

HOUSE No. 3727

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to protect the Massachusetts Pension Fund from the risks 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 As used in this act the following words shall, unless the context clearly requires
2 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.

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

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

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

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

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

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

27 “Indirect holdings”, all securities of a company held in an account or fund, such as a
28 mutual fund, managed by 1 or more 40 persons not employed by the public fund, in which the
29 public fund owns shares or interests together with other investors not subject to the provisions of
30 this act.

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

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

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

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

43 “Substantial action”, adopting, publicizing, and implementing a formal plan to cease
44 scrutinized business operations within 1 year⁶³ and to refrain from any such new business
45 operations in Iran.

46 SECTION 2. Notwithstanding any general or special law to the contrary, within 90 days
47 of the effective date of this act, the public fund shall make its best efforts to facilitate the
48 identification of all scrutinized companies in which the public fund has direct or indirect
49 holdings. The identification of scrutinized companies shall be the responsibility of an
50 independent, third-party research firm, as identified by the public fund, and based on the criteria
51 set forth in this act. By the first meeting of the public fund following the 90 day period, the
52 public fund shall assemble all scrutinized companies in which it has direct or indirect holdings
53 into a scrutinized companies list. The public fund shall update the scrutinized companies list on a
54 quarterly basis based on evolving information from the aforementioned independent, third-party
55 research firm.

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

58 (a)(1) the public fund shall immediately determine the companies on the scrutinized
59 companies list in which the public fund owns direct or indirect holdings;

60 (2) if, and only while such company continues to have scrutinized active business
61 operations, the public fund shall sell, redeem, divest, or withdraw all publicly-traded securities of
62 each company identified in paragraph (1) with active business operations, except as provided
63 below, according to the following schedule:— (i) at least 50 per cent of such assets shall be
64 removed from the public fund’s assets under management by 6 months after the company’s most
65 recent appearance on the scrutinized companies list (ii) 100 per cent of such assets shall be
66 removed from the public fund’s assets under management within 12 months after the company’s
67 most recent appearance on the scrutinized companies list;

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

72 (4) If a company identified in paragraph (1) with only inactive business operations
73 converts such operations to active business operations, paragraph (2) shall immediately apply.
74 The company shall also be immediately reintroduced onto the scrutinized companies list.

75 30 (b) At no time shall the public fund acquire securities of companies on the scrutinized
76 companies list that have active business operations, except as provided in subsections (c) and (d).

77 (c) No company which the United States government affirmatively declares to be excluded from

78 its present or any future federal sanctions regime relating to the government of Iran shall be
79 subject to divestment or investment prohibition pursuant to subsections (a) and (b). (d)
80 Notwithstanding anything herein to the contrary, subsections (a) and (b) shall not apply to
81 indirect holdings in actively managed investment funds; provided, however, that the public 41
82 fund shall submit letters to the managers of such investment funds containing companies with
83 scrutinized active business operations requesting that they consider removing such companies
84 from the fund or create a similar actively managed fund with indirect holdings devoid of such
85 companies. If the manager creates a similar fund, the public fund shall replace all applicable
86 investments with investments in the similar fund in an expedited time frame consistent with
87 prudent investing standards. For the purposes of this section, private equity funds shall be
88 deemed to be actively managed investment funds.

89 SECTION 4. Notwithstanding any general or special law to the 2 contrary, the public
90 fund shall file a report with the clerks of the Senate and the House of Representatives and the
91 attorney general that includes the scrutinized companies list within 30 days after the list is
92 created. Annually thereafter, the public fund shall file a report to the clerks of the senate and the
93 house of representatives and the attorney general that includes: — (1) all investments sold,
94 redeemed, divested, or withdrawn in compliance with subsection (a) of section 3; (2) all
95 prohibited investments under subsection (b) of section 3; 11 and 12 (3) any progress made under
96 subsection (d) of section 3.

97 SECTION 5. Notwithstanding any general or special law to the contrary, the public fund
98 shall be exempt from any conflicting 3 statutory or common law obligations, including any such
99 obligations in respect to choice of asset managers, investment funds, or investments for the

100 public fund's securities portfolios with respect 6 to actions taken in compliance with this act,
101 including all good faith determinations regarding companies as required by this act.

102 SECTION 6. Notwithstanding any general or special law to the contrary, the public fund
103 shall be permitted to cease divesting from certain scrutinized companies pursuant to subsection
104 (a) of section 3 or reinvest in certain scrutinized companies from which 5 it divested pursuant to
105 said subsection upon clear and convincing evidence showing that the total and aggregate value of
106 all assets under management by, or on behalf of, the public fund becomes equal to or less than
107 99.5 per cent, or 100 per cent less 50 basis points, of the hypothetical value of all assets under
108 management by, or on behalf of, the public fund assuming no divestment for any company had
109 occurred under said subsection. Cessation of divestment, reinvestment, or any subsequent
110 ongoing investment authorized by this section shall be strictly limited to the minimum steps
111 necessary to avoid the contingency set forth in the preceding sentence. For any cessation of
112 divestment, and in advance of such cessation, authorized by this subsection, the public fund shall
113 provide a written report to the attorney general, the senate and house committees on ways and
114 means and the joint committee on public service, updated semi-annually thereafter as applicable,
115 setting forth the reasons and justification, supported by clear and convincing evidence, for its
116 decisions to cease divestment of holdings in companies on the scrutinized companies list.,
117 reinvest, or remain invested in companies with scrutinized active business operations.

118 SECTION 7. This act shall expire upon: — (i) the United States 2 Department of State
119 removing Iran from its list of state sponsors of terrorism, and certifying that Iran is no longer
120 pursuing a nuclear capability in violation of its international commitments and obligations; or (ii)
121 the President of the United States declaring that this act interferes with the conduct of the United
122 States foreign policy.

123 SECTION 8. This act shall take effect upon passage.

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