

# SENATE BILL No. 846

October 25, 2007, Introduced by Senators BROWN, HUNTER, KUIPERS, JACOBS, JANSEN, THOMAS, ANDERSON, BASHAM, BARCIA, OLSHOVE, SANBORN, GILBERT, GLEASON, PAPPAGEORGE, JELINEK, VAN WOERKOM, CLARKE, BRATER and SCHAUER and referred to the Committee on Homeland Security and Emerging Technologies.

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 plan for the Michigan legislative  
22 retirement system created by the Michigan legislative retirement  
23 system act, 1957 PA 261, MCL 38.1001 to 38.1080.

24 (ii) The state treasurer for the retirement systems created  
25 under all of the following acts:

26 (A) The state police retirement act of 1986, 1986 PA 182, MCL  
27 38.1601 to 38.1648.

1 (B) The judge's retirement act of 1992, 1992 PA 234, MCL  
2 38.2101 to 38.2670.

3 (C) The state employees retirement act, 1943 PA 240, MCL 38.1  
4 to 38.69.

5 (D) The public school employees retirement act of 1979, 1980  
6 PA 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 any company that has business  
11 operations that involve contracts with or provision of supplies or  
12 services to a state sponsor of terror; companies in which a state  
13 sponsor of terror has any direct or indirect equity share,  
14 consortiums, or projects commissioned by a state sponsor of terror;  
15 or companies involved in consortiums and projects commissioned by a  
16 state sponsor of terror and 1 or more of the following:

17 (i) More than 10% of the company's total revenues or assets are  
18 directly or significantly contributed to a state sponsor of terror  
19 and the company has failed to take substantial action.

20 (ii) The company has, with actual knowledge, on or after August  
21 5, 1996, made an investment of \$20,000,000.00 or more, or any  
22 combination of investments of at least \$10,000,000.00 each, which  
23 in the aggregate equals or exceeds \$20,000,000.00 in any 12-month  
24 period, and which directly or significantly contributes to a state  
25 sponsor of terror, and the company has failed to take substantial  
26 action.

27 (i) "State sponsor of terror" means any country determined by

1 the United States secretary of state to have repeatedly provided  
2 support for acts of international terrorism.

3 (j) "Substantial action" means adopting, publicizing, and  
4 implementing a formal plan to cease scrutinized business operations  
5 within 1 year and to refrain from any new business operations.

6 Sec. 3. Within 90 days after the effective date of this act,  
7 the fiduciary shall make its best efforts to identify all  
8 scrutinized companies in which the fiduciary has direct or indirect  
9 holdings or could possibly have such holdings in the future. The  
10 efforts may include 1 or more of the following:

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

16 (b) Contacting asset managers contracted by the fiduciary that  
17 invest in companies with business operations in a state sponsor of  
18 terror.

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

22 (d) Reviewing the laws of the United States regarding the  
23 levels of business activity that would cause application of  
24 sanctions against companies conducting business or investing in  
25 countries that are designated state sponsors of terror.

26 Sec. 4. (1) At the end of the 90-day period or by the first  
27 meeting of the fiduciary following the 90-day period described in

1 section 3, the fiduciary shall assemble all scrutinized companies  
2 identified into a scrutinized companies list.

3 (2) The fiduciary shall update the scrutinized companies list  
4 described in subsection (1) on a quarterly basis based on evolving  
5 information from, among other sources, those sources listed in  
6 section 3.

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) If, within 90 days following the fiduciary's first  
14 engagement with a company, that company ceases scrutinized business  
15 operations, the company shall be removed from the scrutinized  
16 companies list and this act shall cease to apply to it unless it  
17 resumes scrutinized business operations. If, within 90 days  
18 following the fiduciary's first engagement, the company converts  
19 its scrutinized active business operations to inactive business  
20 operations, the company shall be subject to this act.

21 (c) If, after 90 days following the fiduciary's first  
22 engagement with a company, the company continues to have  
23 scrutinized active business operations, and only while the company  
24 continues to have scrutinized active business operations, the  
25 fiduciary shall sell, redeem, divest, or withdraw all publicly  
26 traded securities of the company, according to the following  
27 schedule:

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

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

7 (d) Except as provided in subdivision (e), at no time shall  
8 the fiduciary acquire securities of companies on the scrutinized  
9 companies list that have active business operations.

10 (e) Subdivisions (c) and (d) shall not apply to indirect  
11 holdings in actively managed investment funds. For purposes of this  
12 section, actively managed investment funds include private equity  
13 funds and publicly traded funds. Before the fiduciary invests in a  
14 new private equity fund that is not in the fiduciary's portfolio as  
15 of the effective date of this act, the fiduciary shall perform due  
16 diligence to prevent investment in any private equity fund where  
17 the offering memorandum or prospectus identifies the purpose of the  
18 private equity fund as investing in scrutinized companies with  
19 active business operations in a state sponsor of terror. The  
20 fiduciary is not required to identify holdings in private equity  
21 funds or submit engagement letters to those funds. If the manager  
22 of a publicly traded, actively managed fund that is in the  
23 fiduciary's portfolio on the effective date of this act creates a  
24 similar publicly traded, actively managed fund with indirect  
25 holdings devoid of identified scrutinized companies with  
26 scrutinized active business operations as defined in this act, the  
27 fiduciary shall replace all applicable investments with investments

1 in the similar fund in an expedited time frame consistent with  
2 prudent investment standards.

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

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

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

10 (c) Any progress made under section 4(3)(e).

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

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

22 Sec. 7. If any provision, section, subsection, sentence,  
23 clause, phrase, or word of this act or its application to any  
24 person or circumstance is found to be invalid, illegal,  
25 unenforceable, or unconstitutional, the same is hereby declared to  
26 be severable and the balance of this legislation shall remain  
27 effective and functional notwithstanding such invalidity,



1   illegality, unenforceability, or unconstitutionality.