

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

**SENATE BILL**

**No. 1279** Session of  
2008

---

INTRODUCED BY FUMO, ORIE, RAFFERTY, KITCHEN, FONTANA, STACK,  
BOSCOLA, LOGAN, WASHINGTON, PIPPY, C. WILLIAMS, HUGHES,  
DINNIMAN, O'PAKE, BROWNE, TARTAGLIONE, PILEGGI, EICHELBERGER,  
SCARNATI, PICCOLA, LAVALLE, GREENLEAF AND COSTA,  
FEBRUARY 14, 2008

---

REFERRED TO FINANCE, FEBRUARY 14, 2008

---

AN ACT

1 Providing for divestiture by the State Employees' Retirement  
2 System and the Public School Employees' Retirement System of  
3 investments in companies doing business in Iran's petroleum-  
4 energy sector.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Protecting  
9 Pennsylvania's Investments Act.

10 Section 2. Findings and declarations.

11 The General Assembly finds and declares as follows:

12 (1) In 2001, the United States Securities and Exchange  
13 Commission determined that companies with business operations  
14 in terrorist-sponsoring states are exposed to a special-risk  
15 category known as Global Security Risk, which is the risk to  
16 share value and corporate reputation stemming from the  
17 intersection of a publicly traded company's international

1 business activities and security-related concerns, such as  
2 terrorism and weapons proliferation.

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

9 (3) According to a former chair of the Securities and  
10 Exchange Commission, the fact that a foreign company is doing  
11 material business with a country, government or entity on the  
12 Office of Foreign Assets Control's sanctions list is, in the  
13 Securities and Exchange Commission staff's view,  
14 substantially likely to be significant to a reasonable  
15 investor's decision about whether to invest in that company.

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

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

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

1 (7) The United Nations Security Council has twice voted  
2 unanimously to impose sanctions on Iran for its failure to  
3 suspend its uranium-enrichment activities, calling for an  
4 additional embargo on Iranian arms exports, which would  
5 result in a freeze on assets abroad of an expanded list of  
6 individuals and companies involved in Iran's nuclear and  
7 ballistic missile programs, and calling for nations and  
8 institutions to bar new grants or loans to Iran except for  
9 humanitarian and developmental purposes.

10 (8) Foreign entities have invested in Iran's petroleum-  
11 energy sector despite United States and United Nations  
12 sanctions against Iran.

13 (9) All entities that have invested more than  
14 \$20,000,000 in any given year in Iran's energy sector since  
15 August 5, 1996, are subject to sanctions under United States  
16 law under the Iran and Libya Sanctions Act of 1996 (Public  
17 Law 104-172, 110 Stat. 1541).

18 (10) The United States renewed the Iran and Libya  
19 Sanctions Act of 1996 in 2001 and 2006.

20 (11) It is a fundamental responsibility of the  
21 Commonwealth to decide where, how and by whom financial  
22 resources in its control should be invested, taking into  
23 account numerous pertinent factors.

24 (12) Divestiture should be considered with the intent to  
25 improve investment performance and, by the rules of prudence,  
26 fiduciaries must take into account all relevant substantive  
27 factors in arriving at an investment decision.

28 (13) The Commonwealth is deeply concerned about  
29 investments in publicly traded companies that have  
30 investments in Iran's petroleum-energy sector as a financial

1 risk to shareholders.

2 (14) By investing in publicly traded companies having  
3 investments in Iran's petroleum-energy sector, the  
4 Commonwealth's State Employees' Retirement System and Public  
5 School Employees' Retirement System are putting the funds it  
6 oversees at substantial financial risk.

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

12 (16) The General Assembly finds that this act should  
13 remain in effect only insofar as it continues to be  
14 consistent with and does not unduly interfere with the  
15 foreign policy of the United States as determined by the  
16 Federal Government.

17 (17) To protect the Commonwealth's assets, it is in the  
18 best interest of the Commonwealth to enact a statutory  
19 prohibition regarding the investments managed by the State  
20 Treasurer, the State Employees' Retirement System and Public  
21 School Employees' Retirement System doing business in Iran's  
22 petroleum-energy sector.

23 Section 3. Definitions.

24 The following words and phrases when used in this act shall  
25 have the meanings given to them in this section unless the  
26 context clearly indicates otherwise:

27 "Board." As defined in 71 Pa.C.S. Pt. XXV (relating to  
28 retirement for State employees and officers) or 24 Pa.C.S. Pt.  
29 IV (relating to retirement for school employees).

