
A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

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

1 SECTION 1. The legislature finds that, currently, the
2 United States Secretary of State has determined that five
3 countries have repeatedly provided support for acts of
4 international terrorism and that have been designated as state
5 sponsors of terrorism. The Islamic Republic of Iran has been so
6 designated since January 19, 1984. The four main categories of
7 sanctions imposed as a result of this designation include:

- 8 (1) Restrictions on United States foreign assistance;
9 (2) A ban on defense exports and sales;
10 (3) Certain controls over exports of dual use items; and
11 (4) Miscellaneous financial and other restrictions.

12 These sanctions are monitored by the United States Treasury
13 Department's Office of Foreign Assets Control.

14 According to a report released on April 28, 2006, by the
15 Office of the Coordinator for Counterterrorism within the
16 Department of State, the Islamic Republic of Iran has continued
17 to maintain ties to terrorist groups and has routinely provided
18 unique safe haven, substantial resources, and guidance to



1 terrorist organizations. State sponsors of terrorism provide
2 critical support to non-state terrorist groups. Without state
3 sponsors, terrorist groups would have much more difficulty
4 obtaining the funds, weapons, materials, and secure areas they
5 require to plan and conduct operations. Most worrisome is that
6 some of these countries also have the capability to manufacture
7 weapons of mass destruction and other destabilizing technologies
8 that can get into the hands of terrorists.

9 According to the 2006 report:

10 (1) The Islamic Republic of Iran remained the most active
11 state sponsor of terrorism. Its Islamic Revolutionary
12 Guard Corps and Ministry of Intelligence and Security
13 were directly involved in the planning and support of
14 terrorist acts and continued to exhort a variety of
15 groups, especially Palestinian groups with leadership
16 cadres in Syria and Lebanese Hezbollah, to use
17 terrorism in pursuit of their goals. In addition, the
18 Islamic Revolutionary Guard Corps was increasingly
19 involved in supplying lethal assistance to Iraqi
20 militant groups, which destabilizes Iraq;

21 (2) The Islamic Republic of Iran continues to be unwilling
22 to bring to justice senior al-Qaida members it



1 detained in 2003. The Islamic Republic of Iran has
2 refused to identify publicly these senior members in
3 its custody on "security grounds." The Islamic
4 Republic of Iran has also resisted numerous calls to
5 transfer custody of its al-Qaida detainees to their
6 countries of origin or to third countries for
7 interrogation, trial, or both;

8 (3) The Islamic Republic of Iran maintained a high-profile
9 role in encouraging anti-Israeli terrorist activity--
10 rhetorically, operationally, and financially. Supreme
11 Leader Khamenei and President Ahmadinejad praised
12 Palestinian terrorist operations, and the Islamic
13 Republic of Iran provided Lebanese Hezbollah and
14 Palestinian terrorist groups--notably HAMAS,
15 Palestinian Islamic Jihad, the al-Aqsa Martyrs
16 Brigades, and the Popular Front for the Liberation of
17 Palestine-General Command--with extensive funding,
18 training, and weapons;

19 (4) The Islamic Republic of Iran pursued a variety of
20 policies in Iraq, some of which appeared to be
21 inconsistent with its stated objectives regarding
22 stability in Iraq and with the objectives of the Iraqi



1 Transitional Government and the Multi-national Forces
2 in Iraq. Senior Iraqi officials have publicly
3 expressed concern over Iranian interference in Iraq,
4 and there were reports that the Islamic Republic of
5 Iran provided funding, safe passage, and arms to
6 insurgent elements; and

7 (5) State sponsors of terrorism pose a grave terrorism
8 threat by employing a weapons of mass destruction
9 program. Such a program in a state that sponsors
10 terrorism could enable a terrorist organization to
11 acquire sophisticated weapons of mass destruction.
12 State sponsors of terrorism and nations that fail to
13 live up to their international obligations deserve
14 special attention as potential facilitators of
15 terrorism involving weapons of mass destruction. The
16 Islamic Republic of Iran presents a particular
17 concern, given its active sponsorship of terrorism and
18 its continued development of a nuclear program. The
19 Islamic Republic of Iran is also capable of producing
20 biological and chemical agents or weapons. Like other
21 state sponsors of terrorism having weapons of mass
22 destruction programs, the Islamic Republic of Iran



1 could support terrorist organizations seeking to
2 acquire such weapons of mass destruction.

