

1 AN ACT concerning finance.

2 WHEREAS, A resolution of the United Nations Security
3 Council imposes sanctions on Iran for its failure to suspend
4 its uranium-enrichment activities; and

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

12 WHEREAS, Iran's financial ability to pay its debts to
13 foreign entities involved in the petroleum-energy sector
14 amounting to more than \$20 million is put at risk by the Iran
15 and Libya Sanctions Act embargo and sanctions; and

16 WHEREAS, Foreign entities have invested in Iran's
17 petroleum-energy sector despite United States and United
18 Nations sanctions against Iran; and

19 WHEREAS, All United States and foreign entities that have
20 invested more than \$20 million in Iran's energy sector since
21 August 5, 1996, are subject to sanctions under United States
22 law pursuant to the Iran and Libya Sanctions Act of 1996; and

1 WHEREAS, The United States renewed the Iran and Libya
2 Sanctions Act of 1996 in 2001 and 2006; and

3 WHEREAS, While divestiture should be considered with the
4 intent to improve investment performance and, by the rules of
5 prudence, fiduciaries must take into account all relevant
6 substantive factors in arriving at an investment decision; and

7 WHEREAS, Divestiture from markets that are vulnerable to
8 embargo, loan restrictions, and sanctions from the United
9 States and the international community, including the United
10 Nations Security Council, is in accordance with the rules of
11 prudence; and

12 WHEREAS, The State of Illinois is deeply concerned about
13 investments in publicly traded companies that have business
14 activities in and ties to Iran's petroleum-energy sector as a
15 financial risk to the shareholders; and

16 WHEREAS, By investing in publicly traded companies having
17 ties to Iran's petroleum-energy sector, retirement systems are
18 putting the funds they oversee at substantial financial risk;
19 and

20 WHEREAS, To protect Illinois' assets, it is in the best

1 interest of the State to enact a statutory prohibition
2 regarding investments in or with Iran's petroleum-energy
3 sector; therefore

4 **Be it enacted by the People of the State of Illinois,**
5 **represented in the General Assembly:**

6 Section 5. The Illinois Procurement Code is amended by
7 adding Section 50-36 as follows:

8 (30 ILCS 500/50-36 new)

9 Sec. 50-36. Disclosure of business in Iran.

10 (a) As used in this Section:

11 "Business operations" means engaging in commerce in any
12 form in Iran, including, but not limited to, acquiring,
13 developing, maintaining, owning, selling, possessing, leasing,
14 or operating equipment, facilities, personnel, products,
15 services, personal property, real property, or any other
16 apparatus of business or commerce.

17 "Company" means any sole proprietorship, organization,
18 association, corporation, partnership, joint venture, limited
19 partnership, limited liability partnership, limited liability
20 company, or other entity or business association, including all
21 wholly owned subsidiaries, majority-owned subsidiaries, parent
22 companies, or affiliates of those entities or business
23 associations, that exists for the purpose of making profit.

1 "Mineral-extraction activities" include exploring,
2 extracting, processing, transporting, or wholesale selling or
3 trading of elemental minerals or associated metal alloys or
4 oxides (ore), including gold, copper, chromium, chromite,
5 diamonds, iron, iron ore, silver, tungsten, uranium, and zinc.

6 "Oil-related activities" include, but are not limited to,
7 owning rights to oil blocks; exporting, extracting, producing,
8 refining, processing, exploring for, transporting, selling, or
9 trading of oil; and constructing, maintaining, or operating a
10 pipeline, refinery, or other oil-field infrastructure. The
11 mere retail sale of gasoline and related consumer products is
12 not considered an oil-related activity.

13 "Petroleum resources" means petroleum, petroleum
14 byproducts, or natural gas.

15 "Substantial action" means adopting, publicizing, and
16 implementing a formal plan to cease scrutinized business
17 operations within one year and to refrain from any such new
18 business operations.

