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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO PUBLIC FINANCE -- STATE INVESTMENT COMMISSION --
INVESTMENTS IN IRAN

Introduced By: Senators Miller, and Perry

Date Introduced: March 10, 2011

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 amended
2 by adding thereto the following chapter:

3 CHAPTER 10.2

4 DIVESTITURE OF INVESTMENTS IN IRAN

5 **35-10.2-1. Legislative Findings --** It is hereby found by the general assembly as follows:

6 (1) Iran has been determined by United States Department of State to be a provider of
7 support for acts of 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 calls for nations and
13 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 \$20 million in
16 Iran's energy sector since August 5, 1996, are subject to sanctions under United States law
17 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

1 2006; and

2 (6) The United States House and Senate recently acted to pass the Comprehensive Iran
3 Sanctions, Accountability, and Divestment Act of 2009, in light of: diplomatic efforts to address
4 Iran's illicit nuclear efforts, unconventional and ballistic missile development programs, and
5 support for international terrorism are more likely to be effective if the President is empowered
6 with explicit authority to impose additional sanctions on the government of Iran; the people of the
7 United States have feelings of friendship for the people of Iran and regret that developments in
8 recent decades have created impediments to that friendship; and additional funding should be
9 provided to the Secretary of State to document and disseminate information about human rights
10 abuses in Iran, including abuses that have taken place since the June 2009 presidential election in
11 Iran. Furthermore, the proposal states that it is U.S. policy to support the decision of state
12 governments to divest from, and to prohibit the investment of assets they control in, entities with
13 certain investments in Iran; and

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

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

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

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

28 **35-10.2-2. Definitions.** - As used in this act, the following definitions shall apply:

29 (1) "Active business operations" means all business operations that are not inactive
30 business operations.

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

1 (3) “Company” means any sole proprietorship, organization, association, corporation,
2 partnership, joint venture, limited partnership, limited liability partnership, limited liability
3 company, or other entity or business association, including all wholly-owned subsidiaries,
4 majority-owned subsidiaries, parent companies, or affiliates of such entities or business
5 associations, that exists for profit-making purposes.

6 (4) “Direct holdings” in a company means all securities of that company held directly by
7 the public fund or in an account or fund in which the public fund owns all shares or interests.

8 (5) “Government of Iran” means the government in Tehran, Iran, which is led by
9 Mahmoud Ahmadinejad and the Ayatollah Ali Khamenei or any successor government.

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

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

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

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

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

30 **35-10.2-3. Identification of Companies.** - (a) Within ninety (90) days following the
31 effective date of this chapter, the public fund shall make its best efforts to identify all scrutinized
32 companies in which the public fund has direct or indirect holdings or could possibly have such
33 holdings in the future. Such efforts shall include, as appropriate:

34 (1) Reviewing and relying, as appropriate in the public fund’s judgment, on publicly

1 available information regarding companies with business operations in Iran, including
2 information provided by non-profit organizations, research firms, international organizations, and
3 government entities; and/or

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

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

8 (b) By the first meeting of the public fund following the ninety (90) day period described
9 in subsection (a), the public fund shall assemble all scrutinized companies identified into a
10 “scrutinized companies list.”

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

13 **35-10.2-4. Required Actions.** - The public fund shall adhere to the following procedures
14 for companies on the scrutinized companies list:

15 (1) Engagement:

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

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

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

30 (iv) If, within ninety (90) days following the public fund’s first engagement with a
31 company pursuant to paragraph (iii), that company ceases scrutinized business operations, the
32 company shall be removed from the scrutinized companies list and the provisions of this section
33 shall cease to apply to it unless it resumes scrutinized business operations. If, within ninety (90)
34 days following the public fund’s first engagement, the company converts its scrutinized active

1 business operations to inactive business operations, the company shall be subject to all provisions
2 relating thereto.

3 (2) Divestment:

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

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

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

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

19 (3) Prohibition:

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

22 (4) Exemption:

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

29 (5) Excluded Securities:

30 Notwithstanding anything herein to the contrary, subdivisions (2) and (3) shall not apply
31 to indirect holdings in actively managed investment funds. The public fund shall, however,
32 submit letters to the managers of such investment funds containing companies with scrutinized
33 active business operations requesting that they consider removing such companies from the fund
34 or create a similar actively managed fund with indirect holdings devoid of such companies. If the

1 manager creates a similar fund, the public fund shall replace all applicable investments with
2 investments in the similar fund in an expedited timeframe consistent with prudent investing
3 standards. For the purposes of this section, “private equity” funds shall be deemed to be actively
4 managed investment funds.

