

Senate Bill 246

By: Senators Hill of the 32nd, Hill of the 6th, Thompson of the 14th and Crane of the 28th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 7 of Chapter 20 of Title 47 of the Official Code of Georgia Annotated,
2 relating to the Public Retirement Systems Investment Authority Law, so as to provide for the
3 creation of a Scrutinized Company List; to require that boards administering public
4 retirement funds of this state identify all companies in which public funds are invested that
5 are doing certain types of investments in Iran; to require such boards to create and maintain
6 certain scrutinized company lists that name all such companies; to require such boards to
7 periodically contact all scrutinized companies and encourage them to refrain from engaging
8 in certain types of investments in Iran; to require such boards to inform scrutinized
9 companies of their status as a scrutinized company and to ask for clarification as to the nature
10 of each company's business activities; to provide that a company may be removed from the
11 list under certain conditions; to provide for the reintroduction of a company onto the list; to
12 provide for the divestment of all directly held, publicly traded securities of a scrutinized
13 company under certain conditions; to provide exceptions to the divestment requirements; to
14 prohibit such boards from acquiring securities of scrutinized companies that have certain
15 active investments; to provide exceptions to the investment prohibition; to provide an
16 additional exception from the divestment requirement and the investment prohibition to
17 certain indirect holdings in actively managed investment funds; to require such boards to
18 request that the managers of such investment funds consider removing scrutinized companies
19 from the fund or creating a similar fund that excludes such companies; to require certain
20 reports; to provide for termination of such prohibitions and divestments; to provide for
21 certain notices; to provide for related matters; to provide for legislative findings; to provide
22 for definitions; to provide conditions for an effective date and automatic repeal; to provide
23 for immunity; to repeal conflicting laws; and for other purposes.

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

25

26 The General Assembly finds that:

27 (1) In 2001, the federal Securities and Exchange Commission determined that companies
28 with business operations in terrorist-sponsored states are exposed to a special risk
29 category known as global security risk: the risk to share value and corporate reputation
30 stemming from the intersection of a publicly traded company's international business
31 activities and security-related concerns, such as terrorism and weapons proliferation;

32 (2) In response to the financial risk posed by investments in companies doing business
33 with a state that sponsors terrorists, the federal Securities and Exchange Commission
34 established its Office of Global Security Risk to provide for enhanced disclosure of
35 material information regarding such companies;

36 (3) According to the former chair of the federal Securities and Exchange Commission
37 Laura Unger, the fact that a foreign company is doing material business with a country,
38 government, or entity on OFAC's sanctions list is, in the view of the staff of the federal
39 Securities and Exchange Commission, substantially likely to be significant to a
40 reasonable investor's decision about whether to invest in that company;

41 (4) A 2006 report by the United States House of Representatives Committee on
42 Appropriations states that "a company's association with sponsors of terrorism and human
43 rights abuses, no matter how large or small, can have a materially adverse result on a
44 public company's activities, financial condition, earnings, and stock prices, all of which
45 can negatively affect the value of an investment";

46 (5) Iran tops the United States State Department's list of state sponsors of terrorism,
47 funding such groups as Hamas, Hezbollah, and Islamic Jihad, as well as fueling the
48 insurgency in Iraq via its Al-Quds force;

49 (6) The United States imposed sanctions on Iran by designating the Islamic
50 Revolutionary Guard Corps, its Al-Quds Force, and three state-owned banks as weapons
51 proliferators and supporters of terrorism;

52 (7) The United Nations Security Council has twice voted unanimously to impose
53 sanctions on Iran for its failure to suspend its uranium-enrichment activities calling for
54 an additional embargo on Iranian arms exports, which is a freeze on assets abroad of an
55 expanded list of individuals and companies involved in Iran's nuclear and ballistic missile
56 programs, and calls for nations and institutions to bar new grants or loans to Iran except
57 for humanitarian and developmental purposes;

58 (8) Foreign entities have invested in Iran's petroleum energy sector despite United States
59 and United Nations sanctions against Iran;

