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S.B. No. 450

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting the investment of retirement system funds
in certain private business entities doing business in Iran.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds that:

(1) Iran is a leading sponsor of international
terrorism;

(2) United Nations Security Council Resolution 1737
imposes sanctions on Iran for its failure to suspend
uranium-enrichment activities;

(3) foreign entities have active business operations
involving the government of Iran despite Iran's support of
international terrorism and clandestine nuclear program, affording
Iran a free pass while many United States entities have unknowingly
invested in those same foreign entities;

(4) all United States and foreign entities that have
invested more than \$20 million in Iran's energy sector since August
5, 1996, are subject to sanctions under United States law pursuant
to the Iran and Libya Sanctions Act of 1996, renewed in 2001, and
renewed in 2006 as the Iran Freedom Support Act;

(5) investors from Texas can have considerable
influence over the commercial decisions of the foreign entities in
which they invest;

(6) support for terrorism and the acquisition of

1 weapons of mass destruction represent a grave threat to the
2 security of the United States and to the residents of the State of
3 Texas;

4 (7) the State of Texas is deeply concerned about
5 investments in publicly traded companies that have active business
6 operations involving the government of Iran as both a global
7 security and a financial risk to the shareholders;

8 (8) the Securities and Exchange Commission has
9 determined that companies having business operations in
10 terrorist-sponsoring states are exposed to a special risk category
11 known as "global security risk," which is the risk to stock value
12 and corporate reputation stemming from the intersection of a
13 publicly traded company's international business activities and
14 security-related concerns, such as terrorism and weapons
15 proliferation;

16 (9) by investing in publicly traded companies having
17 active business operations involving the government of Iran, the
18 State of Texas is putting the pensions of its current and former
19 public employees and teachers at risk;

20 (10) it is a fundamental responsibility of the state
21 to decide where, how, and by whom financial resources in its control
22 should be invested, taking into account numerous pertinent factors;

23 (11) to protect Texas' public assets, it is in the best
24 interest of the state to enact a statutory prohibition against the
25 investment of public employee retirement funds in companies having
26 active business operations involving the government of Iran;

27 (12) this Act should remain in effect only as long as

1 it continues to be consistent with, and does not unduly interfere
2 with, the foreign policy of the United States as determined by the
3 United States government;

4 (13) this Act is not intended to interfere with the
5 performance of the fiduciary duties of a manager of funds subject to
6 this Act; and

7 (14) mandatory divestment of public funds from certain
8 companies is a measure that should be employed sparingly and
9 judiciously and a congressional and presidential declaration that
10 Iran poses a serious threat to the national security of the United
11 States satisfies this high threshold.

12 SECTION 2. Subtitle A, Title 8, Government Code, is amended
13 by adding Chapter 807 to read as follows:

14 CHAPTER 807. PROHIBITION ON INVESTMENT IN IRAN

15 SUBCHAPTER A. GENERAL PROVISIONS

16 Sec. 807.001. DEFINITIONS. In this chapter:

17 (1) "Active business operations" means all business
18 operations that are not inactive business operations.

19 (2) "Business operations" means engaging in commerce
20 in any form in Iran, including by acquiring, developing,
21 maintaining, owning, selling, possessing, leasing, or operating
22 equipment, facilities, personnel, products, services, personal
23 property, real property, or any other apparatus of business or
24 commerce.

25 (3) "Company" means a sole proprietorship,
26 organization, association, corporation, partnership, joint
27 venture, limited partnership, limited liability partnership,

1 limited liability company, or other entity or business association
2 whose securities are publicly traded, including a wholly owned
3 subsidiary, majority-owned subsidiary, parent company, or
4 affiliate of those entities or business associations, that exists
5 to make a profit.

6 (4) "Direct holdings in a company" means all
7 securities of that company held directly by a state governmental
8 entity in an account or fund in which a state governmental entity
9 owns all shares or interests.

