

111TH CONGRESS
1ST SESSION

H. R. 1327

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.

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

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. FINDINGS.**

5 The Congress finds as follows:

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

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

21 **SEC. 3. AUTHORITY OF STATE AND LOCAL GOVERNMENTS**
22 **TO DIVEST FROM CERTAIN COMPANIES IN-**
23 **VESTED IN IRAN’S ENERGY SECTOR.**

24 (a) STATEMENT OF POLICY.—It is the policy of the
25 United States to support the decision of State govern-
26 ments, local governments, and educational institutions to

1 divest from, and to prohibit the investment of assets they
2 control in, persons that have investments of more than
3 \$20,000,000 in Iran's energy sector.

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

13 (c) **INVESTMENT ACTIVITIES IN IRAN DESCRIBED.**—
14 A person engages in investment activities in Iran described
15 in this subsection if the person—

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

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

22 (3) is a financial institution that extends
23 \$20,000,000 or more in credit to another person, for
24 45 days or more, if that person will use the credit
25 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), or described
13 in subsection (i), is not preempted by any Federal law or
14 regulation.

15 (g) DEFINITIONS.—In this section:

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

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

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

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

24 (2) ASSETS.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), the term “assets” refers to
3 public monies and includes any pension, retire-
4 ment, annuity, or endowment fund, or similar
5 instrument, that is controlled directly or indi-
6 rectly by a State or local government.

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

11 (h) EFFECTIVE DATE.—

12 (1) IN GENERAL.—Except as provided in para-
13 graph (2) of this subsection and subsection (i), this
14 section shall apply to measures adopted by a State
15 or local government on or after the date of the en-
16 actment of this Act.

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

21 (i) AUTHORIZATION FOR PRIOR ENACTED MEAS-
22 URES.—Notwithstanding any other provision of law, a
23 State or local government may enforce a measure (without
24 regard to the requirements of subsection (d)) adopted by
25 the State or local government before the date of the enact-

1 ment of this Act that provides for the divestiture of assets
2 of the State or local government from, or prohibits the
3 investment of the assets of the State or local government
4 in, any person that the State or local government deter-
5 mines, using credible information available to the public,
6 engages in investment or business activities in Iran (deter-
7 mined without regard to subsection (c)) identified in the
8 measure.

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

11 Section 13(c)(1) of the Investment Company Act of
12 1940 (15 U.S.C. 80a-13(c)(1)) is amended to read as fol-
13 lows:

14 “(1) IN GENERAL.—Solely for purposes of this
15 subsection, and notwithstanding any other provision
16 of Federal or State law, no person may bring any
17 civil, criminal, or administrative action against any
18 registered investment company, or any employee, of-
19 ficer, director, or investment adviser thereof, based
20 solely upon the investment company divesting from,
21 or avoiding investing in, securities issued by persons
22 that the investment company determines, using cred-
23 ible information that is available to the public, con-
24 duct or have direct investments in business oper-
25 ations in Sudan described in section 3(d) of the

1 Sudan Accountability and Divestment Act of 2007
2 or engage in investment activities in Iran described
3 in section 3(c) of the Iran Sanctions Enabling Act
4 of 2009. Nothing in this paragraph shall be con-
5 strued to create, imply, diminish, change, or affect
6 in any way the existence of a private cause of action
7 under any other provision of this Act.”.

8 **SEC. 5. SAFE HARBOR FOR CHANGES OF INVESTMENT**
9 **POLICIES BY EMPLOYEE BENEFIT PLANS.**

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

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

1 **SEC. 6. DEFINITIONS.**

2 In this title:

3 (1) ENERGY SECTOR.—The term “energy sec-
4 tor” refers to activities to develop petroleum or nat-
5 ural gas resources or nuclear power.

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

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

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

13 (A) a natural person, corporation, com-
14 pany, business association, partnership, society,
15 trust, or any other nongovernmental entity, or-
16 ganization, or group;

17 (B) any governmental entity or instrumen-
18 tality of a government, including a multilateral
19 development institution (as defined in section
20 1701(c)(3) of the International Financial Insti-
21 tutions Act (22 U.S.C. 262r(c)(3))); and

22 (C) any successor, subunit, parent com-
23 pany, or subsidiary of, or company under com-
24 mon ownership or control with, any entity de-
25 scribed in subparagraph (A) or (B).

1 (5) STATE.—The term “State” means each of
2 the several States, the District of Columbia, the
3 Commonwealth of Puerto Rico, the United States
4 Virgin Islands, Guam, American Samoa, and the
5 Commonwealth of the Northern Mariana Islands.

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

8 (A) any State and any agency or instru-
9 mentality thereof;

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

12 (C) any other governmental instrumen-
13 tality; and

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

17 **SEC. 7. SUNSET.**

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

20 (1) the Government of Iran has ceased pro-
21 viding support for acts of international terrorism
22 and no longer satisfies the requirements for designa-
23 tion as a state-sponsor of terrorism for purposes of
24 section 6(j) of the Export Administration Act of
25 1979, section 620A of the Foreign Assistance Act of

1 1961, section 40 of the Arms Export Control Act,
2 or any other provision of law; or

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

Passed the House of Representatives October 14,
2009.

Attest: LORRAINE C. MILLER,
Clerk.