

Bill No. SB 2250

Barcode 833742 Comm: RCS 03/27/2007 06:08 PM

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Proposed Committee Substitute by the Committee on Military
Affairs and Domestic Security

1 A bill to be entitled

2 An act relating to divestment of public funds

3 related to Iran; providing definitions;

4 requiring the State Board of Administration to

5 identify all companies doing certain types of

6 business in or with Iran in which public moneys

7 are invested; requiring the board to create and

8 maintain a Scrutinized Company List that names

9 all such companies; requiring the board to

10 periodically contact all scrutinized companies

11 and encourage them to refrain from engaging in

12 certain types of business in or with Iran;

13 requiring the board to inform scrutinized

14 companies of their status as a scrutinized

15 company and to ask for clarification as to the

16 nature of each company's business activities;

17 providing that a company may be removed from

18 the list under certain conditions; providing

19 for reintroduction of a company onto the list;

20 requiring the board to divest the company of

21 all publicly traded securities of a scrutinized

22 company under certain conditions; providing

23 exceptions to the divestment requirement;

24 prohibiting the board from acquiring securities

25 of scrutinized companies that have active

26 business operations; providing exceptions to

27 the investment prohibition; providing an

28 additional exception from the divestment

29 requirement and the investment prohibition

30 concerning certain indirect holdings in

31 actively managed investment funds; requiring

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1 the board to request that the managers of such
2 investment funds consider removing scrutinized
3 companies from the fund or create a similar
4 fund that excludes such companies; requiring
5 the board to file a report to the Board of
6 Trustees of the State Board of Administration
7 and the Legislature within a specified period
8 after creation of the Scrutinized Company List;
9 requiring the annual filing of an updated
10 report; requiring that all such reports be made
11 available to the public; requiring that the
12 report include certain information; providing
13 for the expiration of the act; exempting the
14 board from certain statutory or common law
15 obligations; authorizing the board to cease
16 divesting or to reinvest in certain scrutinized
17 companies if the value of all assets under
18 management by the board becomes equal to or
19 less than a specified amount; requiring the
20 board to file a written report to the Board of
21 Trustees of the State Board of Administration
22 and the Legislature before such reinvestment;
23 requiring that the report contain certain
24 information; requiring semiannual updates to
25 such reports when applicable; providing for
26 severability; providing an effective date.

27
28 WHEREAS, a resolution of the United Nations Security
29 Council imposes sanctions on Iran for its failure to suspend
30 its uranium-enrichment activities, and

31 WHEREAS, the United Nations Security Council voted

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1 unanimously for an additional embargo on Iranian arms exports
 2 which is a freeze on assets abroad of an expanded list of
 3 individuals and companies involved in Iran's nuclear and
 4 ballistic missile programs and calls for nations and
 5 institutions to bar new grants or loans to Iran except for
 6 humanitarian and developmental purposes, and

7 WHEREAS, Iran's financial ability to pay its debts to
 8 foreign entities involved in the petroleum-energy sector
 9 amounting to more than \$20 million is put at risk by the Iran
 10 and Libya Sanctions Act embargo and sanctions, and

11 WHEREAS, foreign entities have invested in Iran's
 12 petroleum-energy sector despite United States and United
 13 Nations sanctions against Iran, and

14 WHEREAS, all United States and foreign entities that
 15 have invested more than \$20 million in Iran's energy sector
 16 since August 5, 1996, are subject to sanctions under United
 17 States law pursuant to the Iran and Libya Sanctions Act of
 18 1996, and

19 WHEREAS, United States renewed the Iran and Libya
 20 Sanctions Act of 1996 in 2001 and 2006, and

21 WHEREAS, while divestiture should be considered with
 22 the intent to improve investment performance and, by the rules
 23 of prudence, fiduciaries must take into account all relevant
 24 substantive factors in arriving at an investment decision, and

25 WHEREAS, divestiture from markets that are vulnerable
 26 to embargo, loan restrictions, and sanctions from the United
 27 States and the international community, including the United
 28 Nations Security Council, is in accordance with the rules of
 29 prudence, and

30 WHEREAS, the State of Florida is deeply concerned about
 31 investments in publicly traded companies that have business

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1 activities in and ties to Iran's petroleum-energy sector as a
2 financial risk to the shareholders, and

