

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 846

A bill to prohibit the investment of certain state money or other assets in companies with certain types of business operations in countries designated as state sponsors of terror; to require divestment of any current investments in those companies; and to provide for the powers and duties of certain state and local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "divestment from terror act".

3 Sec. 2. As used in this act:

4 (a) "Active business operations" means all business operations
5 that are not inactive business operations. Active business
6 operations do not include the activities of any business, legal, or

1 governmental entity or institution that provides humanitarian aid
2 to the people of any state sponsors of terror.

3 (b) "Business operations" means engaging in commerce in any
4 form with a state sponsor of terror, including by acquiring,
5 developing, maintaining, owning, selling, possessing, leasing, or
6 operating equipment, facilities, personnel, products, services,
7 personal property, real property, or any other apparatus of
8 business or commerce.

9 (c) "Company" means any sole proprietorship, organization,
10 association, corporation, partnership, joint venture, limited
11 partnership, limited liability partnership, limited liability
12 company, or other entity or business association, including all
13 wholly owned subsidiaries, majority-owned subsidiaries, parent
14 companies, or affiliates of those entities or business
15 associations, that exists for profit-making purposes.

16 (d) "Direct holdings" in a company means all securities of
17 that company held directly by the fiduciary or in an account or
18 fund in which the fiduciary owns all shares or interests.

19 (e) "Fiduciary" means any of the following:

20 (i) The Michigan legislative retirement system board of
21 trustees for the Tier 1 retirement plan available under the
22 Michigan legislative retirement system act, 1957 PA 261, MCL
23 38.1001 to 38.1080.

24 (ii) The state treasurer for all of the following:

25 (A) The state police retirement system created under the state
26 police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1648.

27 (B) The Tier 1 retirement plan available under the judges

1 retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

2 (C) The Tier 1 retirement plan available under the state
3 employees retirement act, 1943 PA 240, MCL 38.1 to 38.69.

4 (D) The public school employees retirement system created
5 under the public school employees retirement act of 1979, 1980 PA
6 300, MCL 38.1301 to 38.1408.

7 (iii) The state treasurer in connection with his or her duties
8 under any of the following:

9 (A) 1946 (1st Ex Sess) PA 9, MCL 35.602 to 35.610.

10 (B) 1855 PA 105, MCL 21.141 to 21.147.

11 (C) Section 7 of the Michigan trust fund act, 2000 PA 489, MCL
12 12.257.

13 (D) Children's trust fund under 1982 PA 249, MCL 21.171 to
14 21.172.

15 (E) The McCauley-Traxler-Law-Bowman-McNeely lottery act, 1972
16 PA 239, MCL 432.1 to 432.47.

17 (F) Section 503b of the natural resources and environmental
18 protection act, 1994 PA 451, MCL 324.503b.

19 (iv) The board of trustees of a community college subject to
20 the community college act of 1966, 1966 PA 331, MCL 389.1 to
21 389.195.

22 (v) The board of directors of the Michigan education trust
23 described in section 10 of the Michigan education trust act, 1986
24 PA 316, MCL 390.1430.

25 (vi) The board of the Michigan strategic fund under the
26 Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2094.

27 (f) "Inactive business operations" means the mere continued

1 holding or renewal of rights to property previously operated for
2 the purpose of generating revenues but not presently deployed for
3 that purpose.

4 (g) "Indirect holdings" in a company means all securities of
5 that company held in an account or fund, including a mutual fund or
6 other commingled fund, managed by 1 or more persons not employed by
7 the fiduciary, in which the fiduciary owns shares or interests
8 together with other investors not subject to the provisions of this
9 act.

10 (h) "Scrutinized company" means, except for a company
11 described in subdivision (i), and for a social development company
12 or a company that only meets the criteria of this subdivision
13 because an independently owned franchisee of that company is a
14 scrutinized company, any company that has business operations that
15 involve contracts with or provision of supplies or services to a
16 state sponsor of terror; companies in which a state sponsor of
17 terror has any direct or indirect equity share, consortiums, or
18 projects commissioned by a state sponsor of terror; or companies
19 involved in consortiums and projects commissioned by a state
20 sponsor of terror and 1 or more of the following:

21 (i) More than 10% of the company's total revenues or assets are
22 directly invested in or earned from or significantly contributed to
23 a state sponsor of terror and the company has failed to take
24 substantial action.

25 (ii) The company has, with actual knowledge, made an investment
26 of \$20,000,000.00 or more, or any combination of investments of at
27 least \$10,000,000.00 each, which in the aggregate equals or exceeds

1 \$20,000,000.00 in any 12-month period, and which directly or
2 significantly contributes to a state sponsor of terror, and the
3 company has failed to take substantial action.

4 (i) A scrutinized company does not mean a company which the
5 United States government has excluded from any present federal
6 sanctions regime relating to a state sponsor of terror, or which
7 has obtained from the United States government an applicable
8 license or approval to conduct a transaction with a state sponsor
9 of terror.

