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

A BILL TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

SECTION 2.

The General Assembly finds that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20) The members of this body have faith that the boards of trustees and investment managers of our public retirement systems are patriotic Americans who would not aid or assist terrorism in any manner, and that restrictive and potentially costly micro-managing 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 publicly available information regarding companies that have invested more than $20 million in any given year since August 5, 1996, in Iran´s petroleum energy sector, including information provided by nonprofit organizations, research firms, international organizations, and government entities.

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

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

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

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

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

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

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

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

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

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

(h) Subsections (f) and (g) of this Code section shall not apply to a public fund´s indirect holdings. However, the public fund shall submit letters to the managers of such investment funds containing companies on the Scrutinized Companies with Activities in Iran Petroleum Energy Sector List requesting that they consider removing such companies from the fund or create a similar actively managed fund having indirect holdings devoid of such companies. If the manager creates a similar fund devoid of such securities or if such funds are created elsewhere, the board of the public fund shall determine within six months whether to 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 subsection, a private equity fund is deemed to be an actively managed investment fund.

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

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

(1) A summary of correspondence with companies engaged by the public fund under this Code section;

(2) All investments sold, redeemed, divested, or withdrawn in compliance with this Code section;

(3) All prohibited investments under this Code section;

(4) Any progress made under subsection (h) of this Code section; and

(5) A list of all publicly traded securities held directly by the public fund.

(k) If any of the following occur, this Code section shall be of no further force or effect:

(1) The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Iran has ceased to pursue the capabilities to develop nuclear weapons and support international terrorism;

(2) The United States revokes all sanctions imposed against the government of Iran; or

(3) The Congress or President of the United States affirmatively and unambiguously declares, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this Code section interferes with the conduct of United States foreign policy.

(l) With respect to actions taken in compliance with this Code section, including all good faith determinations regarding companies as required by this Code section, the public fund shall be exempt from any conflicting statutory or common law obligations, including any such obligations with respect to choice of asset managers, investment funds, or investments for the public fund´s securities portfolios.

(m) Neither the retirement system nor any employee of the retirement system shall be liable for a good faith omission in identifying a scrutinized company.

(n) The director of the Office of Treasury and Fiscal Services shall annually prepare a list of scrutinized companies as otherwise required by this Code section. The list shall be made available to each public fund in Georgia and each such fund may rely on said list in meeting the requirements of this Code section.″

SECTION 3.1.

This Act shall be automatically repealed on July 1, 2015.

SECTION 4.

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