IN THE SENATE OF THE UNITED STATES

OCTOBER 15, 2009

Received; read twice and referred to the Committee on Banking, Housing, and Urban Affairs

AN ACT

To authorize State and local governments to direct divestiture from, and prevent investment in, companies with investments of $20,000,000 or more in Iran’s energy sector, and for other purposes.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Iran Sanctions Enabling Act of 2009”.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) There is an increasing interest by States, local governments, educational institutions, and private institutions to seek to disassociate themselves from companies that directly or indirectly support the Government of Iran’s efforts to achieve a nuclear weapons capability.

(2) Policy makers and fund managers may find moral, prudential, or reputational reasons to divest from companies that accept the business risk of operating in countries that are subject to international economic sanctions or that have business relationships with countries, governments, or entities with which any United States company would be prohibited from dealing because of economic sanctions imposed by the United States.

SEC. 3. AUTHORITY OF STATE AND LOCAL GOVERNMENTS TO DIVEST FROM CERTAIN COMPANIES INVESTED IN IRAN’S ENERGY SECTOR.

(a) STATEMENT OF POLICY.—It is the policy of the United States to support the decision of State governments, local governments, and educational institutions to
divest from, and to prohibit the investment of assets they
control in, persons that have investments of more than
$20,000,000 in Iran’s energy sector.

(b) Authority to divest.—Notwithstanding any
other provision of law, a State or local government may
adopt and enforce measures that meet the requirements
of subsection (d) to divest the assets of the State or local
government from, or prohibit investment of the assets of
the State or local government in, any person that the
State or local government determines, using credible infor-
mation available to the public, engages in investment ac-
tivities in Iran described in subsection (c).

(c) Investment activities in Iran described.—
A person engages in investment activities in Iran described
in this subsection if the person—

(1) has an investment of $20,000,000 or more
in the energy sector of Iran;

(2) provides oil or liquified natural gas tankers,
or products used to construct or maintain pipelines
used to transport oil or liquified natural gas, for the
energy sector in Iran; or

(3) is a financial institution that extends
$20,000,000 or more in credit to another person, for
45 days or more, if that person will use the credit
to invest in the energy sector in Iran.
(d) REQUIREMENTS.—The requirements referred to in subsection (b) that a measure taken by a State or local government must meet are the following:

1. **NOTICE.**—The State or local government shall provide written notice to each person to whom the State or local government, as the case may be, intends to apply the measure, of such intent.

2. **TIMING.**—The measure shall apply to a person not earlier than the date that is 90 days after the date on which the person receives the written notice required by paragraph (1).

3. **OPPORTUNITY FOR HEARING.**—The State or local government shall provide each person referred to in paragraph (1) with an opportunity to demonstrate to the State or local government, as the case may be, that the person does not engage in investment activities in Iran described in subsection (c). If the person demonstrates to the State or local government that the person does not engage in investment activities in Iran described in subsection (c), the measure shall not apply to the person.

4. **SENSE OF THE CONGRESS ON AVOIDING ERRONEOUS TARGETING.**—It is the sense of the Congress that a State or local government should not adopt a measure under subsection (b) with respect
to a person unless the State or local government has made every effort to avoid erroneously targeting the person and has verified that the person engages in investment activities in Iran described in subsection (c).

(e) NOTICE TO DEPARTMENT OF JUSTICE.—Not later than 30 days after adopting a measure pursuant to subsection (b), a State or local government shall submit to the Attorney General of the United States a written notice which describes the measure.

(f) NONPREEMPTION.—A measure of a State or local government authorized under subsection (b), or described in subsection (i), is not preempted by any Federal law or regulation.

(g) DEFINITIONS.—In this section:

(1) INVESTMENT.—The “investment” of assets, with respect to a State or local government, includes—

(A) a commitment or contribution of assets;

(B) a loan or other extension of credit; or

(C) the entry into or renewal of a contract for goods or services.

(2) ASSETS.—
(A) IN GENERAL.—Except as provided in subparagraph (B), the term “assets” refers to public monies and includes any pension, retirement, annuity, or endowment fund, or similar instrument, that is controlled directly or indirectly by a State or local government.

