

Senate Bill 451

By: Senators Balfour of the 9th, Adelman of the 42nd, Williams of the 19th, Reed of the 35th, Rogers of the 21st and others

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Article 7 of Chapter 20 of Title 47 of the Official Code of Georgia Annotated,
2 relating to the Public Retirement Systems Investment Authority Law, so as to provide a short
3 title; to provide for legislative findings; to provide for definitions; to require that boards
4 administering public retirement funds of this state identify all companies in which public
5 funds are invested that are doing certain types of investments in Iran; to require such boards
6 to create and maintain certain scrutinized company lists that name all such companies; to
7 require such boards to periodically contact all scrutinized companies and encourage them to
8 refrain from engaging in certain types of investments in Iran; to require such boards to
9 inform scrutinized companies of their status as a scrutinized company and to ask for
10 clarification as to the nature of each company's business activities; to provide that a company
11 may be removed from the list under certain conditions; to provide for the reintroduction of
12 a company onto the list; to provide for the divestment of all directly held, publicly traded
13 securities of a scrutinized company under certain conditions; to provide exceptions to the
14 divestment requirements; to prohibit such boards from acquiring securities of scrutinized
15 companies that have certain active investments; to provide exceptions to the investment
16 prohibition; to provide an additional exception from the divestment requirement and the
17 investment prohibition to certain indirect holdings in actively managed investment funds; to
18 require such boards to request that the managers of such investment funds consider removing
19 scrutinized companies from the fund or creating a similar fund that excludes such companies;
20 to require certain reports; to provide for termination of such prohibitions and divestments;
21 to provide for certain notices; to provide for related matters; to provide for automatic repeal;
22 to provide for immunity; to repeal conflicting laws; and for other purposes.

23 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

24 **SECTION 1.**

25 This Act shall be known and may be cited as the "Protecting Georgia's Investments Act."

SECTION 2.

1
2 The General Assembly finds that:

3 (1) In 2001, the federal Securities and Exchange Commission determined that companies
4 with business operations in terrorist-sponsored states are exposed to a special risk category
5 known as global security risk: the risk to share value and corporate reputation stemming
6 from the intersection of a publicly traded company's international business activities and
7 security-related concerns, such as terrorism and weapons proliferation;

8 (2) In response to the financial risk posed by investments in companies doing business
9 with a state that sponsors terrorists, the federal Securities and Exchange Commission
10 established its Office of Global Security Risk to provide for enhanced disclosure of
11 material information regarding such companies;

12 (3) According to the former chair of the federal Securities and Exchange Commission
13 Laura Unger, the fact that a foreign company is doing material business with a country,
14 government, or entity on OFAC's sanctions list is, in the view of the staff of the federal
15 Securities and Exchange Commission, substantially likely to be significant to a reasonable
16 investor's decision about whether to invest in that company;

17 (4) A 2006 report by the United States House of Representatives Committee on
18 Appropriations states that "a company's association with sponsors of terrorism and human
19 rights abuses, no matter how large or small, can have a materially adverse result on a public
20 company's activities, financial condition, earnings, and stock prices, all of which can
21 negatively affect the value of an investment";

22 (5) Iran tops the United States State Department's list of state sponsors of terrorism,
23 funding such groups as Hamas, Hezbollah, and Islamic Jihad, as well as fueling the
24 insurgency in Iraq via its Al-Quds force;

25 (6) The United States imposed sanctions on Iran by designating the Islamic Revolutionary
26 Guard Corps, its Al-Quds Force, and three state-owned banks as weapons proliferators and
27 supporters of terrorism;

28 (7) The United Nations Security Council has twice voted unanimously to impose sanctions
29 on Iran for its failure to suspend its uranium-enrichment activities calling for an additional
30 embargo on Iranian arms exports, which is a freeze on assets abroad of an expanded list of
31 individuals and companies involved in Iran's nuclear and ballistic missile programs, and
32 calls for nations and institutions to bar new grants or loans to Iran except for humanitarian
33 and developmental purposes;

34 (8) Foreign entities have invested in Iran's petroleum energy sector despite United States
35 and United Nations sanctions against Iran;

1 (9) All entities that have invested more than \$20 million in any given year in Iran's
2 petroleum sector since August 5, 1996, are subject to sanctions under United States law
3 pursuant to the Iran Sanctions Act of 1996;

4 (10) The United States renewed the Iran Sanctions Act of 1996 in 2001 and 2006;

5 (11) It is a fundamental responsibility of the State of Georgia to decide where, how, and
6 by whom financial resources in its control should be invested, taking into account
7 numerous pertinent factors;

8 (12) While divestiture should be considered with the intent to improve investment
9 performance, by the rules of prudence, fiduciaries must take into account all relevant
10 substantive factors in arriving at an investment decision;

