SENATE BILL 455:
Iran Divestment Act

2015-2016 General Assembly

Committee:	House Pensions and Retirement	**Date:**	June 15, 2015
Introduced by:	Sen. Gunn	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to Second Edition S455-CSRO-17		

SUMMARY: The Proposed House Committee Substitute for Senate Bill 455 would prohibit certain investments and contracts with persons determined to be engaging in investment activities in Iran. The Department of State Treasurer is directed to adopt a policy on divestment consistent with its current policy.

CURRENT LAW: The federal Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 expressly authorizes states and local governments to prevent investment in companies operating in Iran's energy sector with investments that have the result of supporting the efforts of the government of Iran to achieve nuclear weapons capability. The North Carolina Department of the State Treasurer currently has an Iran Divestment Policy consistent with this act.

BILL ANALYSIS:

<u>Section 1</u> of Senate Bill 455 would create a new article under Chapter 143C of the General Statutes entitled the Iran Divestment Act of 2015. The section states the intent of the General Assembly to implement the authority granted under Section 202 of the federal Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 by prohibiting certain investments and contracts with persons engaged in investment activities in the energy sector of Iran on a statewide basis.

The bill directs the State Treasurer to adopt a policy to identify persons engaged in investment activities in Iran, to prohibit investment of State funds with those persons, and prohibits persons on the list from contracting with the State.

<u>List of persons</u>: The State Treasurer would be required to create a list of persons engaging in investment activities in the energy sector of Iran. Investment activities in the energy sector of Iran are defined as activities to develop petroleum, natural gas resources, or nuclear power by: a person providing goods or services of 20 million dollars within a 12 month period to the energy sector of Iran; or a person that extends 20 million dollars or more in credit that will be used to provide goods or services in the energy sector of Iran.

The State Treasurer would create the list within 120 days of adoption of the policy and update it every 180 days. The State Treasurer would provide 90 days' written notice to inform any person of the intent of the State Treasurer to include that person on the list and provide that person with the opportunity to deny in writing its engagement in investment activities in the energy sector of Iran.

<u>Prohibited Investments:</u> The bill would prohibit the North Carolina Retirement System or the Department of the State Treasurer from investing funds with a person identified on the list created by the State Treasurer. It would also require that any existing investment with a person on the list be divested within 180 days of the adoption of the policy.

The bill clarifies that nothing in the divestment policy will require the North Carolina Retirement System or the State Treasurer to take action unless the State Treasurer determines in good faith that the action is consistent with the fiduciary duties of those agencies.

An investment may be made in a person identified on the list if:

- The person is eligible to contract with the State under the "substantial positive action exception"; or
- The State Treasurer makes a good faith determination that the investments are necessary to perform its functions.

<u>Prohibited Contracts:</u> The bill would make any person on the list created by the State Treasurer ineligible to contract with the State. It would require a person that contracts with the State to certify that the person is not identified on the list created by the State Treasurer. The State agency would be required to maintain a record of the certification.

<u>Exceptions:</u> The prohibition would not apply to contracts valued at $1,000 or less.

The State may contract with a person engaged in substantial positive action which is action taken by the person to demonstrate that the person has not expanded or renewed the investment activities taken before the effective date of this act and has adopted a formal plan to cease the investment and to refrain from engaging in new investments in Iran.

The State may also contract with a person if the State agency makes a good faith determination that the commodities or services provided by the contract are necessary to perform its functions and the agency would otherwise be unable to obtain the commodities or services.

<u>Reporting and Application:</u> The State Treasurer would report to Joint Legislative Commission on Governmental Operations and the Governor annually on the status of the federal law and the implementation of the act.

The restrictions in this act would apply only until: (1) the President or Congress declares that divestment of this type interferes with the conduct of United States foreign policy; or (2) Congress revokes authority to divest in the manner provided for in the act.

<u>No Private Right of Action:</u> The new Article does not create a private right of action to enforce its provisions. A person may challenge being included on the list by commencing a contested case.

<u>Section 2</u> would clarify that nothing in this act is intended to create a fiduciary relationship between the State Treasurer and anyone who uses the list or any fiduciary duty on the part of the State Treasurer where one does not otherwise exist by law.

<u>Section 3</u> would require the State Treasurer to report a description of this act to the Attorney General of the United States within 30 days, as required by federal law.

<u>Section 4</u> would authorize the State Treasurer to retain consultants and professional to assist with the implementation of the act. This section would become effective when the act becomes law.

EFFECTIVE DATE: This act becomes effective October 1, 2015.

Layla Cummings, counsel to Senate Commerce, substantially contributed to this summary.