

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1968 Session of  
2017

INTRODUCED BY MICCARELLI, BOYLE, BAKER, BERNSTINE, DRISCOLL,  
DAY, SCHLOSSBERG, MILLARD, HELM, BARBIN, WHEELAND AND WATSON,  
DECEMBER 13, 2017

REFERRED TO COMMITTEE ON STATE GOVERNMENT, DECEMBER 13, 2017

AN ACT

1 Amending the act of July 2, 2010 (P.L.266, No.44), entitled "An  
2 act providing for divestiture by the State Treasurer, the  
3 State Employees' Retirement System and the Public School  
4 Employees' Retirement System of investments in companies  
5 doing business in Iran and Sudan," providing for divestiture  
6 of investments in companies boycotting Israel.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. The title of the act of July 2, 2010 (P.L.266,  
10 No.44), known as the Protecting Pennsylvania's Investments Act,  
11 is amended to read:

12 AN ACT

13 Providing for divestiture by the State Treasurer, the State  
14 Employees' Retirement System and the Public School Employees'  
15 Retirement System of investments in companies boycotting  
16 Israel and doing business in Iran and Sudan.

17 Section 2. Section 2 of the act is amended to read:

18 Section 2. Definitions.

19 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

3 "Alternative investments." An investment in a private equity  
4 fund, private debt fund, venture fund, real estate fund, hedge  
5 fund or absolute return fund.

6 "Board." As defined in section 102 of the act of February 1,  
7 1974 (P.L.34, No.15), known as the Pennsylvania Municipal  
8 Retirement Law, 24 Pa.C.S. § 8102 (relating to definitions) or  
9 71 Pa.C.S. § 5102 (relating to definitions).

10 "Boycott Israel." Engaging in actions that are  
11 politically motivated and are intended to penalize, inflict  
12 economic harm on or otherwise limit commercial relations with  
13 the State of Israel or companies based in the State of Israel or  
14 in territories controlled by the State of Israel.

15 "Business activities." Owning or controlling property or  
16 assets located in, having employees or facilities located in,  
17 providing goods or services to, having distribution agreements  
18 with, issuing credit or loans to, purchasing bonds or commercial  
19 paper issued by, investing in or having equity ties to or with  
20 Iran, Sudan or any company domiciled in Iran or Sudan.

21 "Company." Any sole proprietorship, organization,  
22 association, corporation, partnership, joint venture, limited  
23 partnership, limited liability partnership, limited liability  
24 company or other entity or business association that exists for  
25 the purpose of making a profit.

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

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

30 "Government of Iran." The government of Iran and its

1 instrumentalities and companies owned or controlled by the  
2 government of Iran.

3 "Government of Sudan." The government in Khartoum, Sudan,  
4 which is led by the National Congress Party, formerly known as  
5 the National Islamic Front, or any successor government formed  
6 on or after October 13, 2006, including the coalition the  
7 National Unity Government agreed upon in the Comprehensive Peace  
8 Agreement for Sudan. The term does not include the regional  
9 government of southern Sudan.

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

14 "Indemnatee." Each current or former board member, duly  
15 appointed designee of a board member, officer, employee,  
16 including, without limitation, the attorneys in the Office of  
17 Chief Counsel that serve a public fund, agent, research firm or  
18 investment manager of a public fund who was or is a party to, or  
19 is threatened to be made a party to or is otherwise involved in  
20 any proceeding by reason of the fact that the person is or was a  
21 board member, designee of a board member, officer, employee,  
22 agent, research firm or investment manager of a public fund.

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

27 "Iran." The Islamic Republic of Iran.

28 "List of State Sponsors of Terrorism." The list of countries  
29 designated by the United States Secretary of State as having  
30 repeatedly provided support for acts of international terrorism

1 as reported annually in Country Reports on Terrorism under  
2 section 140 of the Foreign Relations Authorization Act, Fiscal  
3 Years 1988 and 1989 (Public Law 100-24, 26 U.S.C. § 2656(f)).

4 "Marginalized populations of Sudan." Include, but are not  
5 limited to, the portion of the population in the Darfur region  
6 that has been genocidally victimized; the portion of the  
7 population of southern Sudan victimized by Sudan's North-South  
8 civil war; the Beja, Rashidiya and other similarly underserved  
9 groups of eastern Sudan; the Nubian and other similarly  
10 underserved groups in Sudan's Abyei, Southern Blue Nile and Nuba  
11 Mountain regions; and the Amri, Hamadab, Manasir and other  
12 similarly underserved groups of northern Sudan.