10 (5) "Inactive business operations" means the mere
11 continued holding or renewal of rights to property previously
12 operated to generate revenue but not presently deployed to generate
13 revenue.

14 (6) "Indirect holdings in a company" means all
15 securities of that company held in an account or fund, such as a
16 mutual fund, managed by one or more persons not employed by a state
17 governmental entity, in which the state governmental entity owns
18 shares or interests together with other investors not subject to
19 the provisions of this chapter. The term does not include money
20 invested under a plan described by Section 401(k) or 457 of the
21 Internal Revenue Code of 1986.

22 (7) "Listed company" means a company listed by the
23 comptroller under Section 807.051.

24 (8) "Military equipment" means weapons, arms,
25 military supplies, and equipment that readily may be used for
26 military purposes, including radar systems and military-grade
27 transport vehicles.

1 (9) "Scrutinized company" means a company that engages
2 in scrutinized business operations described by Section 807.002.

3 (10) "State governmental entity" means the Employees
4 Retirement System of Texas or the Teacher Retirement System of
5 Texas.

6 Sec. 807.002. SCRUTINIZED BUSINESS OPERATIONS. A company
7 engages in scrutinized business operations if:

8 (1) the company has business operations that involve
9 contracts with or providing supplies or services to the government
10 of Iran, a company in which the government of Iran has any direct or
11 indirect equity share, a consortium or project commissioned by the
12 government of Iran, or a company involved in a consortium or project
13 commissioned by the government of Iran; or

14 (2) the company supplies military equipment to Iran.

15 Sec. 807.003. EXCEPTION. Notwithstanding any provision of
16 this chapter, a company that the United States government
17 affirmatively declares to be excluded from its federal sanctions
18 regime relating to Iran is not subject to divestment or investment
19 prohibition under this chapter.

20 Sec. 807.004. OTHER LEGAL OBLIGATIONS. With respect to
21 actions taken in compliance with this chapter, including all good
22 faith determinations regarding companies as required by this
23 chapter, a state governmental entity is exempt from any conflicting
24 statutory or common law obligations, including any obligations with
25 respect to making investments, divesting from any investment,
26 preparing or maintaining any list of companies, or choosing asset
27 managers, investment funds, or investments for the state

1 governmental entity's securities portfolios.

2 Sec. 807.005. INDEMNIFICATION OF STATE GOVERNMENTAL
3 ENTITIES, EMPLOYEES, AND OTHERS. In a cause of action based on an
4 action, inaction, decision, divestment, investment, company
5 communication, report, or other determination made or taken in
6 connection with this chapter, the state shall, without regard to
7 whether the person performed services for compensation, indemnify
8 and hold harmless for actual damages, court costs, and attorney's
9 fees adjudged against, and defend:

10 (1) an employee, a member of the governing body, or any
11 other officer of a state governmental entity;

12 (2) a contractor of a state governmental entity;

13 (3) a former employee, a former member of the
14 governing body, or any other former officer of a state governmental
15 entity who was an employee or officer when the act or omission on
16 which the damages are based occurred; and

17 (4) a former contractor of a state governmental entity
18 who was a contractor when the act or omission on which the damages
19 are based occurred.

20 Sec. 807.006. NO PRIVATE CAUSE OF ACTION. (a) A person,
21 including a member, retiree, and beneficiary of a retirement system
22 to which this chapter applies, an association, a research firm, a
23 company, or any other person may not sue or pursue a private cause
24 of action against the state, a state governmental entity, an
25 employee, a member of the governing body, or any other officer of a
26 state governmental entity, or a contractor of a state governmental
27 entity, for any claim or cause of action, including breach of

fiduciary duty, or for violation of any constitutional, statutory, or regulatory requirement in connection with any action, inaction, decision, divestment, investment, company communication, report, or other determination made or taken in connection with this chapter.

(b) A person who files suit against the state, a state governmental entity, an employee, a member of the governing body, or any other officer of a state governmental entity, or a contractor of a state governmental entity, is liable for paying the costs and attorney's fees of a person sued in violation of this section.

