

HOUSE No. 4297

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 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 in Iran 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”, a company providing goods or services deployed to
8 develop petroleum resources in Iran, including acquiring, developing, maintaining, owning,
9 selling, possessing, leasing, or operating equipment, facilities, personnel, products, services,
10 personal property, real property, or any other apparatus of business or commerce and has
11 knowingly on or after August 5, 1996 made an investment or investments in Iran of at least
12 \$20,000,000 in any 1 year period which directly or significantly contributes the enhancement of

13 Iran’s ability to develop its petroleum resources; provided, however, that this definition shall not
14 apply to a company that has inactive business operations in Iran.

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

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

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

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

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

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

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

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

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

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

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

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

57 (a)(1) The public fund shall determine the companies on the scrutinized companies list,
58 created pursuant to section 2, in which the public fund owns direct or indirect holdings.

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

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 Iran in which the public fund still owns direct or indirect holdings;

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

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

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

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

91 SECTION 4. Notwithstanding any general or special law to the contrary, with respect to
92 actions taken in compliance with this act, the public fund shall be exempt from any conflicting
93 statutory or common law obligations, including any such obligations with respect to choice of
94 asset managers, investment funds or investments for the public fund's securities portfolios and
95 all good faith determinations regarding companies as required by this act.

96 SECTION 5. Notwithstanding any general or special law to the contrary, the public fund
97 shall be permitted to cease divesting from certain scrutinized companies pursuant to subsection
98 (a) of section 3, reinvest in certain scrutinized companies from which it divested pursuant to said
99 subsection (a) of said section 3 or continue to invest in certain scrutinized companies from which
100 it has not yet divested upon clear and convincing evidence showing that the total and aggregate
101 value of all assets under management by, or on behalf of, the public fund becomes: (i) equal to or
102 less than 99.5 per cent, or (ii) 100 per cent less 50 basis points of the hypothetical value of all
103 assets under management by, or on behalf of, the public fund assuming no divestment for any
104 company had occurred under said subsection (a) of said section 3. Cessation of divestment,
105 reinvestment or any subsequent ongoing investment authorized by this section shall be strictly
106 limited to the minimum steps necessary to avoid the contingency set forth in the preceding
107 sentence.

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

115 SECTION 6. The public fund shall file a copy of the scrutinized companies list with the
116 clerks of the senate and the house of representatives and the attorney general within 30 days after
117 the list is created. Annually thereafter, the public fund shall file a report with the clerks of the
118 senate and the house of representatives and the attorney general that includes: (1) the most recent

119 scrutinized companies list; (2) all investments sold, redeemed, divested or withdrawn in
120 compliance with subsection (a) of section 3; (3) all prohibited investments from which the public
121 fund has not yet divested pursuant to subsection (b) of section 3; and (4) any progress made
122 under subsection (d) of section 3.

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