13 "Military equipment." Weapons, arms, military supplies and  
14 equipment that may be used readily for military purposes,  
15 including, but not limited to, radar systems or military-grade  
16 transport vehicles. This term shall also include supplies or  
17 services sold or provided directly or indirectly to any force  
18 actively participating in armed conflict in Sudan.

19 "Mineral extraction activities." Include exploring,  
20 extracting, processing, transporting or wholesale selling or  
21 trading of elemental minerals or associated metal alloys or  
22 oxides (ore), including gold, copper, chromium, chromite,  
23 diamonds, iron, iron ore, silver, tungsten, uranium and zinc, as  
24 well as facilitating such activities, including by providing  
25 supplies or services in support of such activities.

26 "Oil-related activities." The term includes all of the  
27 following:

- 28 (1) Development of petroleum or natural gas resources of  
29 Iran or Sudan. This paragraph does not include the mere sale  
30 of gasoline and related consumer products.

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

2           (3)   Exporting, extracting, producing, refining,  
3   processing, exploring for, transporting, selling or trading  
4   oil or natural gas.

5           (4)   Constructing, maintaining or operating any pipeline,  
6   refinery, liquefaction facility or other oil or natural gas  
7   infrastructure.

8           (5)   Facilitating activities referred to in paragraph  
9   (1), (2), (3) or (4), including by supplying services in  
10   support of the activities.

11        "Power production activities."   Business activities that  
12   involve a project commissioned by the National Electricity  
13   Corporation (NEC) of Sudan or other similar government of Sudan  
14   entity whose purpose is to facilitate power generation and  
15   delivery, including, but not limited to, establishing power-  
16   generating plants or hydroelectric dams, selling or installing  
17   components for the project, providing service contracts related  
18   to the installation or maintenance of the project, as well as  
19   facilitating such activities, including by providing supplies or  
20   services in support of such activities.

21        "Proceeding."   Any threatened, pending or completed action,  
22   suit or proceeding, including, without limitation, an action,  
23   suit or proceeding by or in the right of a public fund, relating  
24   to compliance with any investment limitations imposed by  
25   statute, whether civil, criminal, administrative, investigative  
26   or through arbitration.

27        "Public fund."   Any of the following:

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

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

4           (3) The Pennsylvania Municipal Retirement Fund.

5           (4) Any Commonwealth fund of which the State Treasurer  
6       is the custodian.

7       "Scrutinized business activities." Business activities that  
8       have resulted in a company becoming a scrutinized company.

9       "Scrutinized company." Any of the following:

10           (1) Any foreign company that has:

11               (i) invested at least \$20,000,000 in oil-related  
12               activities in Iran in any 12-month period since August 5,  
13               1996;

14               (ii) supplied military equipment to the government  
15               of Iran within the 12-month period prior to the effective  
16               date of this section; or

17               (iii) knowingly and intentionally violated the  
18               United States export controls with respect to Iran during  
19               the 12-month period prior to the effective date of this  
20               section.

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

23               (i) The company has business activities that involve  
24               contracts with or provision of supplies or services to  
25               the government of Sudan, companies in which the  
26               government of Sudan has any direct equity share,  
27               government of Sudan-commissioned consortiums or projects,  
28               or companies involved in government of Sudan-commissioned  
29               consortiums or projects; and

30               (A) more than 10% of the company's revenue or

1 assets linked to Sudan involve oil-related activities  
2 or mineral extraction activities; less than 75% of  
3 the company's revenues or assets linked to Sudan  
4 involve contracts with or provision of oil-related or  
5 mineral extracting products or services to the  
6 regional government of southern Sudan or a project or  
7 consortium created exclusively by that regional  
8 government; and the company has failed to take  
9 substantial action specific to Sudan; or

10 (B) more than 10% of the company's revenues or  
11 assets linked to Sudan involve power production  
12 activities; less than 75% of the company's power  
13 production activities include projects whose intent  
14 is to provide power or electricity to the  
15 marginalized populations of Sudan; and the company  
16 has failed to take substantial action specific to  
17 Sudan.

