

# Senate Bill 701

Sponsored by Senator BOQUIST, Representatives GREENLICK, HUNT; Senators DINGFELDER, GIROD, KRUSE, Representatives NOLAN, SCHAUFLER, J SMITH

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires persons that bid on state public contracts to disclose whether they conduct mineral-extraction or oil-related activities related to Iran.

Directs Oregon Investment Council and State Treasurer to divest investment funds invested in certain companies engaged in mineral-extraction or oil-related activities related to Iran. Directs council or treasurer to maintain list of companies. Specifies procedures for notice and divestment. Prohibits certain investments. Provides exceptions.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to the conduct of business in Iran; creating new provisions; amending ORS 279B.100 and  
3 279C.365; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 and 3 of this 2011 Act are added to and made a part of ORS**  
6 **chapter 279B.**

7 **SECTION 2. As used in this section and section 3 of this 2011 Act:**

8 (1) **“Business operations” means engaging in commerce in any form in Iran, including,**  
9 **but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing or**  
10 **operating equipment, facilities, personnel, products, services, personal property, real prop-**  
11 **erty or any other apparatus of business or commerce.**

12 (2) **“Company” means any sole proprietorship, organization, association, corporation,**  
13 **partnership, joint venture, limited partnership, limited liability partnership, limited liability**  
14 **company or other entity or business association, including all wholly owned subsidiaries,**  
15 **majority-owned subsidiaries, parent companies or affiliates of those entities or business as-**  
16 **sociations, that exists for the purpose of making profit.**

17 (3) **“Iran” means the Islamic Republic of Iran.**

18 (4) **“Mineral-extraction activities” means:**

19 (a) **Exploring, extracting, processing, transporting or wholesale selling or trading of ele-**  
20 **mental minerals or associated metal alloys or oxides, including, but not limited to, gold,**  
21 **copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium and zinc;**  
22 **and**

23 (b) **Facilitating or otherwise providing supplies or services in support of the activities**  
24 **described in paragraph (a) of this subsection.**

25 (5)(a) **“Oil-related activities” means:**

26 (A) **Owning rights to oil blocks;**

27 (B) **Exporting, extracting, producing, refining, processing, exploring for, transporting,**  
28 **selling or trading of oil;**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (C) Constructing, maintaining or operating a pipeline, refinery or other oil field  
2 infrastructure; and

3 (D) Facilitating or otherwise providing supplies or services in support of the activities  
4 described in this paragraph.

5 (b) "Oil-related activities" does not include the mere retail sale of gasoline and related  
6 consumer products.

7 (6) "Petroleum resources" means petroleum, petroleum by-products or natural gas.

8 (7) "Scrutinized company" means a company:

9 (a)(A) That has business operations involving contracts with or provision of supplies or  
10 services to the Government of Iran, a company in which the Government of Iran has any  
11 direct or indirect equity share, a consortium or project commissioned by the Government  
12 of Iran, or a company involved in a consortium or project commissioned by the Government  
13 of Iran; and

14 (B) In which more than 10 percent of the company's revenues or assets linked to Iran  
15 involve oil-related activities or mineral-extraction activities, less than 75 percent of the  
16 company's revenues or assets linked to Iran involve contracts with or provision of oil-related  
17 or mineral-extraction products or services to the Government of Iran or a project or con-  
18 sortium created exclusively by that government; and

19 (b)(A) That has failed to take substantial action; or

20 (B) That has, with actual knowledge, on or after August 5, 1996, made an investment of  
21 \$20 million or more, or any combination of investments of at least \$10 million each that in  
22 the aggregate equals or exceeds \$20 million in any 12-month period, that directly or signif-  
23 icantly contributes to the enhancement of Iran's ability to develop the petroleum resources  
24 of Iran.

25 (8) "Substantial action" means adopting, publicizing and implementing a formal plan to  
26 cease engaging in business operations as a scrutinized company within one year and to re-  
27 frain from any such new business operations.

28 **SECTION 3.** (1) A contracting agency in solicitation documents for a procurement shall  
29 require a bidder or proposer to state in the bid or proposal the extent, if any, to which the  
30 bidder or proposer or an affiliate of the bidder or proposer is a scrutinized company or,  
31 within two years before submitting the bid or proposal, was a scrutinized company. The  
32 statement must detail the nature and duration of the business, the products or services  
33 provided or procured and the names of the bidder's or proposer's affiliates.