10 (j) "Social development company" means a company licensed by
11 the United States department of treasury pursuant to the federal
12 trade sanction reform and export enhancement act of 2000, P.L. 106-
13 387, or a company lawfully operating under the laws of another
14 country, whose primary purpose in a state sponsor of terror is to
15 provide humanitarian goods or services including, food, other
16 agricultural products, supplies or infrastructure, clothing,
17 shelter, medicines or medical equipment, educational opportunities,
18 journalism-related activities, information or information
19 materials, spiritual-related activities, general consumer goods, or
20 services of a purely clerical or reporting nature, to aid the
21 inhabitants of a state sponsor of terror.

22 (k) "State sponsor of terror" means, subject to section 10 as
23 to applicability, any country determined by the United States
24 secretary of state to have repeatedly provided support for acts of
25 international terrorism.

26 (l) "Substantial action" means adopting, publicizing, and
27 implementing a formal plan to cease scrutinized business operations

1 within 1 year and to refrain from any new business operations.

2 Sec. 3. Within 90 days after the effective date of this act,
3 the fiduciary shall make its best efforts to identify all
4 scrutinized companies in which the fiduciary has direct or indirect
5 holdings or has a current option to have such holdings in the
6 future. The efforts may include 1 or more of the following:

7 (a) Reviewing and relying, as appropriate in the fiduciary's
8 judgment, on publicly available information regarding companies
9 with business operations in a state sponsor of terror, including
10 information provided by nonprofit organizations, research firms,
11 international organizations, and government entities.

12 (b) Contacting asset managers contracted by the fiduciary that
13 invest in companies with business operations in a state sponsor of
14 terror.

15 (c) Contacting other institutional investors that have
16 divested from or engaged with companies that have business
17 operations in a state sponsor of terror.

18 (d) Reviewing the laws of the United States regarding the
19 levels of business activity that would cause application of
20 sanctions against companies conducting business or investing in
21 countries that are designated state sponsors of terror.

22 Sec. 4. (1) At the end of the 90-day period or by the first
23 meeting of the fiduciary following the 90-day period described in
24 section 3, the fiduciary shall assemble all scrutinized companies
25 identified into a scrutinized companies list.

26 (2) The fiduciary shall update the scrutinized companies list
27 described in subsection (1) on a quarterly basis based on evolving

1 information from, among other sources, those sources listed in
2 section 3. However, if a fiduciary receives credible information
3 that shows that a scrutinized company was wrongfully identified as
4 a scrutinized company, the fiduciary shall immediately modify the
5 scrutinized company list to remove the name of the scrutinized
6 company.

7 (3) The fiduciary shall adhere to the following procedure for
8 companies on the scrutinized companies list described in subsection
9 (1):

10 (a) The fiduciary shall immediately determine the companies on
11 the scrutinized companies list in which the fiduciary oversees
12 pursuant to its responsibilities as described in section 2(e).

13 (b) For each company identified in subdivision (a) with only
14 inactive business operations, the fiduciary shall send a written
15 notice informing the company of this section and encourage the
16 company to continue to refrain from initiating active business
17 operations in a state sponsor of terror until it is able to avoid
18 scrutinized business operations and further encourage the company
19 to engage in substantial humanitarian operations in the country.
20 The fiduciary shall continue the correspondence on a semiannual
21 basis.

22 (c) For each company newly identified in subdivision (a) with
23 active business operations, the fiduciary shall send a written
24 notice informing the company of its scrutinized company status and
25 that it may become subject to divestment by the fiduciary. The
26 notice shall offer the company the opportunity to clarify its state
27 sponsor of terror-related activities and shall encourage the

1 company, within 90 days, to either cease its scrutinized business
2 operations or convert such operations to inactive business
3 operations in order to avoid qualifying for divestment by the
4 fiduciary.

5 (d) If, within 90 days following the fiduciary's first
6 engagement with a company, that company ceases scrutinized business
7 operations, the company shall be removed from the scrutinized
8 companies list and this act shall cease to apply to it unless it
9 resumes scrutinized business operations. If, within 9 months
10 following the fiduciary's first engagement, the company converts
11 its scrutinized active business operations to inactive business
12 operations, the company shall not be subject to this act.

13 (e) If, after 90 days following the fiduciary's first
14 engagement with a company, if the company has not developed and
15 announced a plan to convert its active business operations to
16 inactive business operations, and only while the company continues
17 to have scrutinized active business operations, the fiduciary shall
18 sell, redeem, divest, or withdraw all publicly traded securities of
19 the company, according to the following schedule:

20 (i) At least 50% of the assets shall be removed from the
21 fiduciary's assets under management within 9 months after the
22 company's most recent appearance on the scrutinized companies list.

23 (ii) 100% of the assets shall be removed from the fiduciary's
24 assets under management within 15 months after the company's most
25 recent appearance on the scrutinized companies list.