18 (ii) The company supplies military equipment within  
19 Sudan, unless it clearly shows that the military  
20 equipment cannot be used to facilitate offensive military  
21 actions in Sudan or the company implements rigorous and  
22 verifiable safeguards to prevent use of that equipment by  
23 forces actively participating in armed conflict, for  
24 example, through post-sale tracking of such equipment by  
25 the company, certification from a reputable and objective  
26 third party that such equipment is not being used by a  
27 party participating in armed conflict in Sudan or sale of  
28 such equipment solely to the regional government of  
29 southern Sudan or any internationally recognized  
30 peacekeeping force or humanitarian organization.

1           (3) Any foreign company that boycotts Israel.

2   The term does not include a foreign company that is a social  
3   development company.

4       "Social development company." A company whose primary  
5   purpose in Israel, Iran or Sudan is to provide humanitarian  
6   goods or services, including medicine or medical equipment,  
7   agricultural supplies or infrastructure; educational  
8   opportunities; journalism-related activities; information or  
9   information materials; spiritual-related activities; services of  
10   a purely clerical or reporting nature; food, clothing or general  
11   consumer goods.

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

16       "Substantial action specific to Israel." Adopting,  
17   publicizing and implementing a formal plan to cease boycotting  
18   Israel within one year and to refrain from boycotting Israel  
19   after that period.

20       "Substantial action specific to Sudan." Adopting,  
21   publicizing and implementing a formal plan to cease scrutinized  
22   business activities within one year and to refrain from any such  
23   new business activities; undertaking significant humanitarian  
24   efforts in conjunction with an international organization, the  
25   government of Sudan, the regional government of southern Sudan  
26   or a nonprofit entity and evaluated and certified by an  
27   independent third party to be substantial in relationship to the  
28   company's Sudan business activities and of benefit to one or  
29   more marginalized populations of Sudan; or through engagement  
30   with the government of Sudan, materially improving conditions



1 for the genocidally victimized population in Darfur.

2 "Sudan." The Democratic Republic of Sudan.

3 Section 3. The act is amended by adding a section to read:

4 Section 3.1. Identification of companies boycotting Israel.

5 (a) Best effort.--Within 90 days after the effective date of  
6 this section, a public fund shall make its best effort to  
7 identify all companies boycotting Israel in which the public  
8 fund has direct holdings. A public fund shall review, as  
9 appropriate in the public fund's judgment, publicly available  
10 information regarding companies boycotting Israel, including  
11 information provided by nonprofit organizations, research firms,  
12 international organizations and government entities.

13 (b) Assembly.--By the first meeting of a public fund  
14 following the time period under subsection (a), the public fund  
15 shall assemble all companies boycotting Israel into a  
16 Scrutinized Companies Boycotting Israel List.

17 Section 4. Sections 4, 5 and 6 of the act are amended to  
18 read:

19 Section 4. Required actions.

20 (a) Procedure.--A public fund shall adhere to the procedures  
21 under this section for determining companies on its Scrutinized  
22 Companies Boycotting Israel List, Scrutinized Companies with  
23 Activities in Iran List and Scrutinized Companies with  
24 Activities in Sudan List that qualify for divestment.

25 (b) Engagement.--

26 (1) For each company on a public fund's Scrutinized  
27 Companies Boycotting Israel List, Scrutinized Companies with  
28 Activities in Iran List or Scrutinized Companies with  
29 Activities in Sudan List in which the public fund has direct  
30 holdings, the public fund shall send a written notice

1 informing the company of its scrutinized company status and  
2 specify the business activities which have resulted in this  
3 determination and that it may become subject to divestment by  
4 the public fund. The notice must inform the company of the  
5 opportunity to clarify its scrutinized business activities  
6 and encourage the company, within 180 days of the date of  
7 receipt of the notice, to cease boycotting Israel or its  
8 scrutinized business activities in Iran, Sudan or both or  
9 convert the activities to inactive business activities in  
10 order to avoid qualifying for divestment by the public fund.  
11 The notice shall be sent no later than 120 days after the  
12 effective date of this section.

13 (2) If, within 180 days of the date of receipt of a  
14 notice under paragraph (1), a company announces by public  
15 disclosure substantial action specific to Israel, substantial  
16 action specific to Iran or substantial action specific to  
17 Sudan, the public fund may maintain its holdings, but the  
18 company shall remain on the Scrutinized Companies Boycotting  
19 Israel List, Scrutinized Companies with Activities in Iran  
20 List or Scrutinized Companies with Activities in Sudan List  
21 pending completion of the companies' cessation of scrutinized  
22 business activities. Following completion of a company's  
23 cessation of scrutinized business activities, the public fund  
24 shall remove the company from its Scrutinized Companies  
25 Boycotting Israel List, Scrutinized Companies with Activities  
26 in Iran List or Scrutinized Companies with Activities in  
27 Sudan List.

