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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

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

Introduced By: Senators Miller, DaPonte, Ottiano, Nesselbush, and Algieri

Date Introduced: January 24, 2012

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 and declared that:**

6 (1) Iran has been determined by the United States Department of State to be a provider of
7 support for acts of international terrorism;

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

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;

15 (4) The United States Congress enacted Public Law 111-195, the Comprehensive Iran
16 Sanctions, Accountability, and Divestment Act of 2010, authorizing state and local governments
17 to divest public assets from, or prohibit public investment of assets in, any person that engages in
18 investment activities in the energy sector of Iran, provided that the measures meet certain

1 requirements:

2 (5) The United States Congress enacted the Comprehensive Iran Sanctions,
3 Accountability, and Divestment Act of 2010, in light of diplomatic efforts to address Iran’s illicit
4 nuclear efforts, unconventional and ballistic missile development programs, and support for
5 international terrorism are more likely to be effective if the President is empowered with explicit
6 authority to impose additional sanctions on the government of Iran; the people of the United
7 States have feelings of friendship for the people of Iran and regret that developments in recent
8 decades have created impediments to that friendship; and additional funding should be provided
9 to the Secretary of State to document and disseminate information about human rights abuses in
10 Iran, including abuses that have taken place since the June 2009 presidential election in Iran;

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

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

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

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

25 **35-10.3-2. Definitions.** -- As used in this chapter, the following terms have the following
26 meanings:

27 (1) “Business operations” means engaging in commerce in the energy sector of Iran,
28 including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or
29 operating equipment facilities, personnel, products, services, personal property, real property, or
30 any other apparatus of business or commerce.

31 (2) “Company” means any sole proprietorship, organization, association, corporation,
32 partnership, joint venture, limited partnership, limited liability partnership, limited liability
33 company, or other entity or business association, including all wholly-owned subsidiaries,
34 majority-owned subsidiaries, parent companies, or affiliates of such entities or business

1 associations, that exists for profit-making purposes.

2 (4) "Direct holdings" means equity securities held directly by the public fund or in a
3 separately managed active account in which the public fund owns all shares or interests.

4 (5) "Government of Iran" means the government of the Islamic Republic of Iran.

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

8 (7) "Indirect holdings" means securities held in a commingled account or fund, such as a
9 mutual fund, private equity fund, hedge fund, or real estate fund, managed by one or more
10 persons not employed by the public fund, in which the public fund owns shares or interests
11 together with other investors not subject to the provisions of this chapter.

12 (8) "Public fund" means Rhode Island state pension funds or the state investment
13 commission in charge of the Rhode Island state pension funds, excluding the defined contribution
14 retirement plan as established under section 36-10.3-2.

15 (9) "Scrutinized investment activity" means: (i) An investment of twenty million dollars
16 (\$20,000,000) or more in the energy sector of Iran; including in any company that provides oil or
17 liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport
18 oil or liquefied natural gas, for the energy sector of Iran; or (ii) An extension of twenty million
19 dollars (\$20,000,000) or more in credit to a person, for forty-five (45) days or more, if that person
20 will use the credit for investment in the energy sector of Iran.

21 (10) "Scrutinized company" means any company engaged in a scrutinized investment
22 activity.

23 **35-10.3-3. Identification of scrutinized companies. --** (a) Within ninety (90) days
24 following the effective date of this chapter, the public fund shall make its best efforts to identify
25 all scrutinized companies in which the public fund has direct holdings. Such efforts shall include,
26 as appropriate:

27 (1) Reviewing and relying, as appropriate in the public fund's judgment, on publicly
28 available information regarding companies with business operations in Iran, including
29 information provided by non-profit organizations, research firms, international organizations, and
30 government entities;

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

33 (3) Contacting other institutional investors that have announced divestment from
34 companies that have business operations in Iran.

1 (b) By the first meeting of the public fund following the ninety (90) day period described
2 in subsection (a), the public fund shall assemble all data related to the identification of scrutinized
3 companies into a “scrutinized companies list.”

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

6 **35-10.3-4. Required Actions. --** The public fund shall adhere to the following
7 procedures for companies on the scrutinized companies list:

8 (1) Engagement:

9 (i) The public fund shall immediately determine the companies on the scrutinized
10 companies list in which the public fund owns direct holdings.

11 (ii) For scrutinized companies identified pursuant to paragraph (i), the public fund shall
12 send a written notice to the company in order to:

13 (A) Inform the company of its status as a scrutinized company and that it may become
14 subject to divestment by the public fund;

15 (B) Provide an opportunity for the company to comment in writing on its business
16 operations in Iran; and

17 (C) Encourage the company, within ninety (90) days, to either cease its scrutinized
18 investment activities or convert the scrutinized investment activities to inactive business
19 operations in order to avoid divestment.

20 (iii) If, within ninety (90) days following the public fund’s first engagement with a
21 company identified pursuant to paragraph (i), that company ceases scrutinized investment
22 activities, the company shall be removed from the scrutinized companies list and the provisions
23 of this section shall cease to apply to it unless it resumes scrutinized investment activities. If,
24 within ninety (90) days following the public fund’s first engagement, the company converts its
25 scrutinized investment activities to inactive business operations, the company shall be removed
26 from the scrutinized companies list and the provisions of this section shall cease to apply to it
27 unless it resumes scrutinized investment activities.