11 (13) The State of Georgia is deeply concerned about investments in publicly traded
12 companies that have investments in Iran's petroleum sector as a financial risk to the
13 shareholders;

14 (14) By investing in publicly traded companies having investments in Iran's petroleum
15 sector, public retirement systems are putting their funds at substantial financial risk;

16 (15) Divestiture from markets that are vulnerable to embargo, loan restrictions, and
17 sanctions from the United States and the international community, including the United
18 Nations Security Council, is in accordance with the rules of prudence;

19 (16) This Act should remain in effect only insofar as it continues to be consistent with and
20 does not unduly interfere with the foreign policy of the United States as determined by the
21 federal government;

22 (17) To protect Georgia's assets, it is in the best interest of the state to enact a statutory
23 prohibition regarding the investments managed by public retirement systems doing
24 business in Iran's petroleum-energy sector;

25 (18) Nevertheless, the members of this body have serious concerns regarding the efficacy
26 of requiring the divestment of Georgia's retirement funds in large companies with fiscally
27 sound histories and enviable histories of returns, and whether any effect on world-wide
28 business activities might be too insubstantial as to warrant the cost to the state and to public
29 retirees of divestment;

30 (19) Further, the members of this body are concerned about the cost of compliance, both
31 in terms of the necessity of employing additional administrative staff to ferret certain
32 companies out of the investment pool and in the potential for lost investment revenue
33 caused by a possibly ineffective but costly investment policy; and

34 (20) The members of this body have faith that the boards of trustees and investment
35 managers of our public retirement systems are patriotic Americans who would not aid or
36 assist terrorism in any manner, and that restrictive and potentially costly micro-managing
37 by this body is unnecessary.

SECTION 3.

Article 7 of Chapter 20 of Title 47 of the Official Code of Georgia Annotated, relating to the Public Retirement Systems Investment Authority Law, is revised by adding a new Code section to read as follows:

"47-20-83.1.

(a) As used in this Code section, the term:

(1) 'Company' means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association that exists for the purpose of making profit.

(2) 'Direct holdings' in a company means all securities of that company that are held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

(3) 'Government of Iran' means the government of Iran, its instrumentalities, and companies owned or controlled by the government of Iran.

(4) 'Inactive business activities' means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

(5) 'Indirect holdings' in a company means all securities of that company that are held in an account or fund, such as a mutual fund, managed by one 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 Code section.

(6) 'Iran' means the Islamic Republic of Iran.

(7) 'Petroleum resources' means petroleum or natural gas.

(8) 'Public fund' means a large retirement system as defined in Code Section 47-20-84.

(9) 'Scrutinized business activities' means business activities that have resulted in a company becoming a scrutinized company.

(10) 'Scrutinized company' means any company that has, with actual knowledge, on or after August 5, 1996, made an investment of \$20 million or more in Iran's petroleum sector which directly or significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran.

(11) 'Substantial action specific to Iran' means adopting, publicizing, and implementing a formal plan to cease scrutinized business activities within one year and to refrain from any such new business activities.

(b) On or before October 1, 2008, each public fund shall make its best efforts to identify all scrutinized companies in which the public fund has direct or indirect holdings. Such efforts include reviewing and relying, as appropriate in the public fund's judgment, on

1 publicly available information regarding companies that have invested more than \$20
2 million in any given year since August 5, 1996, in Iran's petroleum energy sector,
3 including information provided by nonprofit organizations, research firms, international
4 organizations, and government entities.

5 (c) By the first meeting of each board responsible for the management of a public fund
6 after October 1, 2008, the board shall assemble all scrutinized companies that fit the criteria
7 specified in paragraph (10) of subsection (a) of this Code section into a 'Scrutinized
8 Companies with Activities in the Iran Petroleum Energy Sector List.'

9 (d) The board of each public fund shall update and make publicly available annually the
10 Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List based on
11 evolving information from, among other sources, those listed in subsection (b) of this Code
12 section.

13 (e) Each public fund shall adhere to the following procedure for assembling companies on
14 the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:

15 (1) For each company in which the public fund has direct holdings newly identified
16 under subsection (c) of this Code section, the public fund shall send a written notice
17 informing the company of its scrutinized company status and that it may become subject
18 to divestment by the public fund. The notice must inform the company of the opportunity
19 to clarify its Iran related activities and encourage the company, within 90 days, to cease
20 its scrutinized business activities or convert such activities to inactive business activities
21 in order to avoid qualifying for divestment by the public fund. Such notice shall be sent
22 no later than December 15, 2008; and

23 (2) If, within 90 days after the public fund's first engagement with a company pursuant
24 to this subsection, that company announces by public disclosure substantial action
25 specific to Iran, the public fund may maintain its direct holdings, but the company shall
26 remain on the Scrutinized Companies with Activities in Iran Petroleum Energy Sector
27 List pending completion of its cessation of scrutinized business activities.