(B) EXCEPTION.—The term “assets” does not include employee benefit plans covered by title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2) of this subsection and subsection (i), this section shall apply to measures adopted by a State or local government on or after the date of the enactment of this Act.

(2) NOTICE REQUIREMENTS.—Subsections (d) and (e) apply to measures adopted by a State or local government on or after the date of the enactment of this Act.

(i) AUTHORIZATION FOR PRIOR ENACTED MEASURES.—Notwithstanding any other provision of law, a State or local government may enforce a measure (without regard to the requirements of subsection (d)) adopted by the State or local government before the date of the enact-
ment of this Act that provides for the divestiture of assets of the State or local government from, or prohibits the investment of the assets of the State or local government in, any person that the State or local government determines, using credible information available to the public, engages in investment or business activities in Iran (determined without regard to subsection (c)) identified in the measure.

SEC. 4. SAFE HARBOR FOR CHANGES OF INVESTMENT POLICIES BY ASSET MANAGERS.

Section 13(c)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–13(c)(1)) is amended to read as follows:

“(1) IN GENERAL.—Solely for purposes of this subsection, and notwithstanding any other provision of Federal or State law, no person may bring any civil, criminal, or administrative action against any registered investment company, or any employee, officer, director, or investment adviser thereof, based solely upon the investment company divesting from, or avoiding investing in, securities issued by persons that the investment company determines, using credible information that is available to the public, conduct or have direct investments in business operations in Sudan described in section 3(d) of the
Sudan Accountability and Divestment Act of 2007

or engage in investment activities in Iran described
in section 3(c) of the Iran Sanctions Enabling Act
of 2009. Nothing in this paragraph shall be con-
strued to create, imply, diminish, change, or affect
in any way the existence of a private cause of action
under any other provision of this Act.”.

SEC. 5. SAFE HARBOR FOR CHANGES OF INVESTMENT

POLICIES BY EMPLOYEE BENEFIT PLANS.

Section 404 of the Employee Retirement Income Se-
curity Act of 1974 (29 U.S.C. 1104) is amended by adding
at the end the following new subsection:

“(e) No person shall be treated as breaching any of
the responsibilities, obligations, or duties imposed upon fi-
duciaries by this title for divesting plan assets from, or
avoiding investing plan assets in, persons that are deter-
mined by such person, using credible information that is
available to the public, to be engaged in investment activi-
ties in Iran described in section 3(c) of the Iran Sanctions
Enabling Act of 2009. Any divestiture of plan assets from,
or avoidance of investing plan assets in, persons that are
so determined to be engaged in such investment activities
shall be treated as in accordance with this title and the
documents and instruments governing the plan.”.
SEC. 6. DEFINITIONS.

In this title:

(1) **ENERGY SECTOR.**—The term “energy sector” refers to activities to develop petroleum or natural gas resources or nuclear power.

(2) **FINANCIAL INSTITUTION.**—The term “financial institution” has the meaning given that term in section 14(5) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).

(3) **IRAN.**—The term “Iran” includes any agency or instrumentality of Iran.

(4) **PERSON.**—The term “person” means—

(A) a natural person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group;

(B) any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3))); and

(C) any successor, subunit, parent company, or subsidiary of, or company under common ownership or control with, any entity described in subparagraph (A) or (B).
(5) STATE.—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(6) STATE OR LOCAL GOVERNMENT.—The term “State or local government” includes—

(A) any State and any agency or instrumentality thereof;

(B) any local government within a State, and any agency or instrumentality thereof;

(C) any other governmental instrumentality; and

(D) any public institution of higher education within the meaning of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

SEC. 7. SUNSET.

This Act shall terminate 30 days after the date on which the President has certified to the Congress that—

(1) the Government of Iran has ceased providing support for acts of international terrorism and no longer satisfies the requirements for designation as a state-sponsor of terrorism for purposes of section 6(j) of the Export Administration Act of 1979, section 620A of the Foreign Assistance Act of
1961, section 40 of the Arms Export Control Act, or any other provision of law; or

(2) Iran has ceased the pursuit, acquisition, and development of nuclear, biological, and chemical weapons and ballistic missiles and ballistic missile launch technology.

Passed the House of Representatives October 14, 2009.

Attest: LORRAINE C. MILLER,

Clerk.