34 (2) A contracting agency may consider the contents of the statement in evaluating a bid  
35 or proposal or in awarding a public contract.

36 (3) A contracting agency shall provide the statement to the Oregon Department of Ad-  
37 ministrative Services. The department shall post a copy of the statement on a website to  
38 which the public has access.

39 **SECTION 4.** ORS 279B.100 is amended to read:

40 279B.100. (1) Any solicitation or procurement described in a solicitation may be canceled, or any  
41 or all bids or proposals may be rejected in whole or in part, when the cancellation or rejection is  
42 in the best interest of the contracting agency as determined by the contracting agency. The reasons  
43 for the cancellation or rejection must be made part of the solicitation file. A contracting agency is  
44 not liable to any bidder or proposer for any loss or expense caused by or resulting from the can-  
45 cellation or rejection of a solicitation, bid, proposal or award.

1 (2) Any solicitation or procurement described in a solicitation may be delayed or suspended  
 2 when the delay or suspension is in the best interest of the contracting agency as determined by the  
 3 contracting agency. The contracting agency shall make the reasons for the delay or suspension part  
 4 of the solicitation file. A contracting agency is not liable to any bidder or proposer for any loss or  
 5 expense caused by or resulting from the delay or suspension of a solicitation, bid, proposal or award.

6 **(3) A contracting agency in solicitation documents for a procurement shall require a**  
 7 **bidder or proposer to include the statement described in section 3 of this 2011 Act in a bid**  
 8 **or proposal and provide notice in the solicitation documents that the contracting agency may**  
 9 **reject a bid or proposal that does not contain the statement.**

10 **SECTION 5.** ORS 279C.365 is amended to read:

11 279C.365. (1) A contracting agency that prepares solicitation documents for a public improve-  
 12 ment contract shall, at a minimum, include in the solicitation documents:

13 (a) A designation for or description of the public improvement project;

14 (b) The office where the specifications for the project may be reviewed;

15 (c) The date that prequalification applications must be filed under ORS 279C.430 and the class  
 16 or classes of work for which bidders must be prequalified if prequalification is a requirement;

17 (d) The date and time after which bids will not be received, which must be at least five days  
 18 after the date of the last publication of the advertisement, and may, in the sole discretion of the  
 19 contracting agency, direct or permit bidders to submit and the contracting agency to receive bids  
 20 by electronic means;

21 (e) The name and title of the person designated to receive bids;

22 (f) The date on which and the time and place at which the contracting agency will publicly open  
 23 the bids;

24 (g) A statement that, if the contract is for a public works project subject to the state prevailing  
 25 rates of wage under ORS 279C.800 to 279C.870, the federal prevailing rates of wage under the  
 26 Davis-Bacon Act (40 U.S.C. 3141 et seq.) or both the state and federal prevailing rates of wage, the  
 27 contracting agency will not receive or consider a bid unless the bid contains a statement by the  
 28 bidder that the bidder will comply with ORS 279C.838 or 279C.840 or 40 U.S.C. 3141 et seq.;

29 (h) A statement that each bid must identify whether the bidder is a resident bidder, as defined  
 30 in ORS 279A.120;

31 (i) A statement that the contracting agency may reject a bid that does not comply with pre-  
 32 scribed public contracting procedures and requirements, including the requirement to demonstrate  
 33 the bidder's responsibility under ORS 279C.375 (3)(b), and that the contracting agency may reject for  
 34 good cause all bids after finding that doing so is in the public interest;

35 (j) Information addressing whether a contractor or subcontractor must be licensed under ORS  
 36 468A.720; [and]

37 (k) A statement that the contracting agency may not receive or consider a bid for a public im-  
 38 provement contract unless the bidder is licensed by the Construction Contractors Board or the State  
 39 Landscape Contractors Board[.]; **and**

40 **(L) A requirement that the bidder must include the statement described in section 3 of**  
 41 **this 2011 Act in the bid and a notification that the contracting agency may reject a bid that**  
 42 **does not contain the statement.**

43 (2) A contracting agency may provide solicitation documents by electronic means.

44 (3) A bid made to the contracting agency under ORS 279C.335 or 279C.400 must be:

45 (a) In writing;

1 (b) Filed with the person the contracting agency designates to receive bids; and

2 (c) Opened publicly by the contracting agency immediately after the deadline for submitting  
3 bids.

4 (4) After the contracting agency opens the bids, the contracting agency shall make the bids  
5 available for public inspection.