19 (b) Each bid, offer, or proposal submitted for a State
20 contract, other than a small purchase defined in Section 20-20,
21 shall include a disclosure of whether or not the bidder,
22 offeror, or proposing entity, or any of its corporate parents
23 or subsidiaries, within the 24 months before submission of the
24 bid, offer, or proposal had business operations that involved
25 contracts with or provision of supplies or services to the
26 Government of Iran, companies in which the Government of Iran

1 has any direct or indirect equity share, consortiums or
2 projects commissioned by the Government of Iran, or companies
3 involved in consortiums or projects commissioned by the
4 Government of Iran and:

5 (1) more than 10% of the company's revenues produced in
6 or assets located in Iran involve oil-related activities or
7 mineral-extraction activities; less than 75% of the
8 company's revenues produced in or assets located in Iran
9 involve contracts with or provision of oil-related or
10 mineral-extraction products or services to the Government
11 of Iran or a project or consortium created exclusively by
12 that government; and the company has failed to take
13 substantial action; or

14 (2) the company has, on or after August 5, 1996, made
15 an investment of \$20 million or more, or any combination of
16 investments of at least \$10 million each that in the
17 aggregate equals or exceeds \$20 million in any 12-month
18 period, that directly or significantly contributes to the
19 enhancement of Iran's ability to develop petroleum
20 resources of Iran.

21 (c) A bid, offer, or proposal that does not include the
22 disclosure required by subsection (b) shall not be considered
23 responsive. A chief procurement officer may consider the
24 disclosure when evaluating the bid, offer, or proposal or
25 awarding the contract.

26 (d) Each chief procurement officer shall provide the State

1 Comptroller with the name of each entity disclosed under
2 subsection (b) as doing business or having done business in
3 Iran. The State Comptroller shall post that information on his
4 or her official website.

5 Section 10. The Illinois Pension Code is amended by adding
6 Section 1-110.10 as follows:

7 (40 ILCS 5/1-110.10 new)

8 Sec. 1-110.10. Transactions prohibited by retirement
9 systems; Iran.

10 (a) As used in this Section:

11 "Active business operations" means all business operations
12 that are not inactive business operations.

13 "Business operations" means engaging in commerce in any
14 form in Iran, including, but not limited to, acquiring,
15 developing, maintaining, owning, selling, possessing, leasing,
16 or operating equipment, facilities, personnel, products,
17 services, personal property, real property, or any other
18 apparatus of business or commerce.

19 "Company" means any sole proprietorship, organization,
20 association, corporation, partnership, joint venture, limited
21 partnership, limited liability partnership, limited liability
22 company, or other entity or business association, including all
23 wholly owned subsidiaries, majority-owned subsidiaries, parent
24 companies, or affiliates of those entities or business

1 associations, that exists for the purpose of making profit.

2 "Direct holdings" in a company means all securities of that
3 company that are held directly by the retirement system or in
4 an account or fund in which the retirement system owns all
5 shares or interests.

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

10 "Indirect holdings" in a company means all securities of
11 that company which are held in an account or fund, such as a
12 mutual fund, managed by one or more persons not employed by the
13 retirement system, in which the retirement system owns shares
14 or interests together with other investors not subject to the
15 provisions of this Section.

16 "Mineral-extraction activities" include exploring,
17 extracting, processing, transporting, or wholesale selling or
18 trading of elemental minerals or associated metal alloys or
19 oxides (ore), including gold, copper, chromium, chromite,
20 diamonds, iron, iron ore, silver, tungsten, uranium, and zinc.

21 "Oil-related activities" include, but are not limited to,
22 owning rights to oil blocks; exporting, extracting, producing,
23 refining, processing, exploring for, transporting, selling, or
24 trading of oil; and constructing, maintaining, or operating a
25 pipeline, refinery, or other oil-field infrastructure. The
26 mere retail sale of gasoline and related consumer products is

1 not considered an oil-related activity.

2 "Petroleum resources" means petroleum, petroleum
3 byproducts, or natural gas.

4 "Private market fund" means any private equity fund,
5 private equity fund of funds, venture capital fund, hedge fund,
6 hedge fund of funds, real estate fund, or other investment
7 vehicle that is not publicly traded.

8 "Retirement system" means the State Employees' Retirement
9 System of Illinois, the Judges Retirement System of Illinois,
10 the General Assembly Retirement System, the State Universities
11 Retirement System, and the Teachers' Retirement System of the
12 State of Illinois.

13 "Scrutinized business operations" means business
14 operations that have caused a company to become a scrutinized
15 company.