28 (c) Divestment.--

29 (1) If, after 180 days following the effective date of  
30 receipt of the notice under subsection (b)(1), a company has

1 not announced by public disclosure substantial action  
2 specific to Israel, substantial action specific to Iran,  
3 substantial action specific to Sudan or both as specified in  
4 the notice, or the public fund determines or becomes aware  
5 that the company continues to boycott Israel or have  
6 scrutinized business activities, the public fund, within 26  
7 months after the 180-day period, shall sell, redeem, divest  
8 or withdraw from its direct holdings all securities of the  
9 company.

10 (2) If a public fund determines or becomes aware that a  
11 company that ceased boycotting Israel scrutinized business  
12 activities following engagement under subsection (b) has  
13 resumed the activities, the public fund shall send a written  
14 notice to the company under subsection (b), and the company  
15 shall be immediately placed onto the public fund's  
16 Scrutinized Companies Boycotting Israel List, Scrutinized  
17 Companies with Activities in Iran List or Scrutinized  
18 Companies with Activities in Sudan List.

19 (3) A public fund shall monitor a scrutinized company  
20 that has announced by public disclosure substantial action  
21 specific to Israel, substantial action specific to Iran,  
22 substantial action specific to Sudan or both. If, after one  
23 year the public fund determines or becomes aware that the  
24 company has not implemented the plan, within 26 months after  
25 the expiration of the one-year period, the public fund shall  
26 sell, redeem, divest or withdraw from its direct holdings all  
27 securities of the company.

28 (d) Prohibition.--A public fund may not acquire securities  
29 of a company on its Scrutinized Companies Boycotting Israel  
30 List, Scrutinized Companies with Activities in Iran List or

1 Scrutinized Companies with Activities in Sudan List.

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

5 Section 5. Reporting.

6 (a) Report to United States Attorney General.--Within 30  
7 days of the passage of this act, administrators of the public  
8 fund shall file a written report to the United States Attorney  
9 General detailing the requirements contained in this act.

10 (b) Duty of public fund.--A public fund shall, within one  
11 year of assembly of its Scrutinized Companies Boycotting Israel  
12 List, Scrutinized Companies with Activities in Iran List and  
13 Scrutinized Companies with Activities in Sudan List, provide a  
14 report to the Governor, the President pro tempore of the Senate,  
15 the Speaker of the House of Representatives and each member of  
16 the boards of the Pennsylvania Municipal Retirement System, the  
17 State Employees' Retirement System and Public School Employees'  
18 Retirement System. The report shall include the items required  
19 under subsection (c). The report shall be made available to the  
20 public.

21 (c) Contents.--The report under subsection (b) shall include  
22 the most recent Scrutinized Companies Boycotting Israel List,  
23 Scrutinized Companies with Activities in Iran List and  
24 Scrutinized Companies with Activities in Sudan List and all of  
25 the following:

26 (1) A summary of correspondence with scrutinized  
27 companies engaged by the public fund under section 4.

28 (2) All investments sold, redeemed, divested or  
29 withdrawn in compliance with section 4(c), the costs and  
30 expenses of such transfers and a determination of net gain or

1 loss on account of such transactions incurred in compliance  
2 with the provisions of this act.

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

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

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

7 (1) Annually update, based on evolving information under  
8 subsection (c), and make publicly available its Scrutinized  
9 Companies Boycotting Israel List, Scrutinized Companies with  
10 Activities in Iran List and Scrutinized Companies with  
11 Activities in Sudan List.

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

14 Section 6. Expiration.

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

19 (1) Iran does not appear on the List of State Sponsors  
20 of Terrorism.

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

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

29 (1) The President or Congress of the United States  
30 declares Darfur genocide has been halted for at least 12

1 months.

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

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

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

17 (c) Recurrence of investment in companies engaged in  
18 boycotting Israel.--A public fund shall have no obligations  
19 under this act with respect to a company engaged in boycotting  
20 Israel upon the occurrence of the President or Congress of the  
21 United States, through legislation or executive order, declaring  
22 that mandatory divestment of the type provided for in this act  
23 interferes with the conduct of United States foreign policy.

24 Section 5. This act shall take effect in 60 days.