6 (5) A bidder shall submit or post a surety bond, irrevocable letter of credit issued by an insured  
7 institution as defined in ORS 706.008, cashier's check or certified check for all bids as bid security  
8 unless the contracting agency has exempted the contract for which the bidder submits a bid from  
9 this requirement under ORS 279C.390. The security may not exceed 10 percent of the amount bid for  
10 the contract.

11 (6) Subsection (5) of this section applies only to public improvement contracts with a value, es-  
12 timated by the contracting agency, of more than \$100,000 or, in the case of contracts for highways,  
13 bridges and other transportation projects, more than \$50,000.

14 **SECTION 6. Sections 7 and 8 of this 2011 Act are added to and made a part of ORS 293.701**  
15 **to 293.820.**

16 **SECTION 7. As used in this section and section 8 of this 2011 Act:**

17 (1) **"Active business operations" means all business operations that are not inactive**  
18 **business operations.**

19 (2) **"Business operations" means engaging in commerce in any form in Iran, including,**  
20 **but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing or**  
21 **operating equipment, facilities, personnel, products, services, personal property, real prop-**  
22 **erty or any other apparatus of business or commerce.**

23 (3) **"Company" means any sole proprietorship, organization, association, corporation,**  
24 **partnership, joint venture, limited partnership, limited liability partnership, limited liability**  
25 **company or other entity or business association, including all wholly owned subsidiaries,**  
26 **majority-owned subsidiaries, parent companies or affiliates of those entities or business as-**  
27 **sociations, that exists for the purpose of making profit.**

28 (4) **"Direct holdings" means securities of a company that are held directly by this state,**  
29 **or an account or fund in which this state owns all shares or interests.**

30 (5) **"Inactive business operations" means the mere continued holding or renewal of rights**  
31 **to property previously operated for the purpose of generating revenues, but not presently**  
32 **deployed for that purpose.**

33 (6) **"Indirect holdings" means securities of a company that are held in an account or**  
34 **fund, such as a mutual fund, managed by one or more persons not employed by this state,**  
35 **in which this state owns shares or interests together with other investors that are not sub-**  
36 **ject to the provisions of section 8 of this 2011 Act.**

37 (7) **"Iran" means the Islamic Republic of Iran.**

38 (8) **"Mineral-extraction activities" means:**

39 (a) **Exploring, extracting, processing, transporting or wholesale selling or trading of ele-**  
40 **mental minerals or associated metal alloys or oxides, including, but not limited to, gold,**  
41 **copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium and zinc;**  
42 **and**

43 (b) **Facilitating or otherwise providing supplies or services in support of the activities**  
44 **described in paragraph (a) of this subsection.**

45 (9)(a) **"Oil-related activities" means:**

1 (A) Owning rights to oil blocks;

2 (B) Exporting, extracting, producing, refining, processing, exploring for, transporting,  
3 selling or trading of oil;

4 (C) Constructing, maintaining or operating a pipeline, refinery or other oil field  
5 infrastructure; and

6 (D) Facilitating or otherwise providing supplies or services in support of the activities  
7 described in this paragraph.

8 (b) "Oil-related activities" does not include the mere retail sale of gasoline and related  
9 consumer products.

10 (10) "Petroleum resources" means petroleum, petroleum by-products or natural gas.

11 (11) "Private market fund" means any private equity fund, private equity fund of funds,  
12 venture capital fund, hedge fund, hedge fund of funds, real estate fund or other investment  
13 vehicle that is not publicly traded.

14 (12) "Scrutinized company" means a company:

15 (a)(A) That has business operations involving contracts with or provision of supplies or  
16 services to the Government of Iran, a company in which the Government of Iran has any  
17 direct or indirect equity share, a consortium or project commissioned by the Government  
18 of Iran, or a company involved in a consortium or project commissioned by the Government  
19 of Iran; and

20 (B) In which more than 10 percent of the company's revenues or assets linked to Iran  
21 involve oil-related activities or mineral-extraction activities, less than 75 percent of the  
22 company's revenues or assets linked to Iran involve contracts with or provision of oil-related  
23 or mineral-extraction products or services to the Government of Iran or a project or con-  
24 sortium created exclusively by that government; and

25 (b)(A) That has failed to take substantial action; or

26 (B) That has, with actual knowledge, on or after August 5, 1996, made an investment of  
27 \$20 million or more, or any combination of investments of at least \$10 million each that in  
28 the aggregate equals or exceeds \$20 million in any 12-month period, that directly or signif-  
29 icantly contributes to the enhancement of Iran's ability to develop the petroleum resources  
30 of Iran.

