

Bill No. CS for SB 2250

Barcode 125354

CHAMBER ACTION

Senate

House

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The Committee on Governmental Operations (Posey) recommended  
the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. (1) DEFINITIONS.--As used in this act, the  
term:

(a) "Active business operations" means all business  
operations that are not inactive business operations.

(b) "Business operations" means engaging in commerce  
in any form in Iran, including, but not limited to,  
acquiring, developing, maintaining, owning, selling,  
possessing, leasing, or operating equipment, facilities,  
personnel, products, services, personal property, real  
property, or any other apparatus of business or commerce.

(c) "Company" means any sole proprietorship,  
organization, association, corporation, partnership, joint  
venture, limited partnership, limited liability partnership,  
limited liability company, or other entity or business

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1 association, including all wholly owned subsidiaries,  
2 majority-owned subsidiaries, parent companies, or affiliates  
3 of such entities or business associations, which exists for  
4 the purpose of making profit.

5 (d) "Complicit" means taking actions during any  
6 preceding 20-month period which have directly invested in the  
7 petroleum energy sector of Iran.

8 (e) "Direct holdings" in a company means all  
9 securities of that company which are held directly by the  
10 Public Fund or in an account or fund in which the Public Fund  
11 owns all shares or interests.

12 (f) "Inactive business operations" means the mere  
13 continued holding or renewal of rights to property previously  
14 operated for the purpose of generating revenues but not  
15 presently deployed for such purpose.

16 (g) "Indirect holdings" in a company means all  
17 securities of that company which are held in an account or  
18 fund, such as a mutual fund, managed by one or more persons  
19 not employed by the Public Fund, in which the Public Fund owns  
20 shares or interests together with other investors not subject  
21 to the provisions of this act.

22 (h) "Military equipment" means weapons, arms, military  
23 supplies, and equipment that readily may be used for military  
24 purposes, including, but not limited to, radar systems,  
25 military-grade transport vehicles, or supplies or services  
26 sold or provided directly or indirectly to any force actively  
27 participating in international terrorism.

28 (i) "Mineral-extraction activities" include exploring,  
29 extracting, processing, transporting, or wholesale selling or  
30 trading of elemental minerals or associated metal alloys or  
31 oxides (ore), including gold, copper, chromium, chromite,

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1 diamonds, iron, iron ore, silver, tungsten, uranium, and zinc,  
2 as well as facilitating such activities, including, providing  
3 supplies or services in support of such activities.

4 (j) "Oil-related activities" include, but are not  
5 limited to, owning rights to oil blocks; exporting,  
6 extracting, producing, refining, processing, exploring for,  
7 transporting, selling, or trading of oil; constructing,  
8 maintaining, or operating a pipeline, refinery, or other  
9 oil-field infrastructure; and facilitating such activities,  
10 including providing supplies or services in support of such  
11 activities, except that the mere retail sale of gasoline and  
12 related consumer products is not considered an oil-related  
13 activity.

14 (k) "Petroleum resources" means petroleum, petroleum  
15 by-products, or natural gas.

16 (l) "Public Fund" means all funds, assets, trustees,  
17 and other designates under the State Board of Administration  
18 according to part I of chapter 121, Florida Statutes.

19 (m) "Scrutinized company" means the company has  
20 business operations that involve contracts with or provision  
21 of supplies or services to the Government of Iran, companies  
22 in which the Government of Iran has any direct or indirect  
23 equity share, consortiums or projects commissioned by the  
24 Government of Iran, or companies involved in consortiums or  
25 projects commissioned by the Government of Iran and:

26 1. More than 10 percent of the company's total  
27 revenues or assets linked to Iran involve oil-related  
28 activities or mineral-extraction activities and the company  
29 has failed to take substantial action; or

30 2. The company has, with actual knowledge, on or after  
31 August 5, 1996, made an investment of \$20 million or more, or

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1 any combination of investments of at least \$10 million each  
2 which in the aggregate equals or exceeds \$20 million in any  
3 12-month period, which directly or significantly contributes  
4 to the enhancement of Iran's ability to develop petroleum  
5 resources of Iran.

6 (n) "Substantial action" means adopting, publicizing,  
7 and implementing a formal plan to cease scrutinized business  
8 operations within 1 year and to refrain from any such new  
9 business operations.

10 (o) "Iran" means the Islamic Republic of Iran.

11 (p) "Government of Iran" means the government of Iran,  
12 its instrumentalities, and companies owned or controlled by  
13 the government of Iran.

14 (q) "Scrutinized business operations" means business  
15 operations that have resulted in a company becoming a  
16 scrutinized company.

17 (r) "Scrutinized active business operations" means  
18 active business operations that have resulted in a company  
19 becoming a scrutinized company.