[Sections 807.007-807.050 reserved for expansion]

SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

Sec. 807.051. LISTED COMPANIES. (a) The comptroller shall prepare and maintain, and provide to each state governmental entity, a list of all scrutinized companies. In maintaining the list, the comptroller may review and rely, as appropriate in the comptroller's judgment, on publicly available information regarding companies with business operations in Iran, including information provided by the state, nonprofit organizations, research firms, international organizations, and governmental entities.

(b) The comptroller shall update the list annually or more often as the comptroller considers necessary, but not more often than quarterly, based on information from, among other sources, those listed in Subsection (a).

(c) Not later than the 30th day after the date the list of scrutinized companies is first provided or updated, the comptroller

1 shall file the list with the presiding officer of each house of the
2 legislature and the attorney general.

3 Sec. 807.052. IDENTIFICATION OF INVESTMENT IN LISTED
4 COMPANIES. Not later than the 14th day after the date a state
5 governmental entity receives the list provided under Section
6 807.051, the state governmental entity shall notify the comptroller
7 of the listed companies in which the state governmental entity owns
8 direct or indirect holdings.

9 Sec. 807.053. NOTICE TO LISTED COMPANY ENGAGED IN INACTIVE
10 BUSINESS OPERATIONS. For each listed company identified under
11 Section 807.052 that is engaged in only inactive scrutinized
12 business operations, the state governmental entity shall send a
13 written notice informing the company of this chapter and
14 encouraging the company to continue to refrain from initiating
15 active business operations in Iran until it is able to avoid being
16 considered a listed company. The state governmental entity shall
17 continue the correspondence as the entity considers necessary, but
18 is not required to initiate correspondence more often than
19 semiannually.

20 Sec. 807.054. ACTIONS RELATING TO LISTED COMPANY ENGAGED IN
21 ACTIVE BUSINESS OPERATIONS. (a) For each listed company
22 identified under Section 807.052 that is engaged in scrutinized
23 active business operations, the state governmental entity shall
24 send a written notice informing the company of its listed company
25 status and warning the company that it may become subject to
26 divestment by state governmental entities.

27 (b) The notice shall offer the company the opportunity to

clarify its Iran-related activities and shall encourage the company, not later than the 90th day after the date the company receives notice under this section, to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by state governmental entities.

(c) If, during the time provided by Subsection (b), the company ceases scrutinized business operations, the comptroller shall remove the company from the list maintained under Section 807.051 and this chapter will no longer apply to the company unless it resumes scrutinized business operations.

(d) If, during the time provided by Subsection (b), the company converts its scrutinized active business operations to inactive business operations, the company is subject to all provisions of this chapter relating to inactive business operations.

(e) If, after the time provided by Subsection (b) expires, the company continues to have scrutinized active business operations, the state governmental entity shall sell, redeem, divest, or withdraw all publicly traded securities of the company, except securities described by Section 807.056, according to the schedule provided by Section 807.055.

Sec. 807.055. DIVESTMENT OF ASSETS. (a) A state governmental entity required to sell, redeem, divest, or withdraw all publicly traded securities of a listed company shall comply with the following schedule:

(1) at least 50 percent of those assets shall be

1 removed from the state governmental entity's assets under
2 management not later than the 270th day after the date the company
3 receives notice under Section 807.054 or Subsection (b); and

4 (2) 100 percent of those assets shall be removed from
5 the state governmental entity's assets under management not later
6 than the 450th day after the date the company receives notice under
7 Section 807.054 or Subsection (b).

8 (b) If a company that ceased scrutinized active business
9 operations after receiving notice under Section 807.054 resumes
10 scrutinized active business operations, the state governmental
11 entity shall send a written notice to the company informing it that
12 the state governmental entity will sell, redeem, divest, or
13 withdraw all publicly traded securities of the scrutinized company
14 according to the schedule in Subsection (a).