3 WHEREAS, by investing in publicly traded companies
4 having ties to Iran's petroleum-energy sector, the Florida
5 State Board of Administration is putting the funds it oversees
6 at substantial financial risk, and

7 WHEREAS, to protect Florida's assets, it is in the best
8 interest of the state to enact a statutory prohibition
9 regarding the investments managed by the State Board of
10 Administration doing business in or with Iran's
11 petroleum-energy sector, NOW, THEREFORE,

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. (1) DEFINITIONS.--As used in this act, the
16 term:

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

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

25 (c) "Company" means any sole proprietorship,
26 organization, association, corporation, partnership, joint
27 venture, limited partnership, limited liability partnership,
28 limited liability company, or other entity or business
29 association, including all wholly owned subsidiaries,
30 majority-owned subsidiaries, parent companies, or affiliates
31 of such entities or business associations, which exists for

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1 the purpose of making profit.

2 (d) "Complicit" means taking actions during any
3 preceding 20-month period which have directly invested in the
4 petroleum energy sector of Iran.

5 (e) "Direct holdings" in a company means all
6 securities of that company which are held directly by the
7 Public Fund or in an account or fund in which the Public Fund
8 owns all shares or interests.

9 (f) "Inactive business operations" means the mere
10 continued holding or renewal of rights to property previously
11 operated for the purpose of generating revenues but not
12 presently deployed for such purpose.

13 (g) "Indirect holdings" in a company means all
14 securities of that company which are held in an account or
15 fund, such as a mutual fund, managed by one or more persons
16 not employed by the Public Fund, in which the Public Fund owns
17 shares or interests together with other investors not subject
18 to the provisions of this act.

19 (h) "Military equipment" means weapons, arms, military
20 supplies, and equipment that readily may be used for military
21 purposes, including, but not limited to, radar systems,
22 military-grade transport vehicles, or supplies or services
23 sold or provided directly or indirectly to any force actively
24 participating in international terrorism.

25 (i) "Mineral-extraction activities" include exploring,
26 extracting, processing, transporting, or wholesale selling or
27 trading of elemental minerals or associated metal alloys or
28 oxides (ore), including gold, copper, chromium, chromite,
29 diamonds, iron, iron ore, silver, tungsten, uranium, and zinc,
30 as well as facilitating such activities, including, providing
31 supplies or services in support of such activities.

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1 (j) "Oil-related activities" include, but are not
 2 limited to, owning rights to oil blocks; exporting,
 3 extracting, producing, refining, processing, exploring for,
 4 transporting, selling, or trading of oil; constructing,
 5 maintaining, or operating a pipeline, refinery, or other
 6 oil-field infrastructure; and facilitating such activities,
 7 including providing supplies or services in support of such
 8 activities, except that the mere retail sale of gasoline and
 9 related consumer products is not considered an oil-related
 10 activity.

11 (k) "Petroleum resources" means petroleum, petroleum
 12 by-products, or natural gas.

13 (l) "Public Fund" means all funds, assets, trustees,
 14 and other designates under the State Board of Administration.

15 (m) "Scrutinized company" means the company has
 16 business operations that involve contracts with or provision
 17 of supplies or services to the Government of Iran, companies
 18 in which the Government of Iran has any direct or indirect
 19 equity share, consortiums or projects commissioned by the
 20 Government of Iran, or companies involved in consortiums or
 21 projects commissioned by the Government of Iran and:

22 1. More than 10 percent of the company's revenues or
 23 assets linked to Iran involve oil-related activities or
 24 mineral-extraction activities; less than 75 percent of the
 25 company's revenues or assets linked to Iran involve contracts
 26 with or provision of oil-related or mineral-extracting
 27 products or services to the Government of Iran or a project or
 28 consortium created exclusively by that government; and the
 29 company has failed to take substantial action; or

30 2. The company has, with actual knowledge, on or after
 31 August 5, 1996, made an investment of \$20 million or more, or

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1 any combination of investments of at least \$10 million each
2 which in the aggregate equals or exceeds \$20 million in any
3 12-month period, which directly or significantly contributes
4 to the enhancement of Iran's ability to develop petroleum
5 resources of Iran.