20 (2) IDENTIFICATION OF COMPANIES.--

21 (a) Within 90 days after the effective date of this  
22 act, the Public Fund shall make its best efforts to identify  
23 all scrutinized companies in which the Public Fund has direct  
24 or indirect holdings or could possibly have such holdings in  
25 the future. Such efforts include:

26 1. Reviewing and relying, as appropriate in the Public  
27 Fund's judgment, on publicly available information regarding  
28 companies having business operations in Iran, including  
29 information provided by nonprofit organizations, research  
30 firms, international organizations, and government entities;

31 2. Contacting asset managers contracted by the Public

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1 Fund which invest in companies having business operations in  
2 Iran;

3 3. Contacting other institutional investors that have  
4 divested from or engaged with companies that have business  
5 operations in Iran; or

6 4. Identifying laws of the United States regarding the  
7 levels of business activity that would cause application of  
8 sanctions for companies conducting business in or investing in  
9 countries that are designated state sponsors of terror.

10 (b) By the first meeting of the Public Fund following  
11 the 90-day period described in paragraph (a), the Public Fund  
12 shall assemble all scrutinized companies identified into a  
13 "Scrutinized Companies List."

14 (c) The Public Fund shall update the Scrutinized  
15 Companies List quarterly based on evolving information from,  
16 among other sources, those listed in paragraph (a).

17 (3) REQUIRED ACTIONS.--The Public Fund shall adhere to  
18 the following procedure for companies on the Scrutinized  
19 Companies List:

20 (a) Engagement.--

21 1. The Public Fund shall immediately determine the  
22 companies on the Scrutinized Companies List in which the  
23 Public Fund owns direct or indirect holdings.

24 2. For each company identified in this paragraph which  
25 has only inactive business operations, the Public Fund shall  
26 send a written notice informing the company of this act and  
27 encouraging it to continue to refrain from initiating active  
28 business operations in Iran until it is able to avoid  
29 scrutinized business operations. The Public Fund shall  
30 continue such correspondence semiannually.

31 3. For each company newly identified under this

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1 paragraph which has active business operations, the Public  
 2 Fund shall send a written notice informing the company of its  
 3 scrutinized company status and that it may become subject to  
 4 divestment by the Public Fund. The notice must inform the  
 5 company of the opportunity to clarify its Iran-related  
 6 activities and encourage the company, within 90 days, to cease  
 7 its scrutinized business operations or convert such operations  
 8 to inactive business operations in order to avoid qualifying  
 9 for divestment by the Public Fund.

10       4. If, within 90 days after the Public Fund's first  
 11 engagement with a company pursuant to this paragraph, that  
 12 company ceases scrutinized business operations, the company  
 13 shall be removed from the Scrutinized Companies List and the  
 14 provisions of this act shall cease to apply to it unless it  
 15 resumes scrutinized business operations. If, within 90 days  
 16 after the Public Fund's first engagement, the company converts  
 17 its scrutinized active business operations to inactive  
 18 business operations, the company is subject to all provisions  
 19 relating thereto.

20       (b) Divestment.--

21       1. If, after 90 days following the Public Fund's first  
 22 engagement with a company pursuant to paragraph (a), the  
 23 company continues to have scrutinized active business  
 24 operations, and only while such company continues to have  
 25 scrutinized active business operations, the Public Fund shall  
 26 sell, redeem, divest, or withdraw all publicly traded  
 27 securities of the company, except as provided in paragraph  
 28 (d), from the Public Fund's assets under management within 12  
 29 months after the company's most recent appearance on the  
 30 Scrutinized Companies List.

31       2. If a company that ceased scrutinized active

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1 business operations following engagement pursuant to paragraph  
 2 (a) resumes such operations, this paragraph immediately  
 3 applies, and the Public Fund shall send a written notice to  
 4 the company. The company shall also be immediately  
 5 reintroduced onto the Scrutinized Companies List.

6 (c) Prohibition.--The Public Fund may not acquire  
 7 securities of companies on the Scrutinized Companies List  
 8 which have active business operations, except as provided in  
 9 paragraph (d).

10 (d) Exemption.--A company that the United States  
 11 Government affirmatively declares to be excluded from its  
 12 present or any future federal sanctions regime relating to  
 13 Iran is not subject to divestment or the investment  
 14 prohibition pursuant to paragraphs (b) and (c).