16 "Scrutinized company" means the company has business
17 operations that involve contracts with or provision of supplies
18 or services to the Government of Iran, companies in which the
19 Government of Iran has any direct or indirect equity share,
20 consortiums or projects commissioned by the Government of Iran,
21 or companies involved in consortiums or projects commissioned
22 by the Government of Iran and:

23 (1) more than 10% of the company's revenues produced in
24 or assets located in Iran involve oil-related activities or
25 mineral-extraction activities; less than 75% of the
26 company's revenues produced in or assets located in Iran

1 involve contracts with or provision of oil-related or
2 mineral-extraction products or services to the Government
3 of Iran or a project or consortium created exclusively by
4 that government; and the company has failed to take
5 substantial action; or

6 (2) the company has, on or after August 5, 1996, made
7 an investment of \$20 million or more, or any combination of
8 investments of at least \$10 million each that in the
9 aggregate equals or exceeds \$20 million in any 12-month
10 period, that directly or significantly contributes to the
11 enhancement of Iran's ability to develop petroleum
12 resources of Iran.

13 "Substantial action" means adopting, publicizing, and
14 implementing a formal plan to cease scrutinized business
15 operations within one year and to refrain from any such new
16 business operations.

17 (b) Within 90 days after the effective date of this
18 Section, a retirement system shall make its best efforts to
19 identify all scrutinized companies in which the retirement
20 system has direct or indirect holdings.

21 These efforts shall include the following, as appropriate
22 in the retirement system's judgment:

23 (1) reviewing and relying on publicly available
24 information regarding companies having business operations
25 in Iran, including information provided by nonprofit
26 organizations, research firms, international

1 organizations, and government entities;

2 (2) contacting asset managers contracted by the
3 retirement system that invest in companies having business
4 operations in Iran; and

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

8 The retirement system may retain an independent research
9 firm to identify scrutinized companies in which the retirement
10 system has direct or indirect holdings. By the first meeting of
11 the retirement system following the 90-day period described in
12 this subsection (b), the retirement system shall assemble all
13 scrutinized companies identified into a scrutinized companies
14 list.

15 The retirement system shall update the scrutinized
16 companies list annually based on evolving information from,
17 among other sources, those listed in this subsection (b).

18 (c) The retirement system shall adhere to the following
19 procedures for companies on the scrutinized companies list:

20 (1) The retirement system shall determine the
21 companies on the scrutinized companies list in which the
22 retirement system owns direct or indirect holdings.

23 (2) For each company identified in item (1) of this
24 subsection (c) that has only inactive business operations,
25 the retirement system shall send a written notice informing
26 the company of this Section and encouraging it to continue

1 to refrain from initiating active business operations in
2 Iran until it is able to avoid scrutinized business
3 operations. The retirement system shall continue such
4 correspondence semiannually.

5 (3) For each company newly identified in item (1) of
6 this subsection (c) that has active business operations,
7 the retirement system shall send a written notice informing
8 the company of its scrutinized company status and that it
9 may become subject to divestment by the retirement system.
10 The notice must inform the company of the opportunity to
11 clarify its Iran-related activities and encourage the
12 company, within 90 days, to cease its scrutinized business
13 operations or convert such operations to inactive business
14 operations in order to avoid qualifying for divestment by
15 the retirement system.

16 (4) If, within 90 days after the retirement system's
17 first engagement with a company pursuant to this subsection
18 (c), that company ceases scrutinized business operations,
19 the company shall be removed from the scrutinized companies
20 list and the provisions of this Section shall cease to
21 apply to it unless it resumes scrutinized business
22 operations. If, within 90 days after the retirement
23 system's first engagement, the company converts its
24 scrutinized active business operations to inactive
25 business operations, the company is subject to all
26 provisions relating thereto.

1 (d) If, after 90 days following the retirement system's
2 first engagement with a company pursuant to subsection (c), the
3 company continues to have scrutinized active business
4 operations, and only while such company continues to have
5 scrutinized active business operations, the retirement system
6 shall sell, redeem, divest, or withdraw all publicly traded
7 securities of the company, except as provided in paragraph (f),
8 from the retirement system's assets under management within 12
9 months after the company's most recent appearance on the
10 scrutinized companies list.