30 "Company." Any sole proprietorship, organization,

1 association, corporation, partnership, joint venture, limited  
2 partnership, limited liability partnership, limited liability  
3 company or other entity or business association that exists for  
4 the purpose of making a profit.

5 "Direct holdings." All securities of a company that are held  
6 directly by the public fund or in an account or fund in which  
7 the public fund owns all shares and interests.

8 "Government of Iran." The government of Iran and its  
9 instrumentalities and companies owned or controlled by the  
10 government of Iran.

11 "Inactive business activities." The continued holding or  
12 renewal of rights to property previously operated for the  
13 purpose of generating revenues but not presently deployed for  
14 that purpose.

15 "Indirect holdings." All securities of a company that are  
16 held in an account or fund, such as a mutual fund, managed by  
17 one or more persons not employed by the public fund, in which  
18 the public fund owns shares or interests together with other  
19 investors not subject to the provisions of this act.

20 "Iran." The Islamic Republic of Iran.

21 "List." The scrutinized companies with activities in the  
22 Iran petroleum-energy sector list.

23 "Petroleum resources." Petroleum or natural gas.

24 "Public fund." Any of the following:

25 (1) The State Employees' Retirement Fund established  
26 pursuant to 71 Pa.C.S. Pt. XXV (relating to retirement for  
27 State employees and officers).

28 (2) The Public School Employees' Retirement Fund  
29 established pursuant to 24 Pa.C.S. Pt. IV (relating to  
30 retirement for school employees).

1 (3) Any Commonwealth fund administered by the State  
2 Treasurer.

3 "Scrutinized business activities." Business activities that  
4 have resulted in a company becoming a scrutinized company.

5 "Scrutinized company." Any company that has, with actual  
6 knowledge, on or after August 5, 1996, made an investment of at  
7 least \$20,000,000 in Iran in any 12-month period and which  
8 directly or significantly contributes to the enhancement of  
9 Iran's ability to develop the petroleum resources of Iran.

10 "Substantial action specific to Iran." Adopting, publicizing  
11 and implementing a formal plan to cease scrutinized business  
12 activities within one year and to refrain from any such new  
13 business activities.

14 Section 4. Identification of companies.

15 (a) Best effort.--Within 30 days after the effective date of  
16 this section, the public fund shall make its best effort to  
17 identify all scrutinized companies in which the public fund has  
18 direct or indirect holdings. The public fund shall, at a  
19 minimum, review and rely, as appropriate in the public fund's  
20 judgment, on publicly available information regarding companies  
21 that have invested more than \$20,000,000 in any given year since  
22 August 5, 1996, in Iran's petroleum-energy sector, including  
23 information provided by nonprofit organizations, research firms,  
24 international organizations and government entities.

25 (b) Assembly.--By the first meeting of the public fund  
26 following the 30-day period under subsection (a), the public  
27 fund shall assemble all scrutinized companies into a scrutinized  
28 companies with activities in the Iran petroleum-energy sector  
29 list.

30 (c) Update.--The public fund shall, from the effective date

1 of this section, annually update and make publicly available the  
2 list based on evolving information from, among other sources,  
3 those listed under subsection (a).

4 Section 5. Required actions.

5 (a) Procedure.--The public fund shall adhere to the  
6 procedures under this section for assembling companies on the  
7 list.

8 (b) Engagement.--

9 (1) For each company in which the public fund has direct  
10 holdings, it shall send a written notice informing the  
11 company of its scrutinized company status and that it may  
12 become subject to divestment by the public fund. The notice  
13 must inform the company of the opportunity to clarify its  
14 Iran-related activities and encourage the company, within 90  
15 days of the date of receipt of the notice, to cease its  
16 scrutinized business activities or convert the activities to  
17 inactive business activities in order to avoid qualifying for  
18 divestment by the public fund. The notice shall be sent no  
19 later than 120 days after the effective date of this section.

20 (2) If, within 90 days of the date of receipt of the  
21 notice under paragraph (1), the company announces by public  
22 disclosure substantial action specific to Iran, the public  
23 fund may maintain its direct holdings, but the company shall  
24 remain on the list pending completion of its cessation of  
25 scrutinized business activities.

26 (c) Divestment.--

27 (1) If, after 90 days following the effective date of  
28 receipt of the notice under subsection (b)(1), the company  
29 has not announced by public disclosure substantial action  
30 specific to Iran or the public fund determines or becomes

1 aware that the company continues to have scrutinized business  
2 activities, the public fund, within nine months after the  
3 expiration of the 90-day period, shall sell, redeem, divest  
4 or withdraw all publicly traded securities of the company  
5 from the public fund's direct holdings.

