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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

A N A C T

RELATING TO PUBLIC FINANCE

Introduced By: Senators Miller, Ruggerio, Goldin, DaPonte, and DiPalma

Date Introduced: February 28, 2013

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 35 of the General Laws entitled "PUBLIC FINANCE" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 10.3

4 DIVESTITURE OF INVESTMENTS IN IRAN

5 **35-10.3-1. Legislative findings. --** It is hereby found by the general assembly as follows:

6 (1) The United States Department of State has determined that Iran supports acts of
7 international terrorism; and

8 (2) A resolution of the United Nations Security Council imposes sanctions on Iran for its
9 failure to suspend its uranium-enrichment activities; and

10 (3) The United Nations Security Council voted unanimously for an additional embargo
11 on Iranian arms exports, which is a freeze on assets abroad of an expanded list of individuals and
12 companies involved in Iran's nuclear and ballistic missile programs and further, calls for nations
13 and institutions to bar new grants or loans to Iran except for humanitarian and developmental
14 purposes; and

15 (4) All United States and foreign entities that have invested more than twenty million
16 dollars (\$20,000,000) in Iran's energy sector since August 5, 1996, are subject to sanctions under
17 United States law pursuant to the Iran and Libya Sanctions Act of 1996; and

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

1 (6) The United States Congress recently acted to pass the Comprehensive Iran Sanctions,
2 Accountability, and Divestment Act of 2010, in light of diplomatic efforts to address Iran's illicit
3 nuclear efforts, unconventional and ballistic missile development programs, and support for
4 international terrorism are more likely to be effective if the president is empowered with explicit
5 authority to impose additional sanctions on the government of Iran; the people of the United
6 States have feelings of friendship for the people of Iran and regret that developments in recent
7 decades have created impediments to that friendship; and additional funding should be provided
8 to the secretary of state to document and disseminate information about human rights abuses in
9 Iran, including abuses that have taken place since the June 2009 presidential election in Iran.
10 Furthermore, the law authorizes state and local governments to divest public assets from, or
11 prohibit public investment in, certain investment activities in Iran; and

12 (7) It is a fundamental responsibility of the state of Rhode Island to decide where, how,
13 and by whom financial resources in its control should be invested, taking into account numerous
14 pertinent factors; and

15 (8) It is the judgment of the Rhode Island general assembly that this act should remain in
16 effect only insofar as it continues to be consistent with, and does not unduly interfere with, the
17 foreign policy of the United States as determined by the federal government; and

18 (9) While the Rhode Island general assembly is sensitive to the welfare of the people of
19 Iran, divestiture may improve the human condition, safety, and security of those currently living
20 in Iran and surrounding states, and it is the responsibility of the state of Iran to provide human
21 rights to its people; and,

22 (10) It is the judgment of this Rhode Island general assembly that mandatory divestment
23 of public funds from certain companies is a measure that should be employed sparingly and
24 judiciously, and with the hope that these peaceful sanctions will prevent the Iranian regime from
25 obtaining nuclear weapons and continuing the spread of terror.

26 **35-10.3-2. Definitions.** -- As used in this chapter, the following definitions shall apply:

27 (1) "Active business operations" means all business operations that are not inactive
28 business operations.

29 (2) "Business operations" means engaging in commerce in any form in Iran, including by
30 acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment,
31 facilities, personnel, products, services, personal property, real property, or any other apparatus of
32 business or commerce.

33 (3) "Company" means any sole proprietorship, organization, association, corporation,
34 partnership, joint venture, limited partnership, limited liability partnership, limited liability

1 company, or other entity or business association, including all wholly-owned subsidiaries,
2 majority-owned subsidiaries, parent companies, or affiliates of such entities or business
3 associations, that exist for profit-making purposes.

4 (4) "Direct holdings" in a company, means all securities of that company held directly by
5 the public fund or in an account or fund in which the public fund owns all shares or interests.

6 (5) "Iran" means the government of Iran, and includes the territory of Iran and any other
7 territory or marine area, including the exclusive economic zone and continental shelf, over which
8 the government of Iran claims sovereignty, sovereign rights, or jurisdiction, provided that the
9 government of Iran exercises partial or total control over the area or derives a benefit from
10 economic activity in the area pursuant to international arrangements.

11 (6) "Inactive business operations" means the mere continued holding or renewal of rights
12 to property previously operated for the purpose of generating revenues but not presently deployed
13 for such purpose.

14 (7) "Indirect holdings" in a company means all securities of that company held in an
15 account or fund, such as a mutual fund, managed by one or more persons not employed by the
16 public fund, in which the public fund owns shares or interests together with other investors not
17 subject to the provisions of this chapter.

