

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 928** Session of
2009

INTRODUCED BY STACK, SCARNATI, WASHINGTON, FONTANA, PIPPY,
TARTAGLIONE, LOGAN, COSTA, ORIE, WARD, HUGHES, BOSCOLA,
FARNESE, ALLOWAY, WOZNIAK, LEACH AND DINNIMAN, JULY 17, 2009

SENATOR BROWNE, FINANCE, AS AMENDED, MAY 3, 2010

AN ACT

1 Providing for divestiture by the State Treasurer, the State
2 Employees' Retirement System and the Public School Employees'
3 Retirement System of investments in companies doing business
4 in Iran and Sudan.

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. Definitions.

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

14 "Alternative investments." An investment in a private equity
15 fund, private debt fund, venture fund, real estate fund, hedge
16 fund or absolute return fund.

17 "Board." As defined in section 102 of the act of February 1,
18 1974 (P.L.34, No.15), known as the Pennsylvania Municipal

1 Retirement Law; 24 Pa.C.S. § 8102 (relating to definitions); or
2 71 Pa.C.S. § 5102 (relating to definitions).

3 "Business activities." Owning or controlling property or
4 assets located in, having employees or facilities located in,
5 providing goods or services to, having distribution agreements
6 with, issuing credit or loans to, purchasing bonds or commercial
7 paper issued by, investing in or having equity ties to or with
8 Iran, Sudan or any company domiciled in Iran or Sudan.

9 "Company." Any sole proprietorship, organization,
10 association, corporation, partnership, joint venture, limited
11 partnership, limited liability partnership, limited liability
12 company or other entity or business association that exists for
13 the purpose of making a profit.

14 "Direct holdings." All securities of a company that are held
15 directly by the public fund.

16 "Foreign company." Any entity which is not organized under
17 the laws of the United States.

18 "Government of Iran." The government of Iran and its
19 instrumentalities and companies owned or controlled by the
20 government of Iran.

21 "Government of Sudan." The government in Khartoum, Sudan,
22 which is led by the National Congress Party, formerly known as
23 the National Islamic Front, or any successor government formed
24 on or after October 13, 2006, including the coalition the
25 National Unity Government agreed upon in the Comprehensive Peace
26 Agreement for Sudan. The term does not include the regional
27 government of southern Sudan.

28 "Inactive business activities." The continued holding or
29 renewal of rights to property previously operated for the
30 purpose of generating revenues but not presently deployed for

1 that purpose.

2 "Indemnatee." Each current or former board member, duly
3 appointed designee of a board member, officer, employee,
4 including, without limitation, the attorneys in the Office of
5 Chief Counsel that serve a public fund, agent, research firm or
6 investment manager of a public fund who was or is a party to, or
7 is threatened to be made a party to, or is otherwise involved in
8 any proceeding by reason of the fact that the person is or was a
9 board member, designee of a board member, officer, employee,
10 agent, research firm or investment manager of a public fund.

11 "Indirect holdings." All securities held in an account or
12 fund such as a mutual fund managed by one or more persons not
13 employed by a public fund, in which the public fund owns shares
14 or interests together with other investors.

15 "Iran." The Islamic Republic of Iran.

16 "List of State Sponsors of Terrorism." The list of countries
17 designated by the United States Secretary of State as having
18 repeatedly provided support for acts of international terrorism
19 as reported annually in Country Reports on Terrorism under
20 section 140 of the Foreign Relations Authorization Act, Fiscal
21 Years 1988 and 1989 (Public Law 100-24, 26 U.S.C. § 2656(f)).

22 "Marginalized populations of Sudan." Include, but are not
23 limited to, the portion of the population in the Darfur region
24 that has been genocidally victimized; the portion of the
25 population of southern Sudan victimized by Sudan's North-South
26 civil war; the Beja, Rashidiya and other similarly underserved
27 groups of eastern Sudan; the Nubian and other similarly
28 underserved groups in Sudan's Abyei, Southern Blue Nile and Nuba
29 Mountain regions; and the Amri, Hamadab, Manasir and other
30 similarly underserved groups of northern Sudan.

1 "Military equipment." Weapons, arms, military supplies and
2 equipment that may be used readily for military purposes,
3 including, but not limited to, radar systems or military-grade
4 transport vehicles. This term shall also include supplies or
5 services sold or provided directly or indirectly to any force
6 actively participating in armed conflict in Sudan.