- 60 (9) All entities that have invested more than \$20 million in any given year in Iran's
61 petroleum sector since August 5, 1996, are subject to sanctions under United States law
62 pursuant to the Iran Sanctions Act of 1996;
- 63 (10) The United States renewed the Iran Sanctions Act of 1996 in 2001 and 2006;
- 64 (11) It is a fundamental responsibility of the State of Georgia to decide where, how, and
65 by whom financial resources in its control should be invested, taking into account
66 numerous pertinent factors;
- 67 (12) While divestiture should be considered with the intent to improve investment
68 performance, by the rules of prudence, fiduciaries must take into account all relevant
69 substantive factors in arriving at an investment decision;
- 70 (13) The State of Georgia is deeply concerned about investments in publicly traded
71 companies that have investments in Iran's petroleum sector as a financial risk to the
72 shareholders;
- 73 (14) By investing in publicly traded companies having investments in Iran's petroleum
74 sector, public retirement systems are putting their funds at substantial financial risk;
- 75 (15) Divestiture from markets that are vulnerable to embargo, loan restrictions, and
76 sanctions from the United States and the international community, including the United
77 Nations Security Council, is in accordance with the rules of prudence;
- 78 (16) This Act should remain in effect only insofar as it continues to be consistent with
79 and does not unduly interfere with the foreign policy of the United States as determined
80 by the federal government;
- 81 (17) To protect Georgia's assets, it is in the best interest of the state to enact a statutory
82 prohibition regarding the investments managed by public retirement systems doing
83 business in Iran's petroleum, energy, and telecommunications sector;
- 84 (18) Nevertheless, the members of this body have serious concerns regarding the efficacy
85 of requiring the divestment of Georgia's retirement funds in large companies with fiscally
86 sound histories and enviable histories of returns, and whether any effect on world-wide
87 business activities might be too insubstantial as to warrant the cost to the state and to
88 public retirees of divestment;
- 89 (19) The members of this body have faith that the boards of trustees and investment
90 managers of our public retirement systems are patriotic Americans who would not aid or
91 assist terrorism in any manner, and that restrictive and potentially costly micro-managing
92 by this body is unnecessary;
- 93 (20) Congress and the President have determined that the illicit nuclear activities of the
94 Government of Iran, combined with its development of unconventional weapons and
95 ballistic missiles, and its support of international terrorism, represent a serious threat to

96 the security of the United States, Israel, and other United States allies in Europe, the
97 Middle East, and around the world;

98 (21) The International Atomic Energy Agency has repeatedly called attention to Iran's
99 unlawful nuclear activities, and, as a result, the United Nations Security Council has
100 adopted a range of sanctions designed to encourage the Government of Iran to cease those
101 activities and comply with its obligations under the Treaty on the Non-Proliferation of
102 Nuclear Weapons;

103 (22) On July 1, 2010, President Barack Obama signed into law H.R. 2194, the
104 "Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010" (Public
105 Law 111-195), which expressly authorizes states and local governments to prevent
106 investment in, including prohibiting entry into or renewing contracts with, companies
107 operating in Iran's energy sector with investments that have the result of directly or
108 indirectly supporting the efforts of the Government of Iran to achieve nuclear weapons
109 capability;

110 (23) The serious and urgent nature of the threat from Iran demands that states, local
111 governments, and private institutions work together with the federal government and
112 American allies to do everything possible diplomatically, politically, and economically
113 to prevent Iran from acquiring a nuclear weapons capability;

114 (24) Respect for human rights in Iran has steadily deteriorated as demonstrated by
115 transparently fraudulent elections and the brutal repression and murder, arbitrary arrests,
116 and show trials of peaceful dissidents;

117 (25) The concerns of the State of Georgia regarding Iran are strictly the result of the
118 actions of the Government of Iran and should not be construed as enmity toward the
119 Iranian people; and

120 (26) In order to effectively address the need for this state to respond to the policies of Iran
121 in a uniform fashion, prohibiting contracts with persons engaged in investment activities
122 in the petroleum, energy, and telecommunications sector of Iran must be accomplished
123 on a statewide basis.

124 **SECTION 2.**

125 Article 7 of Chapter 20 of Title 47 of the Official Code of Georgia Annotated, relating to the
126 Public Retirement Systems Investment Authority Law, is amended by adding a new Code
127 section to read as follows:

128 "47-20-83.2.

129 (a) As used in this Code section, the term:

130 (1) 'Business activities' means maintaining, selling, or leasing equipment, facilities,
131 personnel, or any other apparatus of business or commerce in a proscribed country.

132 including, without limitation, the ownership or possession of real or personal property
133 located in such country and the exploration for or extraction of petroleum products.

134 (2) 'Company' means any sole proprietorship, organization, association, corporation,
135 partnership, joint venture, limited partnership, limited liability partnership, limited
136 liability company, or other entity or business association that exists for the purpose of
137 making profit.

138 (3) 'Direct holdings' in a company means all securities of that company that are held
139 directly by the public fund or in an account or fund in which the public fund owns all
140 shares or interests.

141 (4) 'Indirect holdings' in a company means all securities of that company that are held
142 in an account or fund, such as a mutual fund, managed by one or more persons not
143 employed by the public fund, in which the public fund owns shares or interests together
144 with other investors not subject to the provisions of this Code section.

145 (5) 'Oil related activities' include, but are not limited to, owning rights to oil blocks;
146 exporting, extracting, producing, refining, processing, exploring for, transporting, selling,
147 or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil
148 field infrastructure; and facilitating such activities, including providing supplies or
149 services in support of such activities, except that the mere retail sale of gasoline and
150 related consumer products shall not be considered an oil related activity.