6 (n) "Substantial action" means adopting, publicizing,
7 and implementing a formal plan to cease scrutinized business
8 operations within 1 year and to refrain from any such new
9 business operations.

10 (2) IDENTIFICATION OF COMPANIES.--

11 (a) Within 90 days after the effective date of this
12 act, the Public Fund shall make its best efforts to identify
13 all scrutinized companies in which the Public Fund has direct
14 or indirect holdings or could possibly have such holdings in
15 the future. Such efforts include:

16 1. Reviewing and relying, as appropriate in the Public
17 Fund's judgment, on publicly available information regarding
18 companies having business operations in Iran, including
19 information provided by nonprofit organizations, research
20 firms, international organizations, and government entities;

21 2. Contacting asset managers contracted by the Public
22 Fund which invest in companies having business operations in
23 Iran; or

24 3. Contacting other institutional investors that have
25 divested from or engaged with companies that have business
26 operations in Iran.

27 (b) By the first meeting of the Public Fund following
28 the 90-day period described in paragraph (a), the Public Fund
29 shall assemble all scrutinized companies identified into a
30 "Scrutinized Companies List."

31 (c) The Public Fund shall update the Scrutinized

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1 Companies List quarterly based on evolving information from,
2 among other sources, those listed in paragraph (a).

3 (3) REQUIRED ACTIONS.--The Public Fund shall adhere to
4 the following procedure for companies on the Scrutinized
5 Companies List:

6 (a) Engagement.--

7 1. The Public Fund shall immediately determine the
8 companies on the Scrutinized Companies List in which the
9 Public Fund owns direct or indirect holdings.

10 2. For each company identified in this paragraph which
11 has only inactive business operations, the Public Fund shall
12 send a written notice informing the company of this act and
13 encouraging it to continue to refrain from initiating active
14 business operations in Iran until it is able to avoid
15 scrutinized business operations. The Public Fund shall
16 continue such correspondence semiannually.

17 3. For each company newly identified under this
18 paragraph which has active business operations, the Public
19 Fund shall send a written notice informing the company of its
20 scrutinized company status and that it may become subject to
21 divestment by the Public Fund. The notice must inform the
22 company of the opportunity to clarify its Iran-related
23 activities and encourage the company, within 90 days, to cease
24 its scrutinized business operations or convert such operations
25 to inactive business operations in order to avoid qualifying
26 for divestment by the Public Fund.

27 4. If, within 90 days after the Public Fund's first
28 engagement with a company pursuant to this paragraph, that
29 company ceases scrutinized business operations, the company
30 shall be removed from the Scrutinized Companies List and the
31 provisions of this act shall cease to apply to it unless it

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1 resumes scrutinized business operations. If, within 90 days
 2 after the Public Fund's first engagement, the company converts
 3 its scrutinized active business operations to inactive
 4 business operations, the company is subject to all provisions
 5 relating thereto.

6 (b) Divestment.--

7 1. If, after 90 days following the Public Fund's first
 8 engagement with a company pursuant to paragraph (a), the
 9 company continues to have scrutinized active business
 10 operations, and only while such company continues to have
 11 scrutinized active business operations, the Public Fund shall
 12 sell, redeem, divest, or withdraw all publicly traded
 13 securities of the company, except as provided in paragraph
 14 (d), from the Public Fund's assets under management within 12
 15 months after the company's most recent appearance on the
 16 Scrutinized Companies List.

17 2. If a company that ceased scrutinized active
 18 business operations following engagement pursuant to paragraph
 19 (a) resumes such operations, this paragraph immediately
 20 applies, and the Public Fund shall send a written notice to
 21 the company. The company shall also be immediately
 22 reintroduced onto the Scrutinized Companies List.

23 (c) Prohibition.--The Public Fund may not acquire
 24 securities of companies on the Scrutinized Companies List
 25 which have active business operations, except as provided in
 26 paragraph (d).

27 (d) Exemption.--A company that the United States
 28 Government affirmatively declares to be excluded from its
 29 present or any future federal sanctions regime relating to
 30 Iran is not subject to divestment or the investment
 31 prohibition pursuant to paragraphs (b) and (c).