15 (c) A state governmental entity may delay the schedule for
16 divestment under Subsection (a) only to the extent that the state
17 governmental entity determines, in the state governmental entity's
18 good faith judgment, that divestment from listed companies will
19 likely result in a loss in value described by Section 807.057(a).
20 If a state governmental entity delays the schedule for divestment,
21 the state governmental entity shall submit a report to the
22 presiding officer of each house of the legislature and the attorney
23 general stating the reasons and justification for the state
24 governmental entity's delay in divestment from listed companies.
25 The report must include documentation supporting its determination
26 that the divestment would result in a loss in value described by
27 Section 807.057(a), including objective numerical estimates. The

1 state governmental entity shall update the report every six months.

2 Sec. 807.056. INVESTMENTS EXEMPTED FROM DIVESTMENT. A
3 state governmental entity is not required to divest from any
4 indirect holdings in actively managed investment funds or private
5 equity funds. The state governmental entity shall submit letters
6 to the managers of investment funds containing listed companies
7 requesting that they consider removing those companies from the
8 fund or create a similar actively managed fund with indirect
9 holdings devoid of listed companies. If the manager creates a
10 similar fund with substantially the same management fees and same
11 level of investment risk, the state governmental entity shall
12 replace all applicable investments with investments in the similar
13 fund in an expedited time frame consistent with prudent fiduciary
14 standards.

15 Sec. 807.057. AUTHORIZED INVESTMENT IN LISTED COMPANIES.

16 (a) A state governmental entity may cease divesting from or may
17 reinvest in one or more listed companies if clear and convincing
18 evidence shows that the value for all assets under management by the
19 state governmental entity becomes equal to or less than 99.7
20 percent of the hypothetical value of all assets under management by
21 the state governmental entity had the state governmental entity not
22 divested from listed companies under this chapter.

23 (b) A state governmental entity may cease divesting from or
24 may reinvest in a listed company as provided by this section only to
25 the extent necessary to ensure that the value of the assets managed
26 by the state governmental entity does not fall below the value
27 described by Subsection (a).

1 (c) Before a state governmental entity may cease divesting
2 from or may reinvest in a listed company under this section, the
3 state governmental entity must provide a written report to the
4 presiding officer of each house of the legislature and the attorney
5 general setting forth the reason and justification, supported by
6 clear and convincing evidence, for its decisions to cease
7 divestment, to reinvest, or to remain invested in a listed company.

8 (d) The state governmental entity shall update the report
9 required by Subsection (c) semiannually, as applicable.

10 (e) This section does not apply to reinvestment in a company
11 that is no longer a listed company.

12 Sec. 807.058. PROHIBITED INVESTMENTS. Except as provided
13 by Sections 807.003 and 807.057, a state governmental entity may
14 not acquire securities of a listed company.

15 [Sections 807.059-807.100 reserved for expansion]

16 SUBCHAPTER C. EXPIRATION; REPORT; ENFORCEMENT

17 Sec. 807.101. EXPIRATION OF CHAPTER. This chapter expires
18 on the earlier of:

19 (1) the date the United States revokes its sanctions
20 against the government of Iran; or

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

26 Sec. 807.102. REPORT. Not later than December 31 of each
27 year, each state governmental entity shall file a publicly

1 available report with the presiding officer of each house of the
2 legislature and the attorney general, that:

3 (1) identifies all securities sold, redeemed,
4 divested, or withdrawn in compliance with Section 807.055;

5 (2) identifies all prohibited investments under
6 Section 807.058; and

7 (3) summarizes any changes made under Section 807.056.

8 Sec. 807.103. ENFORCEMENT. The attorney general may bring
9 any action necessary to enforce this chapter.

10 SECTION 3. Not later than January 1, 2010, the comptroller
11 of public accounts shall prepare and provide to each state
12 governmental entity, as defined by Section 807.001, Government
13 Code, as added by this Act, the list of scrutinized companies
14 required by Section 807.051, Government Code, as added by this Act.

15 SECTION 4. This Act takes effect January 1, 2010.