7 "Mineral extraction activities." Include exploring,
8 extracting, processing, transporting or wholesale selling or
9 trading of elemental minerals or associated metal alloys or
10 oxides (ore), including gold, copper, chromium, chromite,
11 diamonds, iron, iron ore, silver, tungsten, uranium and zinc, as
12 well as facilitating such activities, including by providing
13 supplies or services in support of such activities.

14 "Oil-related activities." The term includes all of the
15 following:

16 (1) Development of petroleum or natural gas resources of
17 Iran or Sudan. This paragraph does not include the mere sale
18 of gasoline and related consumer products.

19 (2) Owning rights to oil or natural gas blocks.

20 (3) Exporting, extracting, producing, refining,
21 processing, exploring for, transporting, selling or trading
22 oil or natural gas.

23 (4) Constructing, maintaining or operating any pipeline,
24 refinery, liquefaction facility or other oil or natural gas
25 infrastructure.

26 (5) Facilitating activities referred to in paragraph
27 (1), (2), (3) or (4), including by supplying services in
28 support of the activities.

29 "Power production activities." Business ~~operations~~ ←
30 ACTIVITIES that involve a project commissioned by the National ←

1 Electricity Corporation (NEC) of Sudan or other similar
2 government of Sudan entity whose purpose is to facilitate power
3 generation and delivery, including, but not limited to,
4 establishing power-generating plants or hydroelectric dams,
5 selling or installing components for the project, providing
6 service contracts related to the installation or maintenance of
7 the project, as well as facilitating such activities, including
8 by providing supplies or services in support of such activities.

9 "Proceeding." Any threatened, pending or completed action,
10 suit or proceeding, including, without limitation, an action,
11 suit or proceeding by or in the right of a public fund, relating
12 to compliance with any investment limitations imposed by
13 statute, whether civil, criminal, administrative, investigative
14 or through arbitration.

15 "Public fund." Any of the following:

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

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

22 (3) The Pennsylvania Municipal Retirement Fund.

23 (4) Any Commonwealth fund of which the State Treasurer
24 is the custodian.

25 "Scrutinized business activities." Business activities that
26 have resulted in a company becoming a scrutinized company.

27 "Scrutinized company." Any of the following:

28 (1) Any foreign company that has:

29 (i) invested at least \$20,000,000 in oil-related
30 activities in Iran in any 12-month period since August 5,

1 1996;

2 (ii) supplied military equipment to the government
3 of Iran within the 12-month period prior to the effective
4 date of this section; or

5 (iii) knowingly and intentionally violated the
6 United States export controls with respect to Iran during
7 the 12-month period prior to the effective date of this
8 section.

9 (2) Any foreign company that meets the criteria set
10 forth either in subparagraph (i) or (ii):

11 (i) The company has business ~~operations~~ ACTIVITIES ←
12 that involve contracts with or provision of supplies or
13 services to the government of Sudan, companies in which
14 the government of Sudan has any direct equity share,
15 government of Sudan-commissioned consortiums or projects,
16 or companies involved in government of Sudan-commissioned
17 consortiums or projects; and

18 (A) More than 10% of the company's revenue or
19 assets linked to Sudan involve oil-related activities
20 or mineral extraction activities; less than 75% of
21 the company's revenues or assets linked to Sudan
22 involve contracts with or provision of oil-related or
23 mineral extracting products or services to the
24 regional government of southern Sudan or a project or
25 consortium created exclusively by that regional
26 government; and the company has failed to take
27 substantial action specific to Sudan; or

28 (B) More than 10% of the company's revenues or
29 assets linked to Sudan involve power production
30 activities; less than 75% of the company's power

1 production activities include projects whose intent
2 is to provide power or electricity to the
3 marginalized populations of Sudan; and the company
4 has failed to take substantial action specific to
5 Sudan.

6 (ii) The company supplies military equipment within
7 Sudan, unless it clearly shows that the military
8 equipment cannot be used to facilitate offensive military
9 actions in Sudan or the company implements rigorous and
10 verifiable safeguards to prevent use of that equipment by
11 forces actively participating in armed conflict, for
12 example, through post-sale tracking of such equipment by
13 the company, certification from a reputable and objective
14 third party that such equipment is not being used by a
15 party participating in armed conflict in Sudan, or sale
16 of such equipment solely to the regional government of
17 southern Sudan or any internationally recognized
18 peacekeeping force or humanitarian organization.