3 The legislature further finds that, according to a former
4 chair of the United States Securities and Exchange Commission,
5 "the fact that a foreign company is doing material business with
6 a country, government, or entity on OFAC's [*Office of Foreign*
7 *Assets Control*] sanctions list is, in the SEC staff's view,
8 substantially likely to be significant to a reasonable
9 investor's decision about whether to invest in that company." A
10 2006 United States House of Representatives report stated that
11 "a company's association with sponsors of terrorism and human
12 rights abuses, no matter how large or small, can have a
13 materially adverse result on a public company's operations,
14 financial condition, earnings, and stock prices, all of which
15 can negatively affect the value of an investment." In response
16 to the financial risk posed by investments in companies doing
17 business with a state sponsor of terrorism, the Securities and
18 Exchange Commission established its Office of Global Security
19 Risk to provide for enhanced disclosure of material information
20 regarding these companies.

21 The legislature finds that it is a fundamental
22 responsibility of the State to decide where, how, and by whom



1 financial resources in its control should be invested, taking
2 into account numerous pertinent factors. It is the desire of
3 the legislature, with respect to investment resources in its
4 control and to the extent reasonable, with due consideration
5 for, among other things, return on investment, on behalf of
6 itself and its investment beneficiaries, not to participate in
7 an ownership or capital-providing capacity with entities that
8 conduct certain business operations in the Islamic Republic of
9 Iran, including certain non-United States companies presently
10 doing business in that country.

11 The legislature finds that this Act should remain in effect
12 only insofar as it continues to be consistent with, and does not
13 unduly interfere with, the foreign policy of the United States
14 as determined by the United States federal government.

15 Mandatory divestment of public funds from certain companies is a
16 measure that should be employed sparingly and judiciously and
17 the designation of a country as a state sponsor of terrorism
18 satisfies this high threshold.

19 The purpose of this Act is to require the state employees'
20 retirement system to divest itself of investments in companies
21 that conduct certain types of business operations in the Islamic
22 Republic of Iran.



1 SECTION 2. **Definitions.** As used in this Act:

2 "Active business operations" means all business operations

3 that are not inactive business operations.

4 "Business operations" means engaging in commerce in any

5 form in the Islamic Republic of Iran, including by acquiring,

6 developing, maintaining, owning, selling, possessing, leasing,

7 or operating equipment, facilities, personnel, products,

8 services, personal property, real property, or any other

9 apparatus of business or commerce.

10 "Company" means any sole proprietorship, organization,

11 association, corporation, partnership, joint venture, limited

12 partnership, limited liability partnership, limited liability

13 company, or other entity or business association, including all

14 wholly-owned subsidiaries, majority-owned subsidiaries, parent

15 companies, or affiliates of those entities or business

16 associations that exist for profit-making purposes.

17 "Direct holdings" in a company means all securities of that

18 company held directly by the public fund or in an account or

19 fund in which the public fund owns all shares or interests.

20 "Inactive business operations" means the mere continued

21 holding or renewal of rights to property previously operated for

1 the purpose of generating revenues but not presently deployed
2 for that purpose.

3 "Indirect holdings" in a company means all securities of
4 that company held in an account or fund, such as a mutual fund,
5 managed by one or more persons not employed by the public fund,
6 in which the public fund owns shares or interests together with
7 other investors not subject to the provisions of this Act.

8 "Islamic Republic of Iran" means the government in Tehran,
9 Iran, whose President is Mahmud Ahmadinejad and whose Supreme
10 Leader is Ali Hoseini-Khamenei.

11 "Military equipment" means weapons, arms, military
12 supplies, and equipment that readily may be used for military
13 purposes, including but not limited to radar systems, military-
14 grade transport vehicles, supplies, and services sold or
15 provided directly or indirectly to the government of the Islamic
16 Republic of Iran.

