

HOUSE No. 2474

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to Protect the Massachusetts Pension Fund from the Risk of Investment in Iran..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. As used in this act the following words shall, unless the context clearly
2 requires otherwise, have the following meanings:-

3 “Active business operations”, all business operations that are not inactive business
4 operations.

5 “Board”, the pension reserves investment management board established pursuant to
6 section 23 of chapter 32 of the General Laws, as appearing in the 2006 official edition.

7 “Business operations in Iran”, providing goods or services deployed to develop petroleum
8 resources in Iran, including by acquiring, developing, maintaining, owning, selling, possessing,
9 leasing, or operating equipment, facilities, personnel, products, services, personal property, real
10 property, or any other apparatus of business or commerce and has knowingly on or after August
11 5, 1996 made an investment or investments in Iran of at least \$20,000,000 in any 12 month
12 period which directly or significantly contributes to the enhancement of Iran’s ability to develop
13 its petroleum resources; provided, however, that the mere holding or renewal of rights to

property not presently deployed to develop petroleum resources in Iran shall not constitute business operations in Iran.

“Company”, any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations that exist for profit-making purposes.

“Direct holdings”, all securities of a company held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

“Government of Iran”, the government of the Islamic Republic of Iran

“Inactive business operations”, the continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

“Indirect holdings”, all securities of a company held in an account or fund, such as a mutual fund, managed by 1 or more persons not employed by the public fund, in which the public fund owns shares or interests together with other investors not subject to the provisions of this act.

“Petroleum resources”, includes, but shall not be limited to: (1) owning rights to oil blocks or natural gas reserves; (2) exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil or natural gas; (3) constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and (4) facilitating such

activities, including by providing supplies or services in support of such activities, provided that, the mere retail sale of gasoline and related consumer products shall not be considered oil-related activities.

“Public fund”, the Pension Reserves Investment Trust or the Pension Reserves Investment Management Board charged with managing the pooled investment fund consisting of the assets of the State Employees’ and Teachers’ Retirement Systems as well as the assets of local retirement systems under the control of the board.

“Scrutinized company”, any company conducting business operations in Iran

“Substantial action”, adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from any such new business operations in Iran.

SECTION 2. Notwithstanding any general or special law to the contrary, within 180 days of the effective date of this act, the public fund shall make its best efforts to facilitate the identification of all scrutinized companies in which the public fund has direct or indirect holdings. The identification of scrutinized companies shall be the responsibility of an independent, third-party research firm, as identified by the public fund, and based on the criteria set forth in this act. By the first meeting of the public fund following the 180-day period, the public fund shall assemble all scrutinized companies in which it has direct or indirect holdings into a scrutinized companies list. The public fund shall update the scrutinized companies list on a quarterly basis based on evolving information from the aforementioned independent, third-party research firm.

SECTION 3. Notwithstanding any general or special law to the contrary, the public fund shall adhere to the following procedure for companies on the scrutinized companies list:-

(a)(1) the public fund shall immediately identify the companies on the scrutinized companies list in which the public fund owns direct or indirect holdings, and shall inform each company identified, by written notice, of this act and that they may be subject to divestment by the public fund. The notice shall offer the company the opportunity to prove that its operations in Iran do not violate this act, and shall request the company cease its scrutinized business operations in Iran, within 180 days, in order to avoid divestment by the public fund;

(2) if within 180 days following the public fund's notice to a company pursuant to paragraph (1), that company ceases scrutinized business operations in Iran, or the public fund is satisfied the company's operations in Iran do not violate this act, the company shall be removed from the scrutinized companies list and this section will cease to apply until it resumes scrutinized business operations in Iran.

(3) after 180 days following the public fund's notice to a company pursuant to paragraph (1), if, and only while such company continues to have scrutinized active business operations, the public fund shall sell, redeem, divest, or withdraw all publicly-traded securities of each company identified in paragraph (1) with active business operations, except as provided below, according to the following schedule: (i) at least 50 per cent of such assets shall be removed from the public fund's assets under management by 9 months after the company's most recent appearance on the scrutinized companies list (ii) 100 per cent of such assets shall be removed from the public fund's assets under management within 15 months after the company's most recent appearance on the scrutinized companies list;

(4) during the time period outlined in paragraph (2) the public fund may sign onto engagement letters or participate in shareholder resolutions regarding the scrutinized business operations of companies identified in paragraph (1) with active or inactive business operations in which the public fund still owns direct or indirect holdings;

(5) If a company identified in paragraph (1) with only inactive business operations converts such operations to active business operations, paragraph (3) shall immediately apply. The company shall also be immediately reintroduced onto the scrutinized companies list.

(b) At no time shall the public fund acquire securities of companies on the scrutinized companies list that have active business operations, except as provided in subsections (c) and (d).

(c) No company which the United States government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to the government of Iran shall be subject to divestment or investment prohibition pursuant to subsections (a) and (b).

(d) Notwithstanding anything herein to the contrary, subsections (a) and (b) shall not apply to indirect holdings in actively managed investment funds; provided, however, that the public fund shall submit letters to the managers of such investment funds containing companies with scrutinized active business operations requesting that they consider removing such companies from the fund or create a similar actively managed fund with indirect holdings devoid of such companies. If the manager creates a similar fund, the public fund shall replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investing standards. For the purposes of this section, private equity funds shall be deemed to be actively managed investment funds.

SECTION 4. Notwithstanding any general or special law to the contrary, the public fund shall file a report with the clerks of the senate and the house of representatives and the attorney general that includes the scrutinized companies list within 30 days after the list is created. Annually thereafter, the public fund shall file a report to the clerks of the senate and the house of representatives and the attorney general that includes: (1) all investments sold, redeemed, divested, or withdrawn in compliance with subsection (a) of section 3; (2) all prohibited investments under subsection (b) of section 3; and (3) any progress made under subsection (d) of section 3.

SECTION 5. Notwithstanding any general or special law to the contrary, the public fund shall be exempt from any conflicting statutory or common law obligations, including any such obligations in respect to choice of asset managers, investment funds, or investments for the public fund's securities portfolios with respect to actions taken in compliance with this act, including all good faith determinations regarding companies as required by this act.

SECTION 6. Notwithstanding any general or special law to the contrary, the public fund shall be permitted to cease divesting from certain scrutinized companies pursuant to subsection (a) of section 3 or reinvest in certain scrutinized companies from which it divested pursuant to said subsection upon clear and convincing evidence showing that the total and aggregate value of all assets under management by, or on behalf of, the public fund becomes equal to or less than 99.5 per cent, or 100 per cent less 50 basis points, of the hypothetical value of all assets under management by, or on behalf of, the public fund assuming no divestment for any company had occurred under said subsection. Cessation of divestment, reinvestment, or any subsequent ongoing investment authorized by this section shall be strictly limited to the minimum steps necessary to avoid the contingency set forth in the preceding sentence. For any cessation of

divestment, and in advance of such cessation, authorized by this subsection, the public fund shall provide a written report to the attorney general, the senate and house committees on ways and means and the joint committee on public service, updated semi-annually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease divestment of holdings in companies on the scrutinized companies list., reinvest, or remain invested in companies with scrutinized active business operations.

SECTION 7. This act shall expire upon: (i) the United States Department of State removing Iran from its list of state sponsors of terrorism, and certifying that Iran is no longer pursuing a nuclear capability in violation of its international commitments and obligations; or (ii) the President of the United States declaring that this act interferes with the conduct of the United States foreign policy.

SECTION 8. This act shall take effect upon passage.