19 The term does not include a foreign company that is a social
20 development company.

21 "Social development company." A company whose primary
22 purpose in Iran or Sudan is to provide humanitarian goods or
23 services, including medicine or medical equipment, agricultural
24 supplies or infrastructure; educational opportunities;
25 journalism-related activities; information or information
26 materials; spiritual-related activities; services of a purely
27 clerical or reporting nature; food, clothing or general consumer
28 goods.

29 "Substantial action specific to Iran." Adopting, publicizing
30 and implementing a formal plan to cease scrutinized business

1 activities within one year and to refrain from any such new
2 business activities in Iran.

3 "Substantial action specific to Sudan." Adopting,
4 publicizing and implementing a formal plan to cease scrutinized
5 business activities within one year and to refrain from any such
6 new business activities; undertaking significant humanitarian
7 efforts in conjunction with an international organization, the
8 government of Sudan, the regional government of southern Sudan
9 or a nonprofit entity and evaluated and certified by an
10 independent third party to be substantial in relationship to the
11 company's Sudan business activities and of benefit to one or
12 more marginalized populations of Sudan; or through engagement
13 with the government of Sudan, materially improving conditions
14 for the genocidally victimized population in Darfur.

15 "Sudan." The Democratic Republic of Sudan.

16 Section 3. Identification of companies.

17 (a) Best effort.--Within 90 days after the effective date of
18 this section, a public fund shall make its best effort to
19 identify all scrutinized companies in which the public fund has
20 direct holdings. A public fund shall review, as appropriate in
21 the public fund's judgment, publicly available information
22 regarding foreign companies that have scrutinized business
23 activities, including information provided by nonprofit
24 organizations, research firms, international organizations and
25 government entities.

26 (b) Assembly.--By the first meeting of a public fund
27 following the time period under subsection (a), the public fund
28 shall assemble all scrutinized companies that fit the criteria
29 specified in paragraph (1) of the definition of "scrutinized
30 company" into a Scrutinized Companies with Activities in Iran

1 List and shall assemble all scrutinized companies that fit
2 criteria specified in paragraph (2) of the definition of
3 "scrutinized company" into a Scrutinized Companies with
4 Activities in Sudan List.

5 Section 4. Required actions.

6 (a) Procedure.--A public fund shall adhere to the procedures
7 under this section for determining companies on its Scrutinized
8 Companies with Activities in Iran List and Scrutinized Companies
9 with Activities in Sudan List that qualify for divestment.

10 (b) Engagement.--

11 (1) For each company on a public fund's Scrutinized
12 Companies with Activities in Iran List or Scrutinized
13 Companies with Activities in Sudan List in which the public
14 fund has direct holdings, the public fund shall send a
15 written notice informing the company of its scrutinized
16 company status and specify the business activities which have
17 resulted in this determination and that it may become subject
18 to divestment by the public fund. The notice must inform the
19 company of the opportunity to clarify its scrutinized
20 business activities and encourage the company, within ~~90~~ 180 ←
21 days of the date of receipt of the notice, to cease its
22 scrutinized business activities in Iran, Sudan or both, or
23 convert the activities to inactive business activities in
24 order to avoid qualifying for divestment by the public fund.
25 The notice shall be sent no later than 120 days after the
26 effective date of this section.

27 (2) If, within ~~90~~ 180 days of the date of receipt of a ←
28 notice under paragraph (1), a company announces by public
29 disclosure substantial action specific to Iran or substantial
30 action specific to Sudan, the public fund may maintain its

1 holdings, but the company shall remain on the Scrutinized
2 Companies with Activities in Iran List or Scrutinized
3 Companies with Activities in Sudan List pending completion of
4 the companies' cessation of scrutinized business activities.
5 Following completion of a company's cessation of scrutinized
6 business activities, the public fund shall remove the company
7 from its Scrutinized Companies with Activities in Iran List
8 or Scrutinized Companies with Activities in Sudan List.

9 (c) Divestment.--

10 (1) If, after ~~90~~ 180 days following the effective date ←
11 of receipt of the notice under subsection (b)(1), a company
12 has not announced by public disclosure substantial action
13 specific to Iran, substantial action specific to Sudan or
14 both as specified in the notice, or the public fund
15 determines or becomes aware that the company continues to
16 have scrutinized business activities, the public fund, within
17 ~~15~~ 26 months after the ~~90-day~~ 180-DAY period, shall sell, ←
18 redeem, divest or withdraw from its direct holdings all
19 securities of the company.

