

111TH CONGRESS
1ST SESSION

H. R. 1327

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.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2009

Mr. FRANK of Massachusetts (for himself, Mr. BERMAN, Mr. SHERMAN, and Mr. MEEKS of New York) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Iran Sanctions Ena-
5 bling Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

1 (1) There is an increasing interest by States,
2 local governments, educational institutions, and pri-
3 vate institutions to seek to disassociate themselves
4 from companies that directly or indirectly support
5 the Government of Iran’s efforts to achieve a nu-
6 clear weapons capability.

7 (2) Policy makers and fund managers may find
8 moral, prudential, or reputational reasons to divest
9 from companies that accept the business risk of op-
10 erating in countries that are subject to international
11 economic sanctions or that have business relation-
12 ships with countries, governments, or entities with
13 which any United States company would be prohib-
14 ited from dealing because of economic sanctions im-
15 posed by the United States.

16 **SEC. 3. AUTHORITY OF STATE AND LOCAL GOVERNMENTS**
17 **TO DIVEST FROM CERTAIN COMPANIES IN-**
18 **VESTED IN IRAN’S ENERGY SECTOR.**

19 (a) STATEMENT OF POLICY.—It is the policy of the
20 United States to support the decision of State govern-
21 ments, local governments, and educational institutions to
22 divest from, and to prohibit the investment of assets they
23 control in, persons that have investments of more than
24 \$20,000,000 in Iran’s energy sector.

1 (b) **AUTHORITY TO DIVEST.**—Notwithstanding any
2 other provision of law, a State or local government may
3 adopt and enforce measures that meet the requirements
4 of subsection (d) to divest the assets of the State or local
5 government from, or prohibit investment of the assets of
6 the State or local government in, any person that the
7 State or local government determines, using credible infor-
8 mation available to the public, engages in investment ac-
9 tivities in Iran described in subsection (c).

10 (c) **INVESTMENT ACTIVITIES IN IRAN DESCRIBED.**—
11 A person engages in investment activities in Iran described
12 in this subsection if the person—

13 (1) has an investment of \$20,000,000 or
14 more—

15 (A) in the energy sector of Iran; or

16 (B) in a person that provides oil or
17 liquified natural gas tankers, or products used
18 to construct or maintain pipelines used to
19 transport oil or liquified natural gas, for the en-
20 ergy sector in Iran; or

21 (2) is a financial institution that extends
22 \$20,000,000 or more in credit to another person, for
23 45 days or more, if that person will use the credit
24 to invest in the energy sector in Iran.

1 (d) REQUIREMENTS.—The requirements referred to
2 in subsection (b) that a measure taken by a State or local
3 government must meet are the following:

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

8 (2) TIMING.—The measure shall apply to a per-
9 son not earlier than the date that is 90 days after
10 the date on which the person receives the written no-
11 tice required by paragraph (1).

12 (3) OPPORTUNITY FOR HEARING.—The State
13 or local government shall provide each person re-
14 ferred to in paragraph (1) with an opportunity to
15 demonstrate to the State or local government, as the
16 case may be, that the person does not engage in in-
17 vestment activities in Iran described in subsection
18 (c). If the person demonstrates to the State or local
19 government that the person does not engage in in-
20 vestment activities in Iran described in subsection
21 (c), the measure shall not apply to the person.

22 (4) SENSE OF THE CONGRESS ON AVOIDING ER-
23 RONEOUS TARGETING.—It is the sense of the Con-
24 gress that a State or local government should not
25 adopt a measure under subsection (b) with respect

1 to a person unless the State or local government has
2 made every effort to avoid erroneously targeting the
3 person and has verified that the person engages in
4 investment activities in Iran described in subsection
5 (c).

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

11 (f) NONPREEMPTION.—A measure of a State or local
12 government authorized under subsection (b) is not pre-
13 empted by any Federal law or regulation.

14 (g) DEFINITIONS.—In this section:

15 (1) INVESTMENT.—The “investment” of assets,
16 with respect to a State or local government, in-
17 cludes—

18 (A) a commitment or contribution of as-
19 sets;

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

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

23 (2) ASSETS.—

24 (A) IN GENERAL.—Except as provided in
25 subparagraph (B), the term “assets” refers to

1 public monies and includes any pension, retire-
2 ment, annuity, or endowment fund, or similar
3 instrument, that is controlled directly or indi-
4 rectly by a State or local government.