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



1 as well as facilitating such activities, including by providing
2 supplies or services in support of such activities.

3 "Oil-related activities" includes but is not limited to:

4 (1) Owning rights to oil blocks; exporting, extracting,
5 producing, refining, processing, exploring for,
6 transporting, selling, or trading of oil;

7 (2) Constructing, maintaining, or operating a pipeline,
8 refinery, or other oil-field infrastructure; and

9 (3) Facilitating the foregoing activities, including the
10 provision of supplies or services in support of such
11 activities;

12 provided that the mere retail sale of gasoline and related
13 consumer products shall not be considered oil-related
14 activities.

15 "Power production activities" means any business operation
16 that involves a project commissioned by the government of
17 Islamic Republic of Iran or any entity of that government whose
18 purpose is to facilitate power generation and delivery,
19 including:

20 (1) Establishing power-generating plants or hydroelectric
21 dams;

22 (2) Selling or installing components for the project;



- 1 (3) Providing service contracts related to the
2 installation or maintenance of the project; or
3 (4) Facilitating the foregoing activities, including the
4 provision of supplies or services in support of those
5 activities.

6 "Public fund" means the employees' retirement system of the
7 State of Hawaii or the board of trustees of the employees'
8 retirement system of the State of Hawaii.

9 "Scrutinized company" means any company that meets the
10 criteria in paragraph (1) or (2):

- 11 (1) The company has the following characteristics:
12 (A) Its business operations involve contracts with
13 and provision of supplies or services to:
14 (i) The government of the Islamic Republic of
15 Iran;
16 (ii) Companies in which the government of the
17 Islamic Republic of Iran has any direct or
18 indirect equity share;
19 (iii) Government of the Islamic Republic of Iran-
20 commissioned consortiums or projects; or



- 1 (iv) Companies involved in government of the
2 Islamic Republic of Iran-commissioned
3 consortiums or projects; and
- 4 (B) More than ten per cent of the company's revenues
5 or assets linked to the Islamic Republic of Iran:
- 6 (i) Involve oil-related activities or mineral
7 extraction activities; or
- 8 (ii) Involve power production activities; or
- 9 (2) The company supplies military equipment within the
10 Islamic Republic of Iran.

11 "Social development company" means a company whose primary
12 purpose in the Islamic Republic of Iran is to provide:

- 13 (1) Humanitarian goods or services, including medicine or
14 medical equipment, agricultural supplies or
15 infrastructure, educational opportunities, journalism-
16 related activities, information or information
17 materials, spiritual-related activities, services of a
18 purely clerical or reporting nature, food, clothing;
19 or
- 20 (2) General consumer goods that are unrelated to oil-
21 related activities, mineral extraction activities, or
22 power production activities.



1 "Substantial action" means adopting, publicizing, and
2 implementing a formal plan to cease scrutinized business
3 operations within one year and to refrain from any such new
4 business operations.

5 SECTION 3. **Identification of companies.** (a) Within ninety
6 days following passage of this Act, the public fund shall make
7 its best efforts to identify all scrutinized companies in which
8 the public fund has direct or indirect holdings or could
9 possibly have such holdings in the future. These efforts shall
10 include any of the following, as appropriate:

- 11 (1) Reviewing and relying, as appropriate in the public
12 fund's judgment, on publicly available information
13 regarding companies with business operations in the
14 Islamic Republic of Iran, including information
15 provided by non-profit organizations, research firms,
16 international organizations, and government entities;
- 17 (2) Contacting asset managers contracted by the public
18 fund that invest in companies with business operations
19 in the Islamic Republic of Iran; or
- 20 (3) Contacting other institutional investors that have
21 divested from and engaged with companies that have
22 business operations in the Islamic Republic of Iran.



1 (b) By the first meeting of the public fund following the
2 ninety-day period described in subsection (a), the public fund
3 shall assemble a list of all scrutinized companies identified.

