



Senate Finance Committee

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BILL SUMMARY

HOUSE BILL 1086, PN 4039 (REPRESENTATIVE SHAPIRO)

Summary:

This legislation establishes the Protecting Pennsylvania's Investments Act, providing for divestiture by the State Treasurer, the State Employees' Retirement System and the Public School Employees' Retirement System of investments in companies doing business in Iran and Sudan.

Requires all "public funds", as defined in the act, to divest certain holdings in Iran and Sudan, and in any company domiciled in Iran or Sudan, or its affiliates.

"Public fund" includes the State Employees Retirement System (SERS), the Public School Employees' Retirement System (PSERS) and any Commonwealth fund administered by the State Treasurer.

Scrutinized companies: The bill requires SERS, PSERS and other public funds to divest holdings in "scrutinized companies," which are defined as:

- Any foreign company that has business activities with a value of at least \$20 million in Iran in any 12-month period, or that has supplied military equipment to the government of Iran, or that has violated U.S. export controls with respect to Iran.
- Any foreign company that:
 - 1) Has business operations that involve contracts with or provision of supplies or services to the government of Sudan, companies in which the government of Sudan has any direct or indirect equity share, government of Sudan-commissioned consortiums or projects, or companies involved in government of Sudan-commissioned consortiums or projects AND
 - a. More than 10% of the company's revenue or assets linked to Sudan involve oil-related activities or mineral extraction activities; less than 75% of the company's revenues or assets linked to Sudan involve contract with or provision of oil-related or mineral extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government; and the company has failed to take substantial action specific to Sudan; or
 - b. More than 10% of the company's revenues or assets linked to Sudan involve power production activities; less than 75% of the company's power production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action specific to Sudan; OR

- 2) The Company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict.

Procedure to Identify Scrutinized Companies:

- HB 1086 establishes a process by which SERS, PSERS, and any other public fund must identify all scrutinized companies in which it has direct or indirect holdings.
- Direct holdings are all securities of a company that are held directly by the public fund or in an account or fund in which the public fund owns all shares and interests.
- Indirect holdings are all securities of a company that are held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the public fund, in which the public fund owns shares or interests together with other investors not subject to the provisions of this act.
- Each fund is required to assemble a separate list of scrutinized companies for Iran and Sudan.
- The lists must be assembled no later than the first meeting of the fund which occurs more than 30 days after the effective date of the act.

Engagement:

Each public fund is required to send written notice within 120 days of the effective date of the act to each company on the lists of scrutinized companies and inform the company:

- Of its scrutinized company status;
- Specify the business activities which have resulted in this determination and that it may become subject to divestment by the public fund;
- The notice must inform that company that it has the opportunity to clarify its scrutinized business activities;
- Encourage the company to cease its scrutinized business activities or to convert the activities to inactive business activities in order to avoid qualifying for divestment by the public fund.

If, within 90 days of receipt of a notice described above, a company announces by public disclosure substantial action specific to Iran or Sudan, the public fund may maintain its holdings, but the company shall remain on the list of scrutinized companies pending completion of the company's cessation of scrutinized business activities. Following completion of a company's cessation of scrutinized business activities, the public fund shall remove the company from its list of scrutinized companies.

Divestment: If, after 90 days following the receipt of the notice, a company has not announced by public disclosure substantial action specific to Iran, Sudan, or both, as specified on the notice, or the public fund determines or becomes aware that the company continues to have scrutinized business activities, the public fund, within 15 months after the 90-day period, shall sell, redeem, divest or withdraw from its direct and indirect holdings all securities of the company.

If a public fund determines or becomes aware that a company that ceased scrutinized business activities following engagement has resumed the activities, the public fund shall send written notice to the company, and the company shall be immediately reintroduced onto the fund's list of scrutinized companies.

A public fund shall monitor a scrutinized company that has announced by public disclosure substantial action specific to Iran, Sudan or both. If after one year, the public fund determines or becomes aware that the company has not implemented the plan, within six months after the expiration of the one-year period, the public fund shall sell, redeem, divest or withdraw from its direct and indirect holdings all securities of the company.

Prohibition: A public fund may not acquire securities of a company on its list of scrutinized companies. The prohibition does not apply to the fund's holdings in alternative investments.

Reporting: Within 30 days of the passage of the act, administrators of the public fund shall file a written report to the United States Attorney General detailing the requirements contained in this act. In addition, a public fund shall, within 30 days of the creation of its list of scrutinized companies, provide a report to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and each member of the boards of the State Employees' Retirement System and public School Employees' Retirement System. The report shall also be made available to the public.

Expiration: A public fund has no obligation under this act with respect to a company engaged in business activities in Iran upon the occurrence of the following:

- Iran does not appear on the List of State Sponsors of Terrorism; or
- The President or Congress of the United States, through legislation or Executive Order, declares that mandatory divestment of the type provided for in this act interferes with the conduct of United States foreign policy.

A public fund has no obligation under this act with respect to a company engaged in business activities in Sudan upon the occurrence of any of the following:

- The President or Congress of the United States declares Darfur genocide has been halted for at least 12 months;
- The United States revokes all sanctions imposed against the government of Sudan;
- The President or Congress of the United States declares that the government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance and allow for the safe and voluntary return of refugees and internally displaced persons.
- The President or Congress of the United States, through legislation or Executive Order, declares that mandatory divestment of the type provided for in this act interferes with the conduct of United States foreign policy.

Conflict with other laws: A public fund may perform any action necessary to comply with this act, notwithstanding the provisions of any other law, including, but not limited to, any fiduciary or prudent investing responsibilities prescribed in 24 Pa.C.S. §8521 (Relating to Management of Fund and Accounts) and 71 Pa.C.S. §5931 (Relating to Management of Fund and Accounts) and any obligations of a public fund with respect to choice of asset managers, investment funds or investments for the public fund's securities portfolios.

Indemnification: Indemnification is provided to board members, officers, employees, agents, research firms and investment managers for all good faith actions taken to comply with the act and against any expenses, liabilities or losses incurred in connection with any proceeding. The

right to indemnification under the bill includes the right to have the expenses incurred by the indemnitee paid by the Commonwealth in advance of the final disposition.

Reimbursement: After the end of the fiscal year of each public fund, the public fund shall submit to and the Secretary of the Budget shall certify the determination of the net losses, if any, costs and expenses incurred by the public fund as a result of compliance with the provisions of the act, and the Commonwealth shall promptly reimburse the public fund for those losses, costs and expenses from the General Fund. If the public fund accrues net gains as a result of compliance with the provisions of this act, the gains shall first be offset against the costs and expenses of compliance with the act during the previous fiscal year and any balance shall be offset against the costs and expenses of compliance and any net losses incurred in future fiscal years.

Severability: If any provision of the act or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application.

Effective date: This act shall take effect immediately.