151 (6) 'Proscribed country' means the Islamic Republic of Iran, Syrian Arab Republic, the
152 Republic of Cuba, and the Republic of the Sudan.

153 (7) 'Public retirement system' means any retirement or pension system now or hereafter
154 created by or pursuant to the authority of Georgia law or the Constitution of Georgia
155 which has public employees as members of the retirement or pension system.

156 (8) 'Scrutinized business activities' means business activities that have resulted in a
157 company becoming a scrutinized company defined in Code Section 47-20-83.1.

158 (9) 'Scrutinized company' means any company that meets any of the following criteria:

159 (A) The company has business activities that involve contracts with or provision of
160 supplies or services to the government of a proscribed country, companies in which the
161 government of a proscribed country has any direct or indirect equity share, consortiums
162 or projects commissioned by the government of a proscribed country, or companies
163 involved in consortiums or projects commissioned by the government of a proscribed
164 country and:

165 (i) Any of the company's revenues or assets linked to a proscribed country involve
166 oil related activities or mineral extraction activities; a portion of the company's
167 revenues or assets linked to a proscribed country involve contracts with or provision
168 of oil related or mineral extracting products or services to the regional government of

169 a proscribed country or a project or consortium created exclusively by that regional
 170 government; and the company has failed to take substantial action; or
 171 (ii) Any of the company's revenues or assets linked to a proscribed country involve
 172 power production activities; a portion of the company's power production activities
 173 include projects whose intent is to provide power or electricity to the marginalized
 174 populations of a proscribed country; and the company has failed to take substantial
 175 action;
 176 (B) The company is complicit in the Darfur genocide; or
 177 (C) The company supplies military equipment within a proscribed country, unless it
 178 clearly shows that such military equipment cannot be used to facilitate offensive
 179 military actions in a proscribed country, or the company implements rigorous and
 180 verifiable safeguards to prevent use of that military equipment by forces actively
 181 participating in armed conflict. Examples of safeguards include postsale tracking of
 182 such military equipment by the company, certification from a reputable and objective
 183 third party that such military equipment is not being used by a party participating in
 184 armed conflict in a proscribed country, or sale of such military equipment solely to the
 185 regional government of a proscribed country or any internationally recognized
 186 peacekeeping force or humanitarian organization.
 187 Notwithstanding anything in this Code section to the contrary, a social development
 188 company which is not complicit in the Darfur genocide shall not be considered a
 189 scrutinized company.
 190 (10) 'Substantial action' means adopting, publicizing, and implementing a formal plan
 191 to cease scrutinized business activities within one year and to refrain from any such new
 192 business activities.
 193 (b) The state treasurer shall annually prepare a list of scrutinized companies as otherwise
 194 required by this Code section. The list shall be made available to each public fund in
 195 Georgia and each such fund may rely on said list in meeting the requirements of this Code
 196 section.
 197 (c) On or before October 1, 2016, each public fund shall make its best efforts to identify
 198 all scrutinized companies in which the public fund has direct or indirect holdings. Such
 199 efforts include reviewing and relying, as appropriate in the public fund's judgment, on
 200 publicly available information regarding companies that have invested business activities
 201 with a proscribed country, including information provided by nonprofit organizations,
 202 research firms, international organizations, and government entities.
 203 (d) By the first meeting of each board responsible for the management of a public fund
 204 after October 1, 2016, the board shall assemble all scrutinized companies that fit the criteria

205 specified in paragraph (9) of subsection (a) of this Code section into a 'Scrutinized
206 Companies List.'

207 (e) The board of each public fund shall update and make publicly available annually the
208 Scrutinized Companies List based on evolving information from, among other sources,
209 those listed in subsection (c) of this Code section.

210 (f) Each public fund shall adhere to the following procedure for assembling companies on
211 the Scrutinized Companies List:

212 (1) For each company in which the public fund has direct holdings newly identified
213 under subsection (d) of this Code section, the public fund shall send a written notice
214 informing the company of its scrutinized company status and that it may become subject
215 to divestment by the public fund. The notice must inform the company of the opportunity
216 to clarify its activities related to a proscribed country and encourage the company, within
217 90 days, to cease its scrutinized business activities or convert such activities to inactive
218 business activities in order to avoid qualifying for divestment by the public fund. Such
219 notice shall be sent no later than December 15, 2016; and

220 (2) If, within 90 days after the public fund's first engagement with a company pursuant
221 to this subsection, that company announces by public disclosure substantial action
222 specific to a proscribed country, the public fund may maintain its direct holdings, but the
223 company shall remain on the Scrutinized Companies List pending completion of its
224 cessation of scrutinized business activities.