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

7 SECTION 4. **Required actions.** (a) The public fund shall
8 adhere to the procedures in this section with respect to
9 companies on the scrutinized companies list.

10 (b) Engagement.

11 (1) The public fund shall immediately identify the
12 companies on the scrutinized companies list in which
13 the public fund owns direct or indirect holdings;

14 (2) For each company identified in paragraph (1) with only
15 inactive business operations in the Islamic Republic
16 of Iran, the public fund shall send a written notice
17 informing the company of this Act and encouraging the
18 company to continue to refrain from initiating active
19 business operations in the Islamic Republic of Iran
20 until it is able to avoid business operations as a
21 scrutinized company. The public fund shall continue
22 that correspondence on a semi-annual basis. If the



1 company converts its operations to active business
2 operations, paragraph (3) shall apply;

3 (3) For each company newly identified in paragraph (1)
4 with active business operations, or that has converted
5 from inactive to active business operations under
6 paragraph (2), the public fund shall send a written
7 notice informing the company of its scrutinized
8 company status and that it may become subject to
9 divestment by the public fund. The notice shall offer
10 the company the opportunity to clarify its Iran-
11 related activities and shall encourage the company,
12 within ninety days, to either cease its scrutinized
13 business operations or convert such operations to
14 inactive business operations to avoid qualifying for
15 divestment by the public fund; and

16 (4) If, within ninety days following the public fund's
17 first engagement with a company pursuant to paragraph
18 (3), that company ceases scrutinized business
19 operations, the company shall be removed from the
20 scrutinized companies list and this section shall
21 cease to apply unless the company resumes scrutinized
22 business operations. If, within ninety days following



1 the public fund's first engagement, the company
2 converts its scrutinized active business operations to
3 inactive business operations, the company shall be
4 subject to all provisions relating thereto.

5 (c) Divestment.

6 (1) Except as provided in subsections (e) and (f), after
7 ninety days following the public fund's first
8 engagement with a company pursuant to subsection
9 (b) (3), the company continues to have scrutinized
10 active business operations, and only while the company
11 continues to have scrutinized active business
12 operations, the public fund shall sell, redeem,
13 divest, or withdraw all publicly-traded securities of
14 the company according to the following schedule:

15 (A) At least fifty per cent of those assets shall be
16 removed from the public fund's assets under
17 management not later than nine months after the
18 company's most recent appearance on the
19 scrutinized companies list; and

20 (B) One hundred per cent of those assets shall be
21 removed from the public fund's assets under
22 management within fifteen months after the



1 company's most recent appearance on the
2 scrutinized companies list; and

3 (2) If a company that ceased scrutinized active business
4 operations following engagement pursuant to subsection
5 (b)(3) resumes those operations, or following
6 engagement converts scrutinized active business
7 operations to inactive business operations pursuant to
8 subsection (b)(4), then resumes scrutinized active
9 business operations, paragraph (1) shall immediately
10 apply and the public fund shall send a written notice
11 to the company. If applicable, the company shall also
12 be immediately reintroduced onto the scrutinized
13 companies list.

14 (d) At no time shall the public fund acquire securities of
15 companies on the scrutinized companies list that have active
16 business operations, except as provided in subsections (e) and
17 (f).

18 (e) No company that the United States government
19 affirmatively declares to be excluded from its present or any
20 future federal sanctions regime relating to the Islamic Republic
21 of Iran shall be subject to divestment or investment prohibition
22 pursuant to subsections (c) and (d).



1 (f) Notwithstanding anything in this section to the
2 contrary, subsections (c) and (d) shall not apply to indirect
3 holdings in actively managed investment funds; provided that the
4 public fund shall submit letters to the managers of such
5 investment funds containing companies with scrutinized active
6 business operations requesting that they consider removing the
7 companies from the fund or create a similar actively managed
8 fund with indirect holdings devoid of those companies. If the
9 manager creates a similar fund, the public fund shall replace
10 all applicable investments with investments in the similar fund
11 in an expedited timeframe consistent with prudent investing
12 standards. For the purposes of this section, "private equity
13 funds" shall be deemed to be actively managed investment funds.