6 (2) If the public fund determines or becomes aware that  
7 a company that ceased scrutinized business activities  
8 following engagement under subsection (b) has resumed the  
9 activities, the public fund shall send a written notice to  
10 the company under subsection (b) and the company shall be  
11 immediately reintroduced onto the list.

12 (3) The public fund shall monitor the scrutinized  
13 company that has announced by public disclosure substantial  
14 action specific to Iran and, if after one year the public  
15 fund determines or becomes aware that the company has not  
16 implemented the plan, within six months after the expiration  
17 of the one-year period shall sell, redeem, divest or withdraw  
18 all publicly traded securities of the company from the public  
19 fund's direct holdings and the company shall be immediately  
20 reintroduced onto the list.

21 (d) Prohibition.--The public fund may not acquire securities  
22 of companies on the list.

23 (e) Excluded securities.--Subsections (c) and (f) shall not  
24 apply to the public fund's indirect holdings. The public fund  
25 shall submit letters to the managers of any managed investment  
26 funds containing companies on the list that the managers  
27 consider removing the companies from the fund or creating a  
28 similar actively managed fund having indirect holdings devoid of  
29 the companies. If the manager creates a similar fund devoid of  
30 the securities, the board or the State Treasurer, as applicable,

1 shall determine, within six months of a fund's creation, whether  
2 to replace all applicable investments with investments in the  
3 similar fund in an expedited time frame, consistent with prudent  
4 investing standards. For the purposes of this subsection, a  
5 private equity fund is deemed to be an actively managed  
6 investment fund.

7 (f) Further exclusions.--Notwithstanding any other provision  
8 of this act, the public fund, when discharging its  
9 responsibility for operation of a defined contribution plan,  
10 shall engage the manager of the investment offerings in the  
11 plans requesting that they consider removing scrutinized  
12 companies from the investment offerings or create an alternative  
13 investment offering devoid of scrutinized companies. If the  
14 manager created an alternative investment offering and the  
15 offering is deemed by the public fund to be consistent with  
16 prudent investor standards, the public fund shall consider  
17 including the investment offering in the plan.

18 Section 6. Reporting.

19 (a) Duty of public fund.--The public fund shall, within 30  
20 days of the creation of the list, provide a report to the  
21 Governor, the President pro tempore of the Senate, the Speaker  
22 of the House of Representatives and each member of the boards of  
23 the State Employees' Retirement System and Public School  
24 Employees' Retirement System that includes the items required  
25 under subsection (b). The report shall be made available to the  
26 public.

27 (b) Contents.--The report under subsection (a) shall include  
28 the list and all of the following:

29 (1) A summary of correspondence with companies engaged  
30 by the public fund under section 5.

1 (2) All investments sold, redeemed, divested or  
2 withdrawn in compliance with section 5(c).

3 (3) All prohibited investments under section 5(d).

4 (4) Any progress made under section 5(e).

5 (5) A list of all publicly traded securities held  
6 directly by the Commonwealth.

7 Section 7. Expiration.

8 (a) Notice.--The Secretary of the Commonwealth shall submit  
9 to the Legislative Reference Bureau for publication in the  
10 Pennsylvania Bulletin notice of the occurrence of any of the  
11 following:

12 (1) The President or the Congress of the United States  
13 affirmatively and unambiguously stating that the government  
14 of Iran has ceased to pursue weapons of mass destruction and  
15 support international terrorism.

16 (2) The United States revoking all sanctions imposed  
17 against the government of Iran.

18 (3) The President and the Congress of the United States  
19 affirmatively and unambiguously declaring that mandatory  
20 divestment of the type provided for under this act interferes  
21 with the conduct of United States foreign policy.

22 (b) Expiration.--This act shall expire on the date of the  
23 publication of notice under subsection (a).

24 Section 8. Conflict with other laws.

25 The public fund may perform any action necessary to comply  
26 with this act, notwithstanding the provisions of any other law.

27 Section 9. Severability.

28 If any provision of this act or its application to any person  
29 or circumstances is held invalid, the invalidity shall not  
30 affect other provisions or applications of this act that can be

- 1 given effect without the invalid provision or application.
- 2 Section 20. Effective date.
- 3 This act shall take effect immediately.