20 (2) If a public fund determines or becomes aware that a
21 company that ceased scrutinized business activities following
22 engagement under subsection (b) has resumed the activities,
23 the public fund shall send a written notice to the company
24 under subsection (b), and the company shall be immediately
25 placed onto the public fund's Scrutinized Companies with
26 Activities in Iran List or Scrutinized Companies with
27 Activities in Sudan List.

28 (3) A public fund shall monitor a scrutinized company
29 that has announced by public disclosure substantial action
30 specific to Iran, substantial action specific to Sudan or

1 both. If after one year the public fund determines or becomes
2 aware that the company has not implemented the plan, within
3 ~~15~~ 26 months after the expiration of the one-year period, the ←
4 public fund shall sell, redeem, divest or withdraw from its
5 direct holdings all securities of the company.

6 (d) Prohibition.--A public fund may not acquire securities
7 of a company on its Scrutinized Companies with Activities in
8 Iran List or Scrutinized Companies with Activities in Sudan
9 List.

10 (e) Excluded securities.--Nothing in this act shall apply to
11 the public fund's holdings in alternative investments or
12 indirect holdings.

13 Section 5. Reporting.

14 (a) Report to United States Attorney General.--Within 30
15 days of the passage of this act, administrators of the public
16 fund shall file a written report to the United States Attorney
17 General detailing the requirements contained in this act.

18 (b) Duty of public fund.--A public fund shall, within one
19 year of assembly of its Scrutinized Companies with Activities in
20 Iran List and Scrutinized Companies with Activities in Sudan
21 List, provide a report to the Governor; the President pro
22 tempore of the Senate; the Speaker of the House of
23 Representatives; and each member of the boards of the
24 Pennsylvania Municipal Retirement System, the State Employees'
25 Retirement System and Public School Employees' Retirement
26 System. The report shall include the items required under
27 subsection (c). The report shall be made available to the
28 public.

29 (c) Contents.--The report under subsection (b) shall include
30 the most recent Scrutinized Companies with Activities in Iran

1 List and Scrutinized Companies with Activities in Sudan List and
2 all of the following:

3 (1) A summary of correspondence with SCRUTINIZED ←
4 companies engaged by the public fund under section 4.

5 (2) All investments sold, redeemed, divested or
6 withdrawn in compliance with section 4(c), the costs and
7 expenses of such transfers, and a determination of net gain
8 or loss on account of such transactions incurred in
9 compliance with the provisions of this act.

10 (3) All prohibited investments under section 4(d).

11 (4) A list of all publicly traded securities held by the
12 public fund.

13 (d) Update.--A public fund shall do all of the following:

14 (1) Annually update, based on evolving information under
15 subsection (c), and make publicly available its Scrutinized
16 Companies with Activities in Iran List and Scrutinized
17 Companies with Activities in Sudan List.

18 (2) Provide a copy of the lists under paragraph (1),
19 including updates, to all other public funds.

20 Section 6. Expiration.

21 (a) Recurrence of investment in Iran.--A public fund shall
22 have no obligations under this act with respect to a company
23 engaged in business activities in Iran upon the occurrence of
24 any of the following:

25 (1) Iran does not appear on the List of State Sponsors
26 of Terrorism.

27 (2) The President or Congress of the United States,
28 through legislation or executive order, declares that
29 mandatory divestment of the type provided for in this act
30 interferes with the conduct of United States foreign policy.

1 (b) Recurrence of investment in Sudan.--A public fund shall
2 have no obligations under this act with respect to a company
3 engaged in business activities in Sudan upon the occurrence of
4 any of the following:

5 (1) The President or Congress of the United States
6 declares Darfur genocide has been halted for at least 12
7 months.

8 (2) Sudan does not appear on the list of State Sponsors
9 of Terrorism.

10 (3) The President or Congress of the United States
11 declares that the government of Sudan has honored its
12 commitments to cease attacks on civilians, demobilize and
13 demilitarize the Janjaweed and associated militias, grant
14 free and unfettered access for deliveries of humanitarian
15 assistance and allow for the safe and voluntary return of
16 refugees and internally displaced persons under the Sudan
17 Accountability and Divestment Act of 2007 (P.L. 110-174, 121
18 Stat. 2516).