15 (e) Excluded securities.--Notwithstanding the  
 16 provisions of this act, paragraphs (b) and (c) do not apply to  
 17 indirect holdings in actively managed investment funds.  
 18 However, the Public Fund shall submit letters to the managers  
 19 of such investment funds containing companies that have  
 20 scrutinized active business operations requesting that they  
 21 consider removing such companies from the fund or create a  
 22 similar actively managed fund having indirect holdings devoid  
 23 of such companies. If the manager creates a similar fund, the  
 24 Public Fund shall replace all applicable investments with  
 25 investments in the similar fund in an expedited timeframe  
 26 consistent with prudent investing standards. For the purposes  
 27 of this section, a private equity fund is deemed to be an  
 28 actively managed investment fund.

29 (4) REPORTING.--

30 (a) The Public Fund shall file a report to each member  
 31 of the Board of Trustees of the State Board of Administration,

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1 the President of the Senate, and the Speaker of the House of  
2 Representatives which includes the Scrutinized Companies List  
3 within 30 days after the list is created. This report shall be  
4 made available to the public.

5 (b) Annually thereafter, the Public Fund shall file a  
6 report, which shall be made available to the public, to each  
7 member of the Board of Trustees of the State Board of  
8 Administration, the President of the Senate, and the Speaker  
9 of the House of Representatives and send a copy of that report  
10 to the United States Presidential Special Envoy to Iran, or an  
11 appropriate designee or successor, which includes:

12 1. A summary of correspondence with companies engaged  
13 by the Public Fund under subparagraphs (3)(a)2. and 3.;

14 2. All investments sold, redeemed, divested, or  
15 withdrawn in compliance with paragraph (3)(b);

16 3. All prohibited investments under paragraph (3)(c);  
17 and

18 4. Any progress made under paragraph (3)(e).

19 (5) EXPIRATION.--This act expires upon the occurrence  
20 of any of the following:

21 (a) The United States revokes all sanctions imposed  
22 against the Government of Iran;

23 (b) The Congress or President of the United States  
24 affirmatively and unambiguously states, through law or  
25 regulation, including but not limited to, legislation,  
26 executive order, or written certification, that the Government  
27 of Iran has ceased to acquire weapons of mass destruction and  
28 support international terrorism; or

29 (c) The Congress or President of the United States  
30 affirmatively and unambiguously declares through law or  
31 regulation, including but not limited to, legislation,

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1 executive order, or written certification, that mandatory  
2 divestment of the type provided for in this act interferes  
3 with the conduct of United States foreign policy.

4 (6) OTHER LEGAL OBLIGATIONS.--With respect to actions  
5 taken in compliance with this act, including all good faith  
6 determinations regarding companies as required by this act,  
7 the Public Fund is exempt from any conflicting statutory or  
8 common law obligations, including any such obligations with  
9 respect to choice of asset managers, investment funds, or  
10 investments for the Public Fund's securities portfolios.

11 (7) REINVESTMENT IN CERTAIN COMPANIES HAVING  
12 SCRUTINIZED ACTIVE BUSINESS OPERATIONS.--Notwithstanding any  
13 other provision of this act to the contrary, the Public Fund  
14 may cease divesting from certain scrutinized companies  
15 pursuant to paragraph (3)(b) or reinvest in certain  
16 scrutinized companies from which it divested pursuant to  
17 paragraph (3)(b) if clear and convincing evidence shows that  
18 the value of all assets under management by the Public Fund  
19 becomes equal to or less than 99.50 percent, or 50 basis  
20 points, of the hypothetical value of all assets under  
21 management by the Public Fund assuming no divestment for any  
22 company had occurred under paragraph (3)(b). Cessation of  
23 divestment, reinvestment, or any subsequent ongoing investment  
24 authorized by this act is limited to the minimum steps  
25 necessary to avoid the contingency set forth in this  
26 subsection or avoid divestment of any company for less than  
27 fair value. For any cessation of divestment, reinvestment, or  
28 subsequent ongoing investment authorized by this act, the  
29 Public Fund shall provide a written report to each member of  
30 the Board of Trustees of the State Board of Administration,  
31 the President of the Senate, and the Speaker of the House of

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1 Representatives in advance of initial reinvestment, updated  
 2 semiannually thereafter as applicable, setting forth the  
 3 reasons and justification, supported by clear and convincing  
 4 evidence, for its decisions to cease divestment, reinvest, or  
 5 remain invested in companies having scrutinized active  
 6 business operations. This act does not apply to reinvestment  
 7 in companies on the grounds that they have ceased to have  
 8 scrutinized active business operations.

9           Section 2. If any provision of this act or its  
 10 application to any person or circumstance is held invalid, the  
 11 invalidity does not affect other provisions or applications of  
 12 the act which can be given effect without the invalid  
 13 provision or application, and to this end the provisions of  
 14 this act are severable.

15           Section 3. This act shall take effect upon becoming a  
 16 law.

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 19 ===== T I