11 If a company that ceased scrutinized active business
12 operations following engagement pursuant to subsection (c)
13 resumes such operations, this subsection (d) immediately
14 applies, and the retirement system shall send a written notice
15 to the company. The company shall also be immediately
16 reintroduced onto the scrutinized companies list.

17 (e) The retirement system may not acquire securities of
18 companies on the scrutinized companies list that have active
19 business operations, except as provided in subsection (f).

20 (f) A company that the United States Government
21 affirmatively declares to be excluded from its present or any
22 future federal sanctions regime relating to Iran is not subject
23 to divestment or the investment prohibition pursuant to
24 subsections (d) and (e).

25 (g) Notwithstanding the provisions of this Section,
26 paragraphs (d) and (e) do not apply to indirect holdings in a

1 private market fund. However, the retirement system shall
2 submit letters to the managers of those investment funds
3 containing companies that have scrutinized active business
4 operations requesting that they consider removing the
5 companies from the fund or create a similar actively managed
6 fund having indirect holdings devoid of the companies. If the
7 manager creates a similar fund, the retirement system shall
8 replace all applicable investments with investments in the
9 similar fund in an expedited timeframe consistent with prudent
10 investing standards.

11 (h) The retirement system shall file a report with the
12 Public Pension Division of the Department of Financial and
13 Professional Regulation that includes the scrutinized
14 companies list within 30 days after the list is created. This
15 report shall be made available to the public.

16 The retirement system shall file an annual report with the
17 Public Pension Division, which shall be made available to the
18 public, that includes all of the following:

19 (1) A summary of correspondence with companies engaged
20 by the retirement system under items (2) and (3) of
21 subsection (c).

22 (2) All investments sold, redeemed, divested, or
23 withdrawn in compliance with subsection (d).

24 (3) All prohibited investments under subsection (e).

25 (4) A summary of correspondence with private market
26 funds notified under subsection (g).

1 (i) This Section expires upon the occurrence of any of the
2 following:

3 (1) The United States revokes all sanctions imposed
4 against the Government of Iran.

5 (2) The Congress or President of the United States
6 declares that the Government of Iran has ceased to acquire
7 weapons of mass destruction and to support international
8 terrorism.

9 (3) The Congress or President of the United States,
10 through legislation or executive order, declares that
11 mandatory divestment of the type provided for in this
12 Section interferes with the conduct of United States
13 foreign policy.

14 (j) With respect to actions taken in compliance with this
15 Act, including all good-faith determinations regarding
16 companies as required by this Act, the retirement system is
17 exempt from any conflicting statutory or common law
18 obligations, including any fiduciary duties under this Article
19 and any obligations with respect to choice of asset managers,
20 investment funds, or investments for the retirement system's
21 securities portfolios.

22 (k) Notwithstanding any other provision of this Section to
23 the contrary, the retirement system may cease divesting from
24 scrutinized companies pursuant to subsection (d) or reinvest in
25 scrutinized companies from which it divested pursuant to
26 subsection (d) if clear and convincing evidence shows that the

1 value of investments in scrutinized companies with active
2 scrutinized business operations becomes equal to or less than
3 0.5% of the market value of all assets under management by the
4 retirement system. Cessation of divestment, reinvestment, or
5 any subsequent ongoing investment authorized by this Section is
6 limited to the minimum steps necessary to avoid the contingency
7 set forth in this subsection (k). For any cessation of
8 divestment, reinvestment, or subsequent ongoing investment
9 authorized by this Section, the retirement system shall provide
10 a written report to the Public Pension Division in advance of
11 initial reinvestment, updated semiannually thereafter as
12 applicable, setting forth the reasons and justification,
13 supported by clear and convincing evidence, for its decisions
14 to cease divestment, reinvest, or remain invested in companies
15 having scrutinized active business operations. This Section
16 does not apply to reinvestment in companies on the grounds that
17 they have ceased to have scrutinized active business
18 operations.

19 (1) If any provision of this Section or its application to
20 any person or circumstance is held invalid, the invalidity does
21 not affect other provisions or applications of the Act which
22 can be given effect without the invalid provision or
23 application, and to this end the provisions of this Section are
24 severable.

25 Section 99. Effective date. This Act takes effect on
26 January 1, 2008.