26 (f) Except as provided in subdivision (g), at no time shall
27 the fiduciary acquire securities of companies on the scrutinized

1 companies list that have active business operations.

2 (g) Subdivisions (e) and (f) shall not apply to indirect
3 holdings in actively managed investment funds. For purposes of this
4 section, actively managed investment funds include private equity
5 funds and publicly traded funds. Before the fiduciary invests in a
6 new private equity fund that is not in the fiduciary's portfolio as
7 of the effective date of this act, the fiduciary shall perform due
8 diligence to prevent investment in any private equity fund in
9 violation of this act. The fiduciary is not required to identify
10 holdings in private equity funds or submit engagement letters to
11 those funds. If the manager of a publicly traded, actively managed
12 fund that is in the fiduciary's portfolio on the effective date of
13 this act creates a similar publicly traded, actively managed fund
14 with indirect holdings devoid of identified scrutinized companies
15 with scrutinized active business operations as defined in this act,
16 the fiduciary is not required to, but is strongly encouraged to,
17 replace all applicable investments with investments in the similar
18 fund in an expedited time frame consistent with prudent investment
19 standards.

20 Sec. 5. The department of treasury shall collect and publish
21 the following information on the department's internet website no
22 later than 1 year after the effective date of this act and shall
23 periodically update the information at reasonable intervals:

24 (a) All investments sold, redeemed, divested, or withdrawn in
25 compliance with this section.

26 (b) All prohibited investments made under this section.

27 (c) Any progress made under section 4(3)(g).

1 Sec. 6. (1) With respect to actions taken in compliance with
2 this act, including all good faith determinations regarding
3 companies as required by this act, the fiduciary shall be exempt
4 from any conflicting statutory or common law obligations, including
5 any obligations in respect to choice of asset managers, investment
6 funds, or investments for the fiduciary's securities portfolios.

7 (2) The fiduciary, members of an investment advisory
8 committee, and any person with decision-making authority with
9 regard to investments of the fiduciary shall not be held liable for
10 any action undertaken for the purpose of complying with or
11 executing the mandates required under this act.

12 Sec. 7. If any provision, section, subsection, sentence,
13 clause, phrase, or word of this act or its application to any
14 person or circumstance is found to be invalid, illegal,
15 unenforceable, or unconstitutional, the same is hereby declared to
16 be severable and the balance of this legislation shall remain
17 effective and functional notwithstanding such invalidity,
18 illegality, unenforceability, or unconstitutionality.

19 Sec. 8. If a scrutinized company does business with the
20 government of Sudan and the fiduciary is subject to the divestment
21 provisions of section 13c of the public employee retirement system
22 investment act, 1965 PA 314, MCL 38.1133c, for that period of time
23 the fiduciary shall follow the divestment criteria contained in
24 section 13c of the public employee retirement system investment
25 act, 1965 PA 314, MCL 38.1133c, and not the divestment provisions
26 of this act.

27 Sec. 9. If a scrutinized company does business with the

1 government of Iran and the fiduciary is subject to the divestment
2 provisions of section 13d of the public employee retirement system
3 investment act, 1965 PA 314, MCL 38.1133d, for that period of time
4 the fiduciary shall follow the divestment criteria contained in
5 section 13d of the public employee retirement system investment
6 act, 1965 PA 314, MCL 38.1133d, and not the divestment provisions
7 of this act.

8 Sec. 10. (1) If a state sponsor of terror is any of the
9 following countries, then, except as provided in subsection (2),
10 the provisions of this act begin to apply on the following dates:

11 (a) Syria, January 1, 2010.

12 (b) Cuba, January 1, 2011.

13 (c) Any other country, 12 months following the determination
14 by the United States secretary of state.

15 (2) The state treasurer may extend, not more than 2 times, 1
16 or more of the dates in which the provisions of this act apply that
17 are described in subsection (1) for 1 year if the state treasurer
18 determines 1 or more of the following:

19 (a) The constitutionality of the divestment provisions of this
20 act are in conflict with federal law.

21 (b) The department of treasury is not able to gather
22 sufficient information to prepare an accurate scrutinized companies
23 list.

24 Sec. 11. Not later than October 1, 2010 and October 1, 2011,
25 and not later than 9 months immediately following the determination
26 of another country as a state sponsor of terror, the department of
27 treasury shall make recommendations to each house of the

1 legislature and to the standing committees of the senate and house
2 of representatives having jurisdiction over issues pertaining to
3 divestment of state funds on what statutory changes are needed to
4 improve the effectiveness of this act and whether the department of
5 treasury has extended or will extend 1 or more of the dates
6 provided in section 10(1) and the reason for that extension as
7 described in section 10(2).

8 Enacting section 1. This act does not take effect unless all
9 of the following bills of the 94th Legislature are enacted into
10 law:

11 (a) House Bill No. 4854.

12 (b) House Bill No. 4903.