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

9 (h) EFFECTIVE DATE.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), this section shall apply to measures
12 adopted by a State or local government before, on,
13 or after the date of the enactment of this Act.

14 (2) NOTICE REQUIREMENTS.—Subsections (d)
15 and (e) apply to measures adopted by a State or
16 local government on or after the date of the enact-
17 ment of this Act.

18 **SEC. 4. SAFE HARBOR FOR CHANGES OF INVESTMENT**

19 **POLICIES BY ASSET MANAGERS.**

20 Section 13(c)(1) of the Investment Company Act of
21 1940 (15 U.S.C. 80a–13(c)(1)) is amended by inserting
22 before the period the following: “or engage in investment
23 activities in Iran described in section 3(c) of the Iran
24 Sanctions Enabling Act of 2009”.

1 **SEC. 5. SENSE OF CONGRESS REGARDING CERTAIN ERISA**
2 **PLAN INVESTMENTS.**

3 It is the sense of Congress that a fiduciary of an em-
4 ployee benefit plan, as defined in section 3(3) of the Em-
5 ployee Retirement Income Security Act of 1974 (29
6 U.S.C. 1002(3)), may divest plan assets from, or avoid
7 investing plan assets in, any person the fiduciary deter-
8 mines engages in investment activities in Iran described
9 in section 3(c) of this Act, without breaching the respon-
10 sibilities, obligations, or duties imposed upon the fiduciary
11 by section 404 of the Employee Retirement Income Secu-
12 rity Act of 1974 (29 U.S.C. 1104), if—

13 (1) the fiduciary makes such determination
14 using credible information that is available to the
15 public; and

16 (2) such divestment or avoidance of investment
17 is conducted in accordance with section 2509.94–1
18 of title 29, Code of Federal Regulations (as in effect
19 on the day before the date of the enactment of this
20 Act).

21 **SEC. 6. DEFINITIONS.**

22 In this title:

23 (1) **ENERGY SECTOR.**—The term “energy sec-
24 tor” refers to activities to develop petroleum or nat-
25 ural gas resources or nuclear power.

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

5 (3) IRAN.—The term “Iran” includes any agen-
6 cy or instrumentality of Iran.

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

8 (A) a natural person, corporation, com-
9 pany, business association, partnership, society,
10 trust, or any other nongovernmental entity, or-
11 ganization, or group;

12 (B) any governmental entity or instrumen-
13 tality of a government, including a multilateral
14 development institution (as defined in section
15 1701(c)(3) of the International Financial Insti-
16 tutions Act (22 U.S.C. 262r(c)(3))); and

17 (C) any successor, subunit, parent com-
18 pany, or subsidiary of any entity described in
19 subparagraph (A) or (B).

20 (5) STATE.—The term “State” means each of
21 the several States, the District of Columbia, the
22 Commonwealth of Puerto Rico, the United States
23 Virgin Islands, Guam, American Samoa, and the
24 Commonwealth of the Northern Mariana Islands.

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

3 (A) any State and any agency or instru-
4 mentality thereof;

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

7 (C) any other governmental instrumen-
8 tality; and

9 (D) any public institution of higher edu-
10 cation within the meaning of the Higher Edu-
11 cation Act of 1965 (20 U.S.C. 1001 et seq.).

12 **SEC. 7. SUNSET.**

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

15 (1) the Government of Iran has ceased pro-
16 viding support for acts of international terrorism
17 and no longer satisfies the requirements for designa-
18 tion as a state-sponsor of terrorism for purposes of
19 section 6(j) of the Export Administration Act of
20 1979, section 620A of the Foreign Assistance Act of
21 1961, section 40 of the Arms Export Control Act,
22 or any other provision of law; or

23 (2) Iran has ceased the pursuit, acquisition,
24 and development of nuclear, biological, and chemical

- 1 weapons and ballistic missiles and ballistic missile
- 2 launch technology.