14 SECTION 5. **Reinvestment in certain companies with**
15 **scrutinized active business operations.** (a) Notwithstanding
16 anything in this section to the contrary, the public fund shall
17 be permitted to cease divesting from certain scrutinized
18 companies pursuant to section 4(c) and to reinvest in certain
19 scrutinized companies from which it divested pursuant to section
20 4(c) if clear and convincing evidence shows that the value of
21 all assets under management by the public fund becomes equal to
22 or less than ninety-nine and one-half per cent of the



1 hypothetical value of all assets under management by the public
2 fund assuming no divestment for any company had occurred under
3 section 4(c). Cessation of divestment, reinvestment, and any
4 subsequent ongoing investment authorized by this section shall
5 be strictly limited to the minimum steps necessary to avoid the
6 contingency set forth in the preceding sentence.

7 (b) For any cessation of divestment, reinvestment, or
8 subsequent ongoing investment authorized by this section, the
9 public fund shall provide a written report to the legislature
10 and attorney general in advance of initial reinvestment, updated
11 semi-annually thereafter as applicable, setting forth the
12 reasons and justification, supported by clear and convincing
13 evidence, for its decisions to cease divestment, reinvest, or
14 remain invested in companies with scrutinized active business
15 operations.

16 (c) This section shall not apply to reinvestment in
17 companies on the grounds that they have ceased to have
18 scrutinized active business operations.

19 SECTION 6. **Reporting.** (a) The public fund shall file a
20 report to the legislature and attorney general and made
21 available to the public that includes the scrutinized companies
22 list within thirty days after the list is created.



1 (b) Annually thereafter, the public fund shall file and
2 make available to the public a report to the legislature and
3 attorney general and send a copy of that report to the United
4 States Secretary of State for transmittal to the government of
5 the Islamic Republic of Iran, which includes:

- 6 (1) A summary of correspondence with companies engaged by
7 the public fund under section 4(b)(2) and (3);
- 8 (2) All investments sold, redeemed, divested, or withdrawn
9 in compliance with section 4(c);
- 10 (3) All prohibited investments under section 4(d); and
- 11 (4) Any progress made under section 4(f).

12 SECTION 7. **Enforcement.** The attorney general shall
13 enforce this Act and through any lawful designee may bring such
14 actions in court as are necessary to do so.

15 SECTION 8. **Other legal obligations of the public fund.**
16 With respect to actions taken in compliance with this Act,
17 including all good faith determinations regarding companies as
18 required by this Act, the public fund shall be exempt from any
19 conflicting statutory or common law obligations, including any
20 such obligations in respect to choice of asset managers,
21 investment funds, or investments for the public fund's
22 securities portfolios.



1 SECTION 9. If any provision of this Act, or the
 2 application thereof to any person or circumstance is held
 3 invalid, the invalidity does not affect other provisions or
 4 applications of the Act, which can be given effect without the
 5 invalid provision or application, and to this end the provisions
 6 of this Act are severable.

7 SECTION 10. This Act shall be repealed upon the occurrence
 8 of the following:

9 (1) (A) The United States revokes all sanctions imposed
 10 against the government of the Islamic Republic of
 11 Iran; or

12 (B) The Congress or President of the United States,
 13 through legislation or executive order, declares
 14 that mandatory divestment of the type provided
 15 for in this Act interferes with the conduct of
 16 United States foreign policy; and

17 (2) The governor publishes a notice statewide as provided
 18 in section 1-28.5, Hawaii Revised Statutes, that the
 19 events in paragraph (1) or (2) have occurred.

20 SECTION 11. This Act shall take effect on July 1, 2009.

21

INTRODUCED BY:

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ASL

Report Title:

ERS Divestment; Companies in Iran

Description:

Requires employees retirement system to divest itself of investments in companies that invest in or do business with the Islamic Republic of Iran. Allows reinvestment. Provides exemptions. Requires reporting. Authorizes enforcement by Attorney General. Sets conditions for repeal.