31 (13) "Substantial action" means adopting, publicizing and implementing a formal plan to  
32 cease engaging in business operations as a scrutinized company within one year and to re-  
33 frain from any such new business operations.

34 **SECTION 8.** (1) The Oregon Investment Council and the State Treasurer, in the State  
35 Treasurer's role as investment officer for the council, shall make efforts to identify all  
36 scrutinized companies in which the council or treasurer has direct or indirect holdings of  
37 investment funds or could possibly have direct or indirect holdings of investment funds in  
38 the future. These efforts shall include the following:

39 (a) Reviewing and relying, as appropriate in the judgment of the council and treasurer,  
40 on publicly available information regarding companies having business operations in Iran,  
41 including information provided by nonprofit organizations, research firms, international or-  
42 ganizations and government entities;

43 (b) Contacting asset managers contracted by the council or treasurer that invest in  
44 companies having business operations in Iran; and

45 (c) Contacting other institutional investors that have divested from or engaged with

1 companies that have business operations in Iran.

2 (2) The council or treasurer may retain an independent research firm to identify scruti-  
3 nized companies in which the council or treasurer has direct or indirect holdings. The  
4 council or treasurer shall maintain a list of all scrutinized companies. The council or  
5 treasurer shall update the scrutinized companies list quarterly based on evolving informa-  
6 tion.

7 (3) The council or treasurer shall adhere to the following procedures for companies on  
8 the scrutinized companies list:

9 (a) The council or treasurer shall immediately determine the companies on the scruti-  
10 nized companies list in which the council or treasurer has direct or indirect holdings.

11 (b) For each company identified in paragraph (a) of this subsection that has only inactive  
12 business operations in Iran, the council or treasurer shall send a written notice informing  
13 the company of the provisions of this section and encouraging the company to continue to  
14 refrain from initiating active business operations in Iran until it is able to avoid engaging in  
15 business operations as a scrutinized company. The council or treasurer shall continue such  
16 correspondence semiannually.

17 (c) For each company newly identified in paragraph (a) of this subsection that has active  
18 business operations in Iran, the council or treasurer shall send a written notice informing  
19 the company of its scrutinized company status and that it may become subject to divestment  
20 by the council or treasurer. The notice must inform the company of the opportunity to  
21 clarify its Iran-related activities and encourage the company to cease, within 90 days, its  
22 business operations as a scrutinized company or convert the operations to inactive business  
23 operations in order to avoid qualifying for divestment by the council or treasurer.

24 (d) If, within 90 days after the council or treasurer's first engagement with a company  
25 pursuant to this subsection, the company ceases business operations as a scrutinized com-  
26 pany, the council or treasurer shall remove the company from the scrutinized companies list  
27 and the provisions of this section do not apply to the company unless it resumes business  
28 operations as a scrutinized company. If, within 90 days after the council or treasurer's first  
29 engagement, the company converts its active business operations as a scrutinized company  
30 to inactive business operations, the company is subject to all provisions relating to inactive  
31 business operations.

32 (4)(a) If, after 90 days following the council or treasurer's first engagement with a com-  
33 pany pursuant to subsection (3) of this section, the company continues to have active busi-  
34 ness operations as a scrutinized company, and only while the company continues to have  
35 active business operations as a scrutinized company, the council or treasurer shall sell, re-  
36 deem, divest or withdraw all publicly traded securities of the company, except as provided in  
37 subsection (6) of this section, from the council or treasurer's assets under management  
38 within 12 months after the company's most recent appearance on the scrutinized companies  
39 list.

40 (b) If a company that ceased active business operations as a scrutinized company fol-  
41 lowing engagement pursuant to subsection (3) of this section resumes active business oper-  
42 ations as a scrutinized company, this subsection immediately applies, and the council or  
43 treasurer shall send a written notice to the company. The company shall also be imme-  
44 diately reintroduced onto the scrutinized companies list.

45 (5) Except as provided in subsection (6) of this section, the council or treasurer may not

1 acquire securities of companies on the scrutinized companies list that have active business  
2 operations in Iran.

3 (6) A company that the United States Government affirmatively declares to be excluded  
4 from present or any future federal sanctions regime relating to Iran is not subject to  
5 divestment or the investment prohibition pursuant to subsections (4) and (5) of this section.