18 (8) "Public fund" means Rhode Island state pension funds or the state investment
19 commission in charge of the Rhode Island state pension funds.

20 (9) "Scrutinized business operations" means any and all active business operations that
21 are subject or liable to sanctions under Public Law 104-172, as amended, the "Iran Sanctions Act
22 of 1996", and that involve the maintenance of a company's existing assets or investments in Iran,
23 or the deployment of new investments to Iran that meet or exceed the twenty million dollars
24 (\$20,000,000) threshold referred to in Public Law 104-172, as amended, the "Iran Sanctions Act
25 of 1996". "Scrutinized operations" does not include the retail sale of gasoline and related
26 products.

27 (10) "Scrutinized company" means any company engaging in scrutinized business
28 operations.

29 (11) "Substantial action" means adopting, publicizing, and implementing a formal plan to
30 cease scrutinized business operations within one year and to refrain from any such new business
31 operations; undertaking significant humanitarian efforts on behalf of one or more marginalized
32 populations of Iran; or through engagement with the government of Iran.

33 **35-10.3-3. Identification of companies.** -- (a) Within ninety (90) days following the
34 effective date of this chapter, the public fund shall make its best efforts to identify all scrutinized

1 companies in which the public fund has direct or indirect holdings or could possibly have such
2 holdings in the future. Such efforts shall include, as appropriate:

3 (1) Reviewing and relying, as appropriate in the public fund's judgment, on publicly
4 available information regarding companies with business operations in Iran, including
5 information provided by nonprofit organizations, research firms, international organizations, and
6 government entities; and/or

7 (2) Contacting asset managers contracted by the public fund that invest in companies
8 with business operations in Iran; and/or

9 (3) Contacting other institutional investors that have divested from and/or engaged with
10 companies that have business operations in Iran.

11 (b) By the first meeting of the public fund following the ninety (90) day period described
12 in subsection (a), the public fund shall assemble all scrutinized companies identified into a
13 "scrutinized companies list."

14 (c) The public fund shall update the scrutinized companies list on an annual basis based
15 on evolving information from, among other sources, those listed in subsection (a).

16 **35-10.3-4. Required actions. --** The public fund shall adhere to the following procedures
17 for companies on the scrutinized companies list:

18 (1) Engagement:

19 (i) The public fund shall immediately determine the companies on the scrutinized
20 companies list in which the public fund owns direct or indirect holdings.

21 (ii) For each company identified in paragraph (1)(i) with only inactive business
22 operations, the public fund shall send a written notice informing the company of this chapter and
23 encouraging it to continue to refrain from initiating active business operations in Iran until it is
24 able to avoid scrutinized business operations. The public fund shall continue such correspondence
25 on a semi-annual basis.

26 (iii) For each company newly identified in paragraph (1)(i) with active business
27 operations, the public fund shall send a written notice informing the company of its scrutinized
28 company status and that it may become subject to divestment by the public fund. The notice shall
29 offer the company the opportunity to clarify its Iran-related activities and shall encourage the
30 company, within ninety (90) days, to either cease its scrutinized business operations or convert
31 such operations to inactive business operations in order to avoid qualifying for divestment by the
32 public fund.

33 (iv) If, within ninety (90) days following the public fund's first engagement with a
34 company pursuant to paragraph (1)(iii), that company ceases scrutinized business operations, the

1 company shall be removed from the scrutinized companies list and the provisions of this section
2 shall cease to apply to it unless it resumes scrutinized business operations. If, within ninety (90)
3 days following the public fund's first engagement, the company converts its scrutinized active
4 business operations to inactive business operations, the company shall be subject to all provisions
5 relating thereto.

6 (2) Divestment:

7 (i) If, after ninety (90) days following the public fund's first engagement with a company
8 pursuant to paragraph (1)(iii) of this section, the company continues to have scrutinized active
9 business operations, and only while such company continues to have scrutinized active business
10 operations, the public fund shall sell, redeem, divest, or withdraw all publicly-traded securities of
11 the company, except as provided below, according to the following schedule:

12 (A) At least fifty percent (50%) of such assets shall be removed from the public fund's
13 assets under management by nine (9) months after the company's most recent appearance on the
14 scrutinized companies list.

15 (B) One hundred percent (100%) of such assets shall be removed from the public fund's
16 assets under management within fifteen (15) months after the company's most recent appearance
17 on the scrutinized companies list.

