

HOUSE No. 4297

The Commonwealth of Massachusetts

By Mr. Murphy of Burlington, for the committee on Ways & Means, on House, No. 3727, a Bill to protect the Massachusetts pension fund from the risks of investment in Iran (House, No. 4297). October 28, 2009.

An Act to protect the Massachusetts pension fund from the risks of investment in Iran.

FOR THE COMMITTEE

NAME:	DISTRICT/ADDRESS:
Charles Murphy	21st Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and 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 section
6 23 of chapter 32 of the General Laws.

7 “Business operations in Iran”, a company providing goods or services deployed to develop
8 petroleum resources in Iran, including 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 1
12 year period which directly or significantly contributes the enhancement of Iran’s ability to
13 develop its petroleum resources; provided, however, that this definition shall not apply to a
14 company that has inactive business operations in Iran.

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

20 “Direct holdings”, all securities of a company held directly by the public fund or in an account or
21 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 previously
24 operated for the purpose of generating revenues but not presently deployed for such purpose.

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

28 "Petroleum resources", includes, but shall not be limited to: (1) owning rights to oil blocks or natural
29 gas reserves; (2) exporting, extracting, producing, refining, processing, exploring for, transporting,
30 selling or trading of oil or natural gas; (3) constructing, maintaining or operating a pipeline, refinery or
31 other oil-field infrastructure; and (4) facilitating such activities, including by providing supplies or
32 services in support of such activities; provided, that the mere retail sale of gasoline and related consumer
33 products shall not be considered oil-related activities.

34 "Public fund", the Pension Reserves Investment Trust or the Pension Reserves Investment
35 Management Board charged with managing the pooled investment fund consisting of the assets of the
36 State Employees' and Teachers' Retirement Systems as well as the assets of local retirement systems
37 under the control of the board.

38 "Scrutinized company", any company conducting business operations in Iran.

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

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

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

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

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

62 (3) During the time period outlined in paragraph (2), the public fund may sign onto engagement letters or
63 participate in shareholder resolutions regarding the scrutinized business operations of companies
64 identified in paragraph (1) with active or inactive business operations in Iran in which the public fund still
65 owns direct or indirect holdings;

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

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

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

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

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

87 **SECTION 5.** Notwithstanding any general or special law to the contrary, the public fund shall be
88 permitted to cease divesting from certain scrutinized companies pursuant to subsection (a) of section 3,
89 reinvest in certain scrutinized companies from which it divested pursuant to said subsection (a) of said
90 section 3 or continue to invest in certain scrutinized companies from which it has not yet divested upon
91 clear and convincing evidence showing that the total and aggregate value of all assets under
92 management by, or on behalf of, the public fund becomes: (i) equal to or less than 99.5 per cent, or (ii)
93 100 per cent less 50 basis points of the hypothetical value of all assets under management by, or on
94 behalf of, the public fund assuming no divestment for any company had occurred under said subsection
95 (a) of said section 3. Cessation of divestment, reinvestment or any subsequent ongoing investment
96 authorized by this section shall be strictly limited to the minimum steps necessary to avoid the
97 contingency set forth in the preceding sentence.

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

105 **SECTION 6.** The public fund shall file a copy of the scrutinized companies list with the clerks
106 of the senate and the house of representatives and the attorney general within 30 days after the
107 list is created. Annually thereafter, the public fund shall file a report with the clerks of the
108 senate and the house of representatives and the attorney general that includes: (1) the most
109 recent scrutinized companies list; (2) all investments sold, redeemed, divested or withdrawn in
110 compliance with subsection (a) of section 3; (3) all prohibited investments from which the
111 public fund has not yet divested pursuant to subsection (b) of section 3; and (4) any progress
112 made under subsection (d) of section 3.

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