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HOUSE BILL NO. 2457

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A BILL to govern the Virginia Retirement System's investment in certain businesses related to Iran.

Patrons—O'Bannon, Armstrong, Caputo, Carrico, Ebbin, Eisenberg, Englin, Frederick, Gilbert, Hargrove, Howell, A.T., Hugo, Hull, Janis, Marshall, R.G., McClellan, Melvin, Morrissey, Nutter, Plum, Saxman, Shannon, Sickles, Spruill and Ward

Referred to Committee on Appropriations

Whereas, in 2001, the Securities and Exchange Commission (SEC) determined that companies with business operations in terrorist-sponsoring states are exposed to a special risk category known as Global Security Risk: the risk to share value and corporate reputation stemming from the intersection of a publicly traded company's international business activities and security-related concerns, such as terrorism and weapons proliferation; and

Whereas, in response to the financial risk posed by investments in companies doing business with a state that sponsors terrorists, the Securities and Exchange Commission established its Office of Global Security Risk to provide for enhanced disclosure of material information regarding such companies; and

Whereas, according to the former chair of the United States Securities and Exchange Commission Laura Unger, the fact that a foreign company is doing material business with a country, government, or entity on OFAC's sanctions list is, in the SEC staff's view, substantially likely to be significant to a reasonable investor's decision about whether to invest in that company; and

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

Whereas, Iran tops the U.S. State Department's list of state sponsors of terrorism, funding such groups as Hamas, Hizballah, and the Islamic Jihad, as well as fueling the insurgency in Iraq via its Al-Quds Force; and

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

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

Whereas, foreign entities have invested in Iran's petroleum-energy sector despite United States and United Nations sanctions against Iran; and

Whereas, all entities that have invested more than \$20 million in any given year in Iran's petroleum sector since August 5, 1996, are subject to sanctions under United States law pursuant to the Iran Sanctions Act of 1996; and

Whereas, the United States renewed the Iran Sanctions Act of 1996 in 2001 and 2006; and

Whereas, it is a fundamental responsibility of the Commonwealth of Virginia to decide where, how, and by whom financial resources in its control should be invested, taking into account numerous pertinent factors; and

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

Whereas, the Commonwealth of Virginia is deeply concerned about investments in publicly traded companies that have investments in Iran's petroleum sector as a financial risk to the shareholders; and

Whereas, by investing in publicly traded companies having investments in Iran's petroleum sector, the Virginia Retirement System is putting the funds it oversees at substantial financial risk; and

Whereas, divestiture from markets that are vulnerable to embargo, loan restrictions, and sanctions from the United States and the international community, including the United Nations Security Council, is in accordance with the rules of prudence; and

Whereas, the legislature finds that this act should remain in effect only insofar as it continues to be consistent with and does not unduly interfere with the foreign policy of the United States as determined

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57 by the federal government; and

58 Whereas, to protect Virginia's assets, it is in the best interest of the state to enact a statutory
59 prohibition regarding the investments managed by the Virginia Retirement System doing business in
60 Iran's petroleum-energy sector; now therefore,

61 **Be it enacted by the General Assembly of Virginia:**

62 1. § 1. *That this act may be cited as the "Protecting the Commonwealth's Investments Act."*

63 § 2. *Definitions.*

64 *As used in this act, the following definitions shall apply:*

65 *"Active business activities" means all business activities that are not inactive business activities.*

66 *"Company" means any sole proprietorship, organization, association, corporation, partnership, joint
67 venture, limited partnership, limited liability partnership, limited liability company, or other entity or
68 business association that exists for the purpose of making a profit.*

69 *"Direct holdings" in a company means all securities of that company held directly by the public fund
70 or in an account or fund in which the public fund owns all shares or interests.*

71 *"Government of Iran" means the government of Iran, its instrumentalities, and companies owned or
72 controlled by the government of Iran.*

73 *"Inactive business activities" means the mere continued holding or renewal of rights to property
74 previously operated for the purpose of generating revenues but not presently deployed for such purpose.*

75 *"Indirect holdings" in a company means all securities of that company held in an account or fund,
76 such as a mutual fund, managed by one or more persons not employed by the public fund, in which the
77 public fund owns shares or interests together with other investors not subject to the provisions of this
78 act.*

79 *"Iran" means the Islamic Republic of Iran.*

80 *"Petroleum resources" means petroleum or natural gas.*

81 *"Public fund" means all funds, assets, trustee, and other designates of the Virginia Retirement
82 System.*

83 *"Scrutinized business activities" means any and all active business activities that are subject or liable
84 to sanctions under Public Law 104-172, as amended, the Iran Sanctions Act of 1996, and that involve
85 the maintenance of a company's existing assets or investments in Iran, or the deployment of new
86 investments to Iran that meet or exceed the \$20,000,000 threshold referred to in Public Law 104-172, as
87 amended, the Iran Sanctions Act of 1996. "Scrutinized business activities" does not include the retail
88 sale of gasoline and related products.*

89 *"Scrutinized company" means any company that has, with actual knowledge, on or after August 5,
90 1996, made an investment of \$20 million or more in Iran's petroleum sector, which directly or
91 significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran.*

92 *"Substantial action specific to Iran" means adopting, publicizing, and implementing a formal plan to
93 cease scrutinized business activities within one year and to refrain from any such new business
94 activities.*

95 § 3. *Identification of companies.*

96 A. *Within 45 days after the effective date of this act, the public fund shall make its best efforts to
97 identify all scrutinized companies in which the public fund has direct or indirect holdings. Such efforts
98 include: review and relying, as appropriate in the public fund's judgment, on publicly available
99 information regarding companies that have invested more than \$20 million in any given year since
100 August 5, 1996, in Iran's petroleum energy sector, including information provided by nonprofit
101 organizations, research firms, international organizations, and government entities.*