6 (7) Notwithstanding the provisions of this section, subsections (4) and (5) of this section  
7 do not apply to indirect holdings in a private market fund. The council or treasurer shall  
8 submit letters to the managers of those investment funds containing companies that engage  
9 in active business operations as scrutinized companies requesting that they consider re-  
10 moving the companies from the fund or create a similar actively managed fund having indi-  
11 rect holdings devoid of the companies. If the manager creates a similar fund, the council or  
12 treasurer shall replace all applicable investments with investments in the similar fund in an  
13 expedited time frame consistent with prudent investing standards.

14 (8) The council or treasurer shall publish the list of scrutinized companies on the  
15 treasurer's website.

16 (9) The treasurer shall publish an annual report on the treasurer's website. The report  
17 shall include:

18 (a) A summary of correspondence with companies engaged by the council or treasurer  
19 under this section;

20 (b) A list of all investments sold, redeemed, divested or withdrawn in compliance with  
21 this section;

22 (c) A list of investments prohibited under subsection (5) of this section; and

23 (d) A summary of correspondence with private market funds under subsection (7) of this  
24 section.

25 (10) The council or treasurer shall notify the Legislative Assembly in writing if the  
26 council or treasurer determines that:

27 (a) The United States Government has revoked all sanctions imposed against the Gov-  
28 ernment of Iran;

29 (b) The Congress or President of the United States has declared that the Government  
30 of Iran has ceased to acquire weapons of mass destruction and has ceased to support inter-  
31 national terrorism; or

32 (c) The Congress or President of the United States, through legislation or executive or-  
33 der, has declared that mandatory divestment of the type provided for in this section inter-  
34 feres with the conduct of United States foreign policy.

35 (11) With respect to actions taken in compliance with this section, including all good faith  
36 determinations regarding companies as required by this section, the council and treasurer  
37 are exempt from any conflicting statutory or common law obligations, including any such  
38 obligations with respect to choice of asset managers, investment funds or investments for  
39 the council or treasurer's securities portfolios.

40 (12)(a) Notwithstanding the provisions of this section, the council or treasurer may cease  
41 divesting from certain scrutinized companies pursuant to subsection (4) of this section or  
42 reinvest in certain scrutinized companies from which it divested pursuant to subsection (4)  
43 of this section if clear and convincing evidence shows that the value of all assets under  
44 management by the council or treasurer becomes equal to or less than 99.50 percent, or 50  
45 basis points, of the hypothetical value of all assets under management by the council or

1 treasurer assuming no divestment for any company had occurred under subsection (4) of this  
 2 section.

3 (b) Cessation of divestment, reinvestment or any subsequent ongoing investment au-  
 4 thorized by this section is limited to the minimum steps necessary to avoid the contingency  
 5 set forth in paragraph (a) of this subsection. For any cessation of divestment, reinvestment  
 6 or subsequent ongoing investment authorized by this section, the treasurer shall provide a  
 7 written report to the council in advance of initial reinvestment, updated semiannually  
 8 thereafter as applicable, setting forth the reasons and justification, supported by clear and  
 9 convincing evidence, for the decisions to cease divestment, reinvest or remain invested in  
 10 companies engaging in active business operations as scrutinized companies.

11 (c) This subsection does not apply to reinvestment in companies on the grounds that they  
 12 have ceased to engage in active business operations as scrutinized companies.

13 **SECTION 9.** The Oregon Investment Council or State Treasurer shall produce the first  
 14 list of scrutinized companies required by section 8 of this 2011 Act not later than 90 days  
 15 following the operative date specified in section 10 of this 2011 Act.

16 **SECTION 10.** (1) Sections 1 to 3 and 6 to 9 of this 2011 Act and the amendments to ORS  
 17 279B.100 and 279C.365 by sections 4 and 5 of this 2011 Act become operative January 1, 2012.

18 (2) A contracting agency, the State Treasurer and the Oregon Investment Council may  
 19 take any action before the operative date specified in subsection (1) of this section that is  
 20 necessary for the agency, council or treasurer to exercise, on and after the operative date  
 21 specified in subsection (1) of this section, all the duties, functions and powers conferred on  
 22 the agency, council or treasurer by sections 1 to 3 and 6 to 9 of this 2011 Act and the  
 23 amendments to ORS 279B.100 and 279C.365 by sections 4 and 5 of this 2011 Act.

24 **SECTION 11.** This 2011 Act being necessary for the immediate preservation of the public  
 25 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect  
 26 on its passage.

27 \_\_\_\_\_