28 (f)(1) If, after 90 days following a public fund's first engagement with a company
29 pursuant to subsection (e) of this Code section, the company has not announced by public
30 disclosure substantial action specific to Iran, or the public fund determines or becomes
31 aware that the company continues to have scrutinized business activities, the public fund
32 within eight months after the expiration of such 90 day period shall sell, redeem, divest,
33 or withdraw all publicly traded securities of the company from the public fund's direct
34 holdings.

35 (2) If the public fund determines or becomes aware that a company that ceased
36 scrutinized business activities following engagement pursuant to subsection (e) of this
37 Code section has resumed such activities, the public fund shall send a written notice to

1 the company in accordance with subsection (e) and this subsection. The company shall
2 also be immediately reintroduced onto the Scrutinized Companies with Activities in Iran
3 Petroleum Energy Sector List.

4 (3) The public fund shall monitor the scrutinized company that has announced by public
5 disclosure substantial action specific to Iran and, if, after one year, the public fund
6 determines or becomes aware that the company has not implemented such a plan, within
7 three months after the expiration of such one-year period shall sell, redeem, divest, or
8 withdraw all publicly traded securities of the company from the public fund's direct
9 holdings, and the company also shall be immediately reintroduced onto the Scrutinized
10 Companies with Activities in Iran Petroleum Energy Sector List.

11 (g) A public fund shall not acquire securities of companies on the Scrutinized Companies
12 with Activities in Iran Petroleum Energy Sector List.

13 (h) Subsections (f) and (g) of this Code section shall not apply to a public fund's indirect
14 holdings. However, the public fund shall submit letters to the managers of such investment
15 funds containing companies on the Scrutinized Companies with Activities in Iran
16 Petroleum Energy Sector List requesting that they consider removing such companies from
17 the fund or create a similar actively managed fund having indirect holdings devoid of such
18 companies. If the manager creates a similar fund devoid of such securities or if such funds
19 are created elsewhere, the board of the public fund shall determine within six months
20 whether to replace all applicable investments with investments in the similar fund in an
21 expedited time frame consistent with prudent investing standards. For the purposes of this
22 subsection, a private equity fund is deemed to be an actively managed investment fund.

23 (i) Notwithstanding any other provision of this Code section, the public fund, when
24 discharging its responsibility for operation of a defined contribution plan, shall engage the
25 manager of the investment offerings in such plans requesting that they consider removing
26 scrutinized companies from the investment offerings or create an alternative investment
27 offering devoid of scrutinized companies. If the manager creates an alternative investment
28 offering or if such funds are created elsewhere and is deemed by the public fund to be
29 consistent with prudent investor standards, the public fund shall, within six months,
30 consider including such investment offering in the plan.

31 (j) Each public fund shall file a report with the Governor, the President of the Senate, and
32 the Speaker of the House of Representatives that includes the Scrutinized Companies with
33 Activities in Iran Petroleum Energy Sector List within 30 days after the list is created. This
34 report shall be made available to the public. Annually thereafter the board responsible for
35 the management of a public fund shall file a report, which shall be made available to the
36 public and to the Governor, the President of the Senate, and the Speaker of the House of
37 Representatives, which includes:

- 1 (1) A summary of correspondence with companies engaged by the public fund under this
2 Code section;
- 3 (2) All investments sold, redeemed, divested, or withdrawn in compliance with this Code
4 section;
- 5 (3) All prohibited investments under this Code section;
- 6 (4) Any progress made under subsection (h) of this Code section; and
- 7 (5) A list of all publicly traded securities held directly by the public fund.
- 8 (k) If any of the following occur, this Code section shall be of no further force or effect:
- 9 (1) The Congress or President of the United States affirmatively and unambiguously
10 states, by means including, but not limited to, legislation, executive order, or written
11 certification from the President to Congress, that the government of Iran has ceased to
12 pursue the capabilities to develop nuclear weapons and support international terrorism;
- 13 (2) The United States revokes all sanctions imposed against the government of Iran; or
- 14 (3) The Congress or President of the United States affirmatively and unambiguously
15 declares, by means including, but not limited to, legislation, executive order, or written
16 certification from the President to Congress, that mandatory divestment of the type
17 provided for in this Code section interferes with the conduct of United States foreign
18 policy.
- 19 (l) With respect to actions taken in compliance with this Code section, including all good
20 faith determinations regarding companies as required by this Code section, the public fund
21 shall be exempt from any conflicting statutory or common law obligations, including any
22 such obligations with respect to choice of asset managers, investment funds, or investments
23 for the public fund's securities portfolios.
- 24 (m) Neither the retirement system nor any employee of the retirement system shall be
25 liable for a good faith omission in identifying a scrutinized company."

26 **SECTION 3.1.**

27 This Act shall be automatically repealed on July 1, 2011.

28 **SECTION 4.**

29 All laws and parts of laws in conflict with this Act are repealed.