

111TH CONGRESS
1ST SESSION

S. 1065

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 SENATE OF THE UNITED STATES

MAY 18, 2009

Mr. BROWNBACK (for himself and Mr. CASEY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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 Congress finds the following:

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 efforts of the Government of Iran to achieve a
6 nuclear 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. DEFINITIONS.**

17 In this Act:

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

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

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

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

4 (A) a natural person, corporation, com-
5 pany, business association, partnership, society,
6 trust, or any other nongovernmental entity, or-
7 ganization, or group;

8 (B) any governmental entity or instrumen-
9 tality of a government, including a multilateral
10 development institution (as defined in section
11 1701(c)(3) of the International Financial Insti-
12 tutions Act (22 U.S.C. 262r(c)(3))); and

13 (C) any successor, subunit, parent com-
14 pany, or subsidiary of any entity described in
15 subparagraph (A) or (B).

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

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

23 (A) any State and any agency or instru-
24 mentality thereof;

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

3 (C) any other governmental instrumen-
4 tality; and

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

8 **SEC. 4. AUTHORITY OF STATE AND LOCAL GOVERNMENTS**
9 **TO DIVEST FROM CERTAIN COMPANIES IN-**
10 **VESTED IN IRAN'S ENERGY SECTOR.**

11 (a) STATEMENT OF POLICY.—It is the policy of the
12 United States to support the decision of State govern-
13 ments, local governments, and educational institutions to
14 divest from, and to prohibit the investment of assets they
15 control in, persons that have investments of \$20,000,000
16 or more in Iran's energy sector.

17 (b) AUTHORITY TO DIVEST.—Notwithstanding any
18 other provision of law, a State or local government may
19 adopt and enforce measures that meet the requirements
20 of subsection (d) to divest the assets of the State or local
21 government from, or prohibit investment of the assets of
22 the State or local government in, any person that the
23 State or local government determines, using credible infor-
24 mation available to the public, engages in investment ac-
25 tivities in Iran described in subsection (c).

1 (c) INVESTMENT ACTIVITIES IN IRAN DESCRIBED.—

2 A person engages in investment activities in Iran described
3 in this subsection if the person—

4 (1) has an investment of \$20,000,000 or
5 more—

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

7 (B) in a person that provides oil or
8 liquified natural gas tankers, or products used
9 to construct or maintain pipelines used to
10 transport oil or liquified natural gas, for the en-
11 ergy sector in Iran; or

12 (2) is a financial institution that extends
13 \$20,000,000 or more in credit to another person, for
14 45 days or more, if that person will use the credit
15 to invest in the energy sector in Iran.

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

19 (1) NOTICE.—The State or local government
20 shall provide written notice to each person to which
21 the State or local government, as the case may be,
22 intends to apply the measure, of such intent.

23 (2) TIMING.—The measure shall apply to a per-
24 son not earlier than the date that is 90 days after

1 the date on which the person receives the written no-
2 tice required by paragraph (1).

3 (3) OPPORTUNITY FOR HEARING.—The State
4 or local government shall provide each person re-
5 ferred to in paragraph (1) with an opportunity to
6 demonstrate to the State or local government, as the
7 case may be, that the person does not engage in in-
8 vestment activities in Iran described in subsection
9 (c). If the person demonstrates to the State or local
10 government that the person does not engage in in-
11 vestment activities in Iran described in subsection
12 (c), the measure shall not apply to the person.

13 (4) SENSE OF CONGRESS ON AVOIDING ERRO-
14 NEOUS TARGETING.—It is the sense of Congress
15 that a State or local government should not adopt
16 a measure under subsection (b) with respect to a
17 person unless the State or local government has
18 made every effort to avoid erroneously targeting the
19 person and has verified that the person engages in
20 investment activities in Iran described in subsection
21 (c).

22 (e) NOTICE TO DEPARTMENT OF JUSTICE.—Not
23 later than 30 days after adopting a measure pursuant to
24 subsection (b), a State or local government shall submit

1 to the Attorney General of the United States a written
2 notice that describes the measure.

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

6 (g) DEFINITIONS.—In this section:

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

10 (A) a commitment or contribution of as-
11 sets;

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

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

15 (2) ASSETS.—

16 (A) IN GENERAL.—Except as provided in
17 subparagraph (B), the term “assets” refers to
18 public monies and includes any pension, retire-
19 ment, annuity, or endowment fund, or similar
20 instrument, that is controlled directly or indi-
21 rectly by a State or local government.

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

1 (h) EFFECTIVE DATE.—

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

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

10 **SEC. 5. SAFE HARBOR FOR CHANGES OF INVESTMENT**
11 **POLICIES BY ASSET MANAGERS.**

12 Section 13(c)(1) of the Investment Company Act of
13 1940 (15 U.S.C. 80a–13(c)(1)) is amended by inserting
14 before the period the following: “or engage in investment
15 activities in Iran described in section 4(c) of the Iran
16 Sanctions Enabling Act of 2009”.

17 **SEC. 6. SAFE HARBOR FOR CHANGES OF INVESTMENT**
18 **POLICIES BY EMPLOYEE BENEFIT PLANS.**

19 Section 502 of the Employee Retirement Income Se-
20 curity Act of 1974 (29 U.S.C. 1132) is amended by adding
21 at the end the following new subsection:

22 “(n) No person shall be treated as breaching any of
23 the responsibilities, obligations, or duties imposed upon fi-
24 duciaries by this title, and no action may be brought under
25 this section against any person, for divesting plan assets

1 from, or avoiding investing plan assets in, persons that
2 such person determines, using credible information avail-
3 able to the public, engage in investment activities in Iran
4 described in section 4(e) of the Iran Sanctions Enabling
5 Act of 2009.”.

6 **SEC. 7. SUNSET.**

7 The provisions of this Act shall terminate on the day
8 that is 30 days after the date on which the President cer-
9 tifies to Congress that—

10 (1) the Government of Iran has ceased pro-
11 viding support for acts of international terrorism
12 and no longer satisfies the requirements for designa-
13 tion as a state sponsor of terrorism for purposes
14 of—

15 (A) section 40 of the Arms Export Control
16 Act (22 U.S.C. 2780);

17 (B) section 620A of the Foreign Assistance
18 Act of 1961 (22 U.S.C. 2371);

19 (C) section 6(j) of the Export Administra-
20 tion Act of 1979 (50 U.S.C. App. 2405(j)), as
21 continued in effect pursuant to the Inter-
22 national Emergency Economic Powers Act (50
23 U.S.C. 1701 et seq.); or

1 (D) any other provision of law relating to
2 governments that provide support for acts of
3 international terrorism; and

4 (2) the Government of Iran has ceased the pur-
5 suit, acquisition, and development of nuclear, bio-
6 logical, and chemical weapons and ballistic missiles
7 and ballistic missile launch technology.

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