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1 (e) Excluded securities.--Notwithstanding the
2 provisions of this act, paragraphs (b) and (c) do not apply to
3 indirect holdings in actively managed investment funds.
4 However, the Public Fund shall submit letters to the managers
5 of such investment funds containing companies that have
6 scrutinized active business operations requesting that they
7 consider removing such companies from the fund or create a
8 similar actively managed fund having indirect holdings devoid
9 of such companies. If the manager creates a similar fund, the
10 Public Fund shall replace all applicable investments with
11 investments in the similar fund in an expedited timeframe
12 consistent with prudent investing standards. For the purposes
13 of this section, a private equity fund is deemed to be an
14 actively managed investment fund.

15 (4) REPORTING.--

16 (a) The Public Fund shall file a report to each member
17 of the Board of Trustees of the State Board of Administration,
18 the President of the Senate, and the Speaker of the House of
19 Representatives which includes the Scrutinized Companies List
20 within 30 days after the list is created. This report shall be
21 made available to the public.

22 (b) Annually thereafter, the Public Fund shall file a
23 report, which shall be made available to the public, to each
24 member of the Board of Trustees of the State Board of
25 Administration, the President of the Senate, and the Speaker
26 of the House of Representatives and send a copy of that report
27 to the United States Presidential Special Envoy to Iran, or an
28 appropriate designee or successor, which includes:

29 1. A summary of correspondence with companies engaged
30 by the Public Fund under subparagraphs (3)(a)2. and 3.;

31 2. All investments sold, redeemed, divested, or

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1 withdrawn in compliance with paragraph (3)(b);

2 3. All prohibited investments under paragraph (3)(c);

3 and

4 4. Any progress made under paragraph (3)(e).

5 (5) EXPIRATION.--This act expires upon the occurrence
6 of any of the following:

7 (a) The United States revokes all sanctions imposed
8 against the Government of Iran;

9 (b) The Congress or President of the United States
10 declares that the Government of Iran has ceased to acquire
11 weapons of mass destruction and to support international
12 terrorism; or

13 (c) The Congress or President of the United States,
14 through legislation or executive order, declares that
15 mandatory divestment of the type provided for in this act
16 interferes with the conduct of United States foreign policy.

17 (6) OTHER LEGAL OBLIGATIONS.--With respect to actions
18 taken in compliance with this act, including all good faith
19 determinations regarding companies as required by this act,
20 the Public Fund is exempt from any conflicting statutory or
21 common law obligations, including any such obligations with
22 respect to choice of asset managers, investment funds, or
23 investments for the Public Fund's securities portfolios.

24 (7) REINVESTMENT IN CERTAIN COMPANIES HAVING
25 SCRUTINIZED ACTIVE BUSINESS OPERATIONS.--Notwithstanding any
26 other provision of this act to the contrary, the Public Fund
27 may cease divesting from certain scrutinized companies
28 pursuant to paragraph (3)(b) or reinvest in certain
29 scrutinized companies from which it divested pursuant to
30 paragraph (3)(b) if clear and convincing evidence shows that
31 the value of all assets under management by the Public Fund

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1 becomes equal to or less than 99.50 percent, or 50 basis
2 points, of the hypothetical value of all assets under
3 management by the Public Fund assuming no divestment for any
4 company had occurred under paragraph (3)(b). Cessation of
5 divestment, reinvestment, or any subsequent ongoing investment
6 authorized by this act is limited to the minimum steps
7 necessary to avoid the contingency set forth in this
8 subsection. For any cessation of divestment, reinvestment, or
9 subsequent ongoing investment authorized by this act, the
10 Public Fund shall provide a written report to each member of
11 the Board of Trustees of the State Board of Administration,
12 the President of the Senate, and the Speaker of the House of
13 Representatives in advance of initial reinvestment, updated
14 semiannually thereafter as applicable, setting forth the
15 reasons and justification, supported by clear and convincing
16 evidence, for its decisions to cease divestment, reinvest, or
17 remain invested in companies having scrutinized active
18 business operations. This act does not apply to reinvestment
19 in companies on the grounds that they have ceased to have
20 scrutinized active business operations.

21 Section 2. If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 invalidity does not affect other provisions or applications of
24 the act which can be given effect without the invalid
25 provision or application, and to this end the provisions of
26 this act are severable.

27 Section 3. This act shall take effect upon becoming a
28 law.

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