19 (4) The President or Congress of the United States,
20 through legislation or executive order, declares that
21 mandatory divestment of the type provided for in this act
22 interferes with the conduct of United States foreign policy.

23 Section 7. Conflict with other laws.

24 A public fund may perform any action necessary to comply with
25 this act, notwithstanding the provisions of any other law,
26 including, but not limited to, any fiduciary or prudent
27 investing responsibilities as prescribed in 24 Pa.C.S. § 8521
28 (relating to management of fund and accounts) and 71 Pa.C.S. §
29 5931 (relating to management of fund and accounts) and any
30 obligations of a public fund with respect to choice of asset

1 managers, investment funds or investments for the public fund's
2 securities portfolios.

3 Section 8. Indemnification.

4 (a) General rule.--Each indemnitee shall be indemnified and
5 held harmless by the Commonwealth for all good faith actions
6 taken by the indemnitee and for all good faith failures to take
7 action, regardless of the date of any such action or failure to
8 take action, in connection with attempts to comply with any
9 investment limitations imposed by statute against all expense,
10 liability and loss, including, without limitation, attorney
11 fees, judgments, fines, taxes, penalties and amounts paid or to
12 be paid in settlements reasonably incurred or suffered by the
13 indemnitee in connection with any proceeding.

14 (b) Advance payment.--The right to indemnification provided
15 in this section shall include the right to have the expenses
16 reasonably incurred by the indemnitee in defending any
17 proceeding paid by the Commonwealth in advance of the final
18 disposition of the proceeding upon the receipt by the
19 Commonwealth of a written undertaking by the indemnitee to
20 refund the amounts so advanced if it is ultimately determined
21 that the indemnitee is not entitled to indemnification under
22 this section.

23 (c) Persons entitled.--Indemnification pursuant to this
24 section shall continue as to an indemnitee who has ceased to be
25 a board member, designee of a board member, officer or employee
26 of a public fund and shall inure to the benefit of such person's
27 legal representatives, heirs, executors and administrators.

28 (d) Reimbursement to public funds.--To the extent that the
29 Commonwealth does not make any indemnification payments,
30 including any advancement of legal fees and expenses, within 30

1 days of demand therefor, a public fund shall make such payment
2 and the Commonwealth shall reimburse the public fund.

3 (e) Construction.--The repeal, expiration or amendment of
4 any provision of this section shall not limit the rights of any
5 indemnitee to indemnification, including advancement of
6 expenses, with respect to any action or failure to act occurring
7 prior to the effective date of such repeal or amendment.

8 Section 9. Fund reimbursement.

9 The Commonwealth shall reimburse each public fund for their
10 net losses, costs and expenses incurred as a result of
11 compliance with the provisions of this act. The reimbursements
12 shall occur in the following manner:

13 (1) The public fund shall submit to the Secretary of the
14 Budget an itemization of the amount necessary to be
15 appropriated by the General Assembly to reimburse the public
16 fund for their net losses, costs and expenses incurred as a
17 result of compliance with the provisions of this act in the
18 previous fiscal year. To the extent the public fund
19 experiences net gains as a result of compliance with the
20 provisions of this act in a fiscal year, the net gains shall
21 be used to offset any reported costs or expenses incurred by
22 the public fund.

23 (2) In consultation with each public fund, the Secretary
24 of the Budget shall annually establish a uniform method for
25 the determination of gains and losses. The method shall be
26 used by each public fund in making a claim for reimbursement
27 under this section. The budget submission shall be on a form
28 and in a manner determined by the secretary of the budget,
29 including net losses, along with an itemized accounting of
30 all costs and expenses claimed by the public fund. Budget

1 submission shall occur no later than November 1 following the
2 fiscal year in which the net losses, costs and expenses were
3 incurred.

4 (3) Upon appropriation by the General Assembly to
5 provide for the obligations of the Commonwealth, the amount
6 shall be paid by the State Treasurer through the Department
7 of Revenue into the public fund within 90 days of receipt of
8 the requisition presented by the public fund.

9 Section 10. Severability.

10 If any provision of this act or its application to any person
11 or circumstances is held invalid, the invalidity shall not
12 affect other provisions or applications of this act that can be
13 given effect without the invalid provision or application.

14 Section 30. Effective date.

15 This act shall take effect immediately.