5 **35-10.2-5. Required Actions. - Reporting.** (1) The public fund shall file a publicly-
6 available report to the Rhode Island general assembly and office of the attorney general that
7 includes the scrutinized companies list within thirty (30) days after the list is created.

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

12 (i) A summary of correspondence with companies engaged by the public fund under
13 subdivisions 35-10.2- 4(1)(ii) and 35-10.2-4(1)(iii) of this section;

14 (ii) All investments sold, redeemed, divested, or withdrawn in compliance with
15 subsection 4(1)(ii) of this section;

16 (iii) All prohibited investments under subsection 4(c) of this section; and

17 (iv) Any progress made under subsection 4(e) of this section.

18 **35-10.2-6. Provisions for repeal of chapter.** - This chapter shall be repealed upon
19 affirmative action of the general assembly. Provided, that in determining whether to repeal this
20 chapter, by way of suggestion and guidance only and without binding or in any way inhibiting the
21 discretion of future sessions of the general assembly, it is submitted that the occurrence of any of
22 the following should be construed and deemed to be a basis for repealing this chapter:

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

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

27 **35-10.2-7. Other Legal Obligations.** - With respect to actions taken in compliance with
28 this chapter, including all good faith determinations regarding companies as required by this
29 chapter, the public fund shall be exempt from any conflicting statutory or common law
30 obligations, including any such obligations with respect to choice of asset managers, investment
31 funds, or investments for the public fund’s securities portfolios.

32 **35-10.2-8. Reinvestment in Certain Companies with Scrutinized Active Business**
33 **Operations.** - (a) Notwithstanding anything herein to the contrary, the public fund shall be
34 permitted to cease divesting from certain scrutinized companies pursuant to section 35-10.2-4

1 and/or reinvest in certain scrutinized companies from which it divested pursuant to section 35-
2 10.2-4 if clear and convincing evidence shows that the value for all assets under management by
3 the public fund becomes equal to or less than ninety-nine and one-half percent (99.50%) or fifty
4 (50) basis points of the hypothetical value of all assets under management by the public fund
5 assuming no divestment for any company had occurred under subsection 35-10.2-4(2).

6 (b) Cessation of divestment, reinvestment, and/or any subsequent ongoing investment
7 authorized by this section shall be strictly limited to the minimum steps necessary to avoid the
8 contingency set forth in the preceding sentence. For any cessation of divestment, reinvestment,
9 and/or subsequent ongoing investment authorized by this section, the public fund shall provide a
10 written report to the Rhode Island general assembly and the office of the attorney general in
11 advance of initial reinvestment, updated semi-annually thereafter as applicable, setting forth the
12 reasons and justification, supported by clear and convincing evidence, for its decisions to cease
13 divestment, reinvest, and/or remain invested in companies with scrutinized active business
14 operations.

15 (c) This section has no application to reinvestment in companies on the ground that they
16 have ceased to have scrutinized active business operations.

17 **35-10.2-9. Enforcement.** - The attorney general is charged with enforcing the provisions
18 of this chapter and, through any lawful designee, may bring such actions in court as are necessary
19 to do so.

20 **35-10.2-10. Severability.** - If any one or more provision, section, subsection, sentence,
21 clause, phrase, or word of this chapter or the application thereof to any person or circumstance is
22 found to be invalid, illegal, unenforceable or unconstitutional, the same is hereby declared to be
23 severable and the balance of this chapter shall remain effective and functional notwithstanding
24 such invalidity, illegality, unenforceability or unconstitutionality. The Rhode Island general
25 assembly hereby declares that it would have passed this chapter, and each provision, section,
26 subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more
27 provision, section, subsection, sentence, clause, phrase, or word be declared invalid, illegal,
28 unenforceable or unconstitutional, including, but not limited to, each of the engagement,
29 divestment, and prohibition provisions of this chapter.

30 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PUBLIC FINANCE -- STATE INVESTMENT COMMISSION --
INVESTMENTS IN IRAN

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 This act would take effect upon passage.

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