102 B. *By the first meeting of the public fund following the 45-day period described in subsection A, the
103 public fund shall assemble all scrutinized companies as defined in § 2 into a "Scrutinized Companies
104 with Activities in the Iran Petroleum Energy Sector List."*

105 C. *The public fund shall update and make publicly available annually from the effective date of this
106 act the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List based on
107 evolving information from, among other sources, those listed in subsection A.*

108 § 4. *Required actions.*

109 *The public fund shall adhere to the following procedure for assembling companies on the Scrutinized
110 Companies with Activities in the Iran Petroleum Energy Sector List:*

111 A. *Engagement.*

112 1. *For each company in which the public fund has direct holdings newly identified under subsection
113 B of § 3, the public fund shall send a written notice informing the company of its scrutinized company
114 status and that it may become subject to divestment by the public fund. The notice must inform the
115 company of the opportunity to clarify its Iran-related activities and encourage the company, within 90
116 days, to cease its scrutinized business activities or convert such activities to inactive business activities
117 in order to avoid qualifying for divestment by the public fund. Such notice shall be sent no later than
118 135 days after the effective date of this act.*

2. If, within 90 days after the public fund's first engagement with a company pursuant to this section, the company announces by public disclosure substantial action specific to Iran, the public fund may maintain its direct holdings, but the company shall remain on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List pending completion of its cessation of scrutinized business activities.

B. Divestment.

1. If, after 90 days following the public fund's first engagement with a company pursuant to subsection A, the company has not announced by public disclosure substantial action specific to Iran, or the public fund determines or becomes aware that the company continues to have scrutinized business activities, the public fund within eight months after the expiration of such 90-day period shall sell, redeem, divest, or withdraw all publicly traded securities of the company from the public fund's direct holdings.

2. If the public fund determines or becomes aware that a company that ceased scrutinized business activities following engagement pursuant to subsection A has resumed such activities, the public fund shall send a written notice to the company subsections A and B also shall apply. The company also shall be immediately reintroduced onto the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

3. The public fund shall monitor the scrutinized company that has announced by public disclosure substantial action specific to Iran and, if after one year, the public fund determines or becomes aware that the company has not implemented such action, within three months after the expiration of such one-year period, the public fund shall sell, redeem, divest, or withdraw all publicly traded securities of the company from the public fund's direct holdings, and the company also shall be immediately reintroduced onto the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

C. Prohibition.

The public fund may not acquire securities of companies on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

D. Excluded securities.

Notwithstanding the provisions of this act, subsections B and E do not apply to the public fund's indirect holdings. However, the public fund shall submit letters to the managers of any managed investment funds containing companies on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List requesting that they consider removing such companies from the fund or create a similar actively managed fund having indirect holdings devoid of such companies. If the manager creates a similar fund devoid of such securities or if such funds are created elsewhere, the Board shall determine within six months whether to replace all applicable investments with investments in the similar fund in an expedited timeframe consistent with prudent investing standards. For the purposes of this section, a private equity fund is deemed to be an actively managed investment fund.

E. Further exclusions.

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

§ 5. Reporting.

A. The public fund shall file a report with each member of the Board of the Virginia Retirement System, the Governor, the President of the Senate, and the Speaker of the House of Delegates that includes the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List within 30 days after the list is created. This report shall be made available to the public.

B. At each annual meeting of the Board of the Virginia Retirement System, the Virginia Retirement System shall file a report, which shall be made available to the public and to each member of the Board of the Virginia Retirement System, the Governor, the President of the Senate, and the Speaker of the House of Delegates that includes:

1. A summary of correspondence with companies engaged by the Virginia Retirement System under subsection A of § 4;

2. All investments sold, redeemed, divested, or withdrawn in compliance with subsection B of § 4;

3. All prohibited investments under subsection C of § 4;

4. Any progress made under subsection D of § 4; and

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

§ 6. Expiration.

A. This act shall expire upon the occurrence of any of the following:

180 1. The Congress or President of the United States affirmatively and unambiguously states, by means
181 including, but not limited to, legislation, executive order, or written certification from the President to
182 Congress, that the government of Iran has ceased to pursue the capabilities to develop nuclear weapons
183 and support international terrorism;

184 2. The United States revokes all sanctions imposed against the government of Iran; or

185 3. The Congress or President of the United States affirmatively and unambiguously declares, by
186 means including, but not limited to, legislation, executive order, or written certification from the
187 President to Congress, that mandatory divestment of the type provided for in this act interferes with the
188 conduct of United States foreign policy.

189 § 7. Investment policy statement obligations.

190 With respect to actions taken in compliance with this act, including all good faith determinations
191 regarding companies as required by this act, the public fund is exempt from any conflicting law or
192 obligations, including any such obligations with respect to choice of asset managers, investment funds,
193 or investments for the public fund's securities portfolios.

194 § 8. Severability.

195 If any provisions of this act or its application to any person or circumstance is held invalid, the
196 invalidity does not affect other provisions or applications of the act that can be given effect without the
197 invalid provision or application, and to this end the provisions of this act are severable. The General
198 Assembly hereby declares that it would have passed this act and each provision of this act, regardless
199 of whether any one or more provisions of this act might be declared invalid, illegal, unenforceable or
200 unconstitutional, including, but not limited to, each of the engagement, divestment, and prohibition
201 provisions of this act.

202 2. That an emergency exists and this act is in force from its passage.