225 (g)(1) If, after 90 days following a public fund's first engagement with a company
226 pursuant to subsection (f) of this Code section, the company has not announced by public
227 disclosure substantial action specific to a proscribed country, or the public fund
228 determines or becomes aware that the company continues to have scrutinized business
229 activities, the public fund within eight months after the expiration of such 90 day period
230 shall sell, redeem, divest, or withdraw all publicly traded securities of the company from
231 the public fund's direct holdings.

232 (2) If the public fund determines or becomes aware that a company that ceased
233 scrutinized business activities following engagement pursuant to subsection (e) of this
234 Code section has resumed such activities, the public fund shall send a written notice to
235 the company in accordance with subsection (f) and this subsection. The company shall
236 also be immediately reintroduced onto the Scrutinized Companies List.

237 (3) The public fund shall monitor the scrutinized company that has announced by public
238 disclosure substantial action specific to a proscribed country and, if, after one year, the
239 public fund determines or becomes aware that the company has not implemented such
240 a plan, within three months after the expiration of such one-year period shall sell, redeem,
241 divest, or withdraw all publicly traded securities of the company from the public fund's

242 direct holdings, and the company also shall be immediately reintroduced onto the
 243 Scrutinized Companies List.

244 (h) A public fund shall not acquire securities of companies on the Scrutinized Companies
 245 List.

246 (i) Subsections (g) and (h) of this Code section shall not apply to a public fund's indirect
 247 holdings. However, the public fund shall submit letters to the managers of such investment
 248 funds containing companies on the Scrutinized Companies List requesting that they
 249 consider removing such companies from the fund or create a similar actively managed fund
 250 having indirect holdings devoid of such companies. If the manager creates a similar fund
 251 devoid of such securities or if such funds are created elsewhere, the board of the public
 252 fund shall determine within six months whether to replace all applicable investments with
 253 investments in the similar fund in an expedited time frame consistent with prudent
 254 investing standards. For the purposes of this subsection, a private equity fund is deemed
 255 to be an actively managed investment fund.

256 (j) Notwithstanding any other provision of this Code section, the public fund, when
 257 discharging its responsibility for operation of a defined contribution plan, shall engage the
 258 manager of the investment offerings in such plans requesting that they consider removing
 259 scrutinized companies from the investment offerings or create an alternative investment
 260 offering devoid of scrutinized companies. If the manager creates an alternative investment
 261 offering or if such funds are created elsewhere and is deemed by the public fund to be
 262 consistent with prudent investor standards, the public fund shall, within six months,
 263 consider including such investment offering in the plan.

264 (k) Each public fund shall file a report with the Governor, the President of the Senate, and
 265 the Speaker of the House of Representatives that includes the Scrutinized Companies List
 266 within 30 days after the list is created. This report shall be made available to the public.
 267 Annually thereafter the board responsible for the management of a public fund shall file
 268 a report, which shall be made available to the public and to the Governor, the President of
 269 the Senate, and the Speaker of the House of Representatives, which includes:

270 (1) A summary of correspondence with companies engaged by the public fund under this
 271 Code section;

272 (2) All investments sold, redeemed, divested, or withdrawn in compliance with this Code
 273 section;

274 (3) All prohibited investments under this Code section;

275 (4) Any progress made under subsection (i) of this Code section; and

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

277 (l) If any of the following occur, this Code section shall be of no further force or effect:

278 (1) The Congress or President of the United States affirmatively and unambiguously
279 states, by means including, but not limited to, legislation, executive order, or written
280 certification from the President to Congress, that the government of a proscribed country
281 has ceased to pursue the capabilities to develop nuclear weapons and support
282 international terrorism;

283 (2) The United States revokes all sanctions imposed against the government of a
284 proscribed country; or

285 (3) The Congress or President of the United States affirmatively and unambiguously
286 declares, by means including, but not limited to, legislation, executive order, or written
287 certification from the President to Congress, that mandatory divestment of the type
288 provided for in this Code section interferes with the conduct of United States foreign
289 policy.

290 (m) With respect to actions taken in compliance with this Code section, including all good
291 faith determinations regarding companies as required by this Code section, the public fund
292 shall be exempt from any conflicting statutory or common law obligations, including any
293 such obligations with respect to choice of asset managers, investment funds, or investments
294 for the public fund's securities portfolios.

295 (n) Neither the retirement system nor any employee of the retirement system shall be liable
296 for a good faith omission in identifying a scrutinized company."

297 **SECTION 3.**

298 This Act shall become effective on July 1, 2016, only if it is determined to have been
299 concurrently funded as provided in Chapter 20 of Title 47 of the Official Code of Georgia
300 Annotated, the "Public Retirement Systems Standards Law"; otherwise, this Act shall not
301 become effective and shall be automatically repealed in its entirety on July 1, 2016, as
302 required by subsection (a) of Code Section 47-20-50.

303 **SECTION 4.**

304 All laws and parts of laws in conflict with this Act are repealed.