28 (2) Divestment:

29 (i) If, after ninety (90) days following the public fund’s transmittal of a written notice to
30 the scrutinized company pursuant to paragraph (1)(ii), the company continues to engage in
31 scrutinized investment activities, and only while such company continues to have scrutinized
32 active investment activities, the public fund shall sell, redeem, divest, or withdraw all publicly-
33 traded equities of the company, except as provided below, according to the following schedule:

34 (A) At least fifty percent (50%) of such assets shall be removed from the public fund’s

1 assets under management by nine (9) months after the company's most recent appearance on the
2 scrutinized companies list.

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

6 (ii) If a company that ceased scrutinized investment activities following engagement
7 pursuant to paragraph (1)(ii) resumes such operations, paragraph (2)(i) shall immediately apply,
8 and the public fund shall send a written notice to the company. The company shall also be
9 immediately reintroduced onto the scrutinized companies list.

10 (3) Prohibition:

11 At no time shall the public fund acquire direct holdings in scrutinized companies, except
12 as provided below.

13 (4) Exemption:

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

20 (5) Excluded Securities:

21 Notwithstanding anything herein to the contrary, this section shall not apply to indirect
22 holdings. The public fund shall, however, submit letters to the managers of such investment funds
23 containing scrutinized companies, requesting that they consider removing such companies from
24 the fund or create a similar fund devoid of holdings in scrutinized companies. If the manager
25 creates such a similar fund at no additional cost to the public fund, the public fund is encouraged
26 to replace all applicable investments with investments in the similar fund in an expedited
27 timeframe consistent with prudent investing standards.

28 **35-10.3-5. Required reporting. --** (a) The public fund shall file a publicly-available
29 report to the Rhode Island general assembly and office of the attorney general that includes the
30 scrutinized companies list within thirty (30) days after the list is created.

31 (b) Annually thereafter, the public fund shall file a publicly-available report to the Rhode
32 Island general assembly and the office of the attorney general and send a copy of that report to the
33 United States Presidential Special Envoy to Iran (or an appropriate designee or successor) that
34 includes: (1) A summary of correspondence with companies engaged by the public fund under

1 subsections 35-10.3-4(1) and 35-10.3-4(2);

2 (2) A list of all direct holdings sold, redeemed, divested, or withdrawn in compliance
3 with subsection 35-10.3-4(2);

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

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

6 (c) Within thirty (30) days of enactment of this chapter, the public fund shall submit
7 written notice to the United States Attorney General describing the provisions of this chapter.

8 **35-10.3-6. Recurrence of investment in Iran. --** (a) The public fund shall have no
9 obligations under this chapter upon the occurrence of any of the following:

10 (1) Iran is removed from the United States Department of States list of countries that
11 have been determined to repeatedly provide support for acts of international terrorism; and/or

12 (2) The President of the United States of America or the United States Congress, through
13 legislation or executive order, declares that state laws requiring divestment of public funds
14 interfere with the conduct of United States foreign policy.

15 **35-10.3-7. Other Legal Obligations. --** With respect to actions taken in compliance with
16 this chapter, including all good faith determinations regarding companies as required by this
17 chapter, the public fund shall be exempt from any conflicting statutory or common law
18 obligations, including any such obligations with respect to choice of asset managers, investment
19 funds, or investments for the public fund's securities portfolios.

20 **35-10.3-8. Reinvestment in certain companies with scrutinized investment activities.**
21 **--** (a) Notwithstanding anything herein to the contrary, the public fund shall be permitted to cease
22 divesting from certain scrutinized companies pursuant to section 35-10.2-4 and/or reinvest in
23 certain scrutinized companies from which it divested pursuant to section 35-10.2-4 if clear and
24 convincing evidence shows that the value for all assets under management by the public fund
25 becomes equal to or less than ninety-nine and one-half percent (99.5%) or fifty (50) basis points
26 of the hypothetical value of all assets under management by the public fund assuming no
27 divestment for any company had occurred under subsection 35-10.2-4(2).

28 (b) Cessation of divestment, reinvestment, and/or any subsequent ongoing investment
29 authorized by this section shall be strictly limited to the minimum steps necessary to avoid the
30 contingency set forth in the preceding sentence. For any cessation of divestment, reinvestment,
31 and/or subsequent ongoing investment authorized by this section, the public fund shall provide a
32 written report to the Rhode Island general assembly and the office of the attorney general in
33 advance of initial reinvestment, updated semi-annually thereafter as applicable, setting forth the
34 reasons and justification, supported by clear and convincing evidence, for its decisions to cease

1 divestment, reinvest, and/or remain invested in scrutinized companies.

2 (c) This section has no application to reinvestment in companies on the grounds that they
3 have ceased scrutinized investment activities.

4 **35-10.3-9. Enforcement. --** The attorney general is charged with enforcing the provisions
5 of this chapter and, through any lawful designee, may bring such actions in court as are necessary
6 to do so.

7 **35-10.3-10. Severability. --** If any one or more provision, section, subsection, sentence,
8 clause, phrase, or word of this chapter or the application thereof to any person or circumstance is
9 found to be invalid, illegal, unenforceable or unconstitutional, the same is hereby declared to be
10 severable and the balance of this chapter shall remain effective and functional notwithstanding
11 such invalidity, illegality, unenforceability or unconstitutionality. The Rhode Island general
12 assembly hereby declares that it would have passed this chapter, and each provision, section,
13 subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more
14 provision, section, subsection, sentence, clause, phrase, or word be declared invalid, illegal,
15 unenforceable or unconstitutional, including, but not limited to, each of the engagement,
16 divestment, and prohibition provisions of this chapter.

17 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 state pension funds be divested from certain
2 companies making investments in the energy sector of Iran, and would establish a procedure for
3 such divestment.

4 This act would take effect upon passage.

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