18 (ii) If a company that ceased scrutinized active business operations following engagement
19 pursuant to paragraph (1)(iii) of this section resumes such operations, paragraph (2)(i) shall
20 immediately apply, and the public fund shall send a written notice to the company. The company
21 shall also be immediately reintroduced onto the scrutinized companies list.

22 (3) Prohibition:

23 At no time shall the public fund acquire securities of companies on the scrutinized
24 companies list that have active business operations, except as provided below.

25 (4) Exemption:

26 No company which the United States government affirmatively declares to be excluded
27 from its present or any future federal sanctions regime relating to Iran shall be subject to
28 divestment or investment prohibition pursuant to subdivisions (2) and (3), nor any company
29 which is primarily engaged in supplying goods or services intended to relieve human suffering in
30 Iran or that is primarily engaged in promoting health, education, or journalistic, religious, or
31 welfare activities in Iran.

32 (5) Excluded Securities:

33 Notwithstanding anything herein to the contrary, subdivisions (2) and (3) shall not apply
34 to indirect holdings in actively managed investment funds. The public fund shall, however,

1 submit letters to the managers of such investment funds containing companies with scrutinized
2 active business operations requesting that they consider removing such companies from the fund
3 or create a similar actively managed fund with indirect holdings devoid of such companies. If the
4 manager creates a similar fund, the public fund shall replace all applicable investments with
5 investments in the similar fund in an expedited timeframe consistent with prudent investing
6 standards. For the purposes of this section, "private equity" funds shall be deemed to be actively
7 managed investment funds.

8 **35-10.3-5. Required actions--Reporting.** -- (a) The public fund shall file a publicly
9 available report to the Rhode Island general assembly and office of the attorney general that
10 includes the scrutinized companies list within thirty (30) days after the list is created.

11 (b) Annually thereafter, the public fund shall file a publicly available report to the Rhode
12 Island general assembly and the office of the attorney general and send a copy of that report to the
13 United States Presidential Special Envoy to Iran (or an appropriate designee or successor) that
14 includes:

15 (1) A summary of correspondence with companies engaged by the public fund under
16 paragraphs 35-10.3-4(1)(ii) and 35-10.3-4(1)(iii);

17 (2) All investments sold, redeemed, divested, or withdrawn in compliance with
18 subdivision 35-10.3-4(2);

19 (3) All prohibited investments under subdivision 35-10.3-4(3); and

20 (4) Any progress made under subdivision 35-10.3-4(5).

21 **35-10.3-6. Provisions for repeal of chapter.** -- This chapter shall be repealed upon
22 affirmative action of the general assembly. Provided, that in determining whether to repeal this
23 chapter, by way of suggestion and guidance only and without binding or in any way inhibiting the
24 discretion of future sessions of the general assembly, it is submitted that the occurrence of any of
25 the following should be construed and deemed to be a basis for repealing this chapter:

26 (1) Iran is removed from the United States Department of State's list of countries that
27 have been determined to repeatedly provide support for acts of international terrorism; or

28 (2) The President of the United States determines and certifies that state legislation
29 similar to this section interferes with the conduct of United States foreign policy.

30 **35-10.3-7. Other legal obligations.** -- With respect to actions taken in compliance with
31 this chapter, including all good faith determinations regarding companies as required by this
32 chapter, the public fund shall be exempt from any conflicting statutory or common law
33 obligations, including any such obligations with respect to choice of asset managers, investment
34 funds, or investments for the public fund's securities portfolios.

1 PROHIBITION ON CONTRACTING WITH IRAN

2 **37-2.5-1. Legislative findings.** -- It is hereby found by the general assembly as follows:

3 (1) In imposing sanctions on Iran, the United States Congress and the President of the
4 United States have determined that the illicit nuclear activities of Iran, combined with its
5 development of unconventional weapons and ballistic missiles, and its support of international
6 terrorism, represent a serious threat to the security of the United States and its allies around the
7 world.

8 (2) The International Atomic Energy Agency has repeatedly called attention to Iran's
9 unlawful nuclear activities, and as a result, the United Nations Security Council has adopted four
10 (4) rounds of sanctions designed to compel the government of Iran to cease those activities and
11 comply with its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons,
12 commonly known as the Nuclear Non-Proliferation Treaty.

13 (3) The human rights situation in Iran has steadily deteriorated since the fraudulent
14 elections of 2009, as evidenced by the brutal repression, torture, murder and arbitrary detention of
15 peaceful protestors, dissidents and minorities.

16 (4) On July 1, 2010, President Obama signed into law the Comprehensive Iran Sanctions,
17 Accountability, and Divestment Act of 2010, which expressly authorizes state and local
18 governments to prevent investment in, including prohibiting entry into or renewing contracts
19 with, companies operating in Iran and includes provisions that preclude companies that do
20 business in Iran from contracting with the United States government.

21 (5) It is the intention of the general assembly to implement this authority granted under
22 Section 202 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.

23 (6) There are moral and reputational reasons for state and local governments to not
24 engage in business with foreign companies that have business activities benefiting foreign states,
25 such as Iran, that pursue illegal nuclear programs, support acts of terrorism and commit violations
26 of human rights.

27 (7) Short-term economic profits cannot be a justification to circumvent even in spirit
28 those international sanctions designed to thwart Iran from developing nuclear weapons.

29 (8) The concerns of this general assembly regarding Iran are strictly the result of the
30 actions of the government of Iran and should not be construed as enmity toward the Iranian
31 people.

32 **37-2.5-2. Definitions.** -- (a) As used in this act, the following definitions shall apply:

33 (1) "Energy sector" of Iran means activities to develop, invest in, explore , refine,
34 transfer, purchase or sell petroleum, gasoline, or other refined petroleum products, or natural gas,

1 liquefied natural gas resources or nuclear power in Iran.

2 (2) "Financial institution" means the term as used in Section 14 of the Iran Sanctions Act
3 of 1996, Section 14 of Pub.L.104-172 (50 U.S.C. 1701 note), as amended.

4 (3) "Iran" means the government of Iran, and includes the territory of Iran and any other
5 territory or marine area, including the exclusive economic zone and continental shelf, over which
6 the government of Iran claims sovereignty, sovereign rights, or jurisdiction, provided that the
7 government of Iran exercises partial or total control over the area or derives a benefit from
8 economic activity in the area pursuant to international arrangements.

9 (4) "Person or entity" means any of the following:

10 (i) A natural person, corporation, company, limited partnership, limited liability
11 partnership, limited liability company, business association, sole proprietorship, joint venture,
12 partnership, society, trust, or any other nongovernmental entity, organization, or group:

13 (ii) Any governmental entity or instrumentality of a government, including a multilateral
14 development institution, as defined in Section 1701(c)(3) of the International Financial
15 Institutions Act, 22 U.S.C. 262r(c)(3), as amended; or

16 (iii) Any parent, successor, subunit, direct or indirect subsidiary, or any entity under
17 common ownership or control with, any entity described in paragraph (i) or (ii).

18 (5) "State" means the state of Rhode Island and any of its departments or agencies and
19 public agencies, including, but not limited to, any commission, council, board, bureau,
20 committee, institution, or other governmental entity of the executive or judicial branch of this
21 state and the general assembly and any office, board, bureau or commission within or created by
22 the legislative branch.

23 (6) "Treasurer" means the general treasurer or the department of treasury.

24 (b) For the purposes of this act, a person engages in investment activities in Iran, if:

25 (1) The person provides goods or services of twenty million dollars (\$20,000,000) or
26 more in the energy sector of Iran, including a person that provides oil or liquefied natural gas
27 tankers, or products used to construct or maintain pipelines used to transport oil or liquefied
28 natural gas, for the energy sector of Iran; or

29 (2) The person is a financial institution that extends twenty million dollars (\$20,000,000)
30 or more in credit to another person, for forty five (45) days or more, if that person will use the
31 credit to provide goods or services in the energy sector in Iran and is identified on a list created
32 pursuant to subsection 37-2.5-3(b) as a person engaging in investment activities in Iran as
33 described in subsection 37-2.5-3(a).

34 (c) The treasurer shall adopt regulations that reduce the amounts provided for in this

1 subsection if the treasurer determines that such change is permitted or required under Section 202
2 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, as amended.

3 **37-2.5-3. Certain persons, entities prohibited from bidding on certain public**
4 **contracts, maintenance of list. --** (a) A person or entity that, at the time of bid or proposal for a
5 new contract or renewal of an existing contract, is identified on a list created pursuant to
6 subsection (b) as a person or entity engaging in investment activities in Iran as described in
7 subsection 37-2.5-2(b), shall be ineligible to, and shall not, bid on, submit a proposal for, or enter
8 into or renew, a contract with the state for goods or services.

9 (b) Within ninety (90) days of the effective date of this act, the treasurer shall, using
10 credible information available to the public, develop a list of persons or entities it determines
11 engage in investment activities in Iran as described in subsection 37-2.5-2(b).

12 (c) The treasurer shall update the list annually.

13 (d) Before finalizing an initial list pursuant to subsection (b) or an updated list pursuant to
14 subsection (c) of this section, the treasurer shall do the following before a person or entity is
15 included on the list:

16 (1) Provide ninety (90) days written notice of its intent to include the person or entity on
17 the list. The notice shall inform the person or entity that inclusion on the list would make the
18 person or entity ineligible to bid on, submit a proposal for, or enter into or renew, a contract for
19 goods or services with the state; and

20 (2) Provide a person or entity with an opportunity to comment in writing that it is not
21 engaged in investment activities in Iran. If the person or entity demonstrates to the treasurer that
22 the person or entity is not engaged in investment activities in Iran as described in subsection 37-
23 2.5-2(b), the person or entity shall not be included on the list, unless the person or entity is
24 otherwise ineligible to bid on a contract as described in subdivision 37-2.5-5(a)(3).

25 (3) The treasurer shall make every effort to avoid erroneously including a person or entity
26 on the list.

27 **37-2.5-4. Certification required. --** (a) The state shall require a person or entity that
28 submits a bid or proposal or otherwise proposes to enter into or renew a contract to certify, at the
29 time the bid is submitted or the contract is renewed, that the person or entity is not identified on a
30 list created pursuant to subsection 37-2.5-3(b) as a person or entity engaging in investment
31 activities in Iran described in subsection 37-2.5-2(b).

32 (b) The certification required shall be executed on behalf of the applicable person or
33 entity, by an authorized officer or representative of the person or entity.

34 (c) In the event that a person or entity is unable to make the certification required because

1 it or one of its parents, subsidiaries, or affiliates, as defined in subdivision 37-2.5-2(a)(4), has
2 engaged in one or more of the activities specified in subsection 37-2.5-2(b), the person or entity
3 shall provide to the state, prior to the deadline for delivery of such certification, a detailed and
4 precise description of such activities, such description to be provided under penalty of perjury.

5 (d) The certifications provided under subsection (a) of this section and disclosures
6 provided under subsection (c) of this section shall be disclosed to the public.

7 **37-2.5-5. False certification; Penalties.** -- (a) If the treasurer determines, using credible
8 information available to the public and after providing ninety (90) days written notice and an
9 opportunity to comment in writing for the person or entity to demonstrate that it is not engaged in
10 investment activities in Iran, that the person or entity has submitted a false certification pursuant
11 to section 37-2.5-4, and the person or entity fails to demonstrate to the treasurer that the person or
12 entity has ceased its engagement in the investment activities in Iran within ninety (90) days after
13 the determination of a false certification, the following shall apply:

14 (1) Pursuant to an action under subsection (b) of this section, a civil penalty in an amount
15 that is equal to the greater of one million dollars (\$1,000,000) or twice the amount of the contract
16 for which the false certification was made;

17 (2) Termination of an existing contract with the state as deemed appropriate by the state;
18 and

19 (3) Ineligibility to bid on a contract for a period of three (3) years from the date of the
20 determination that the person or entity submitted the false certification.

21 (b) The treasurer shall report to the attorney general the name of the person or entity that
22 the state determines has submitted a false certification under section 37-2.5-4, together with its
23 information as to the false certification, and the attorney general shall determine whether to bring
24 a civil action against the person or entity to collect the penalty described in subdivision (a)(1).
25 Only one civil action against the person or entity to collect the penalty described in subdivision
26 (a)(1) may be brought for a false certification on a contract. A civil action to collect such penalty
27 shall commence within three (3) years from the date the certification is made.

28 **37-2.5-6. Written notice to Attorney General.** -- The governor shall submit to the
29 attorney general of the United States a written notice describing this act within thirty (30) days
30 after its effective date.

1 SECTION 3. Section 1 of this act shall take effect upon passage and it shall expire on
2 July 1, 2018. Section 2 of the act shall take effect upon passage, but shall apply to contracts
3 awarded or renewed commencing thirty (30) days after the effective date of this act.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PUBLIC FINANCE

1 This act would require that Rhode Island's financial resource be divested from companies
2 doing business in Iran, and would establish a procedure for such divestment. Further, this act
3 would set forth the procedure to be followed by the state of Rhode Island should such divestment
4 not take place.

5 The act also prohibits the state from providing public contracts with persons or entities
6 that are engaged in certain investment activities in the energy and financial sectors of Iran.

7 Section 1 of this act would take effect upon passage and expire on July 1, 2018. Section 2
8 of the act would take effect upon passage but would apply to contracts awarded or renewed
9 commencing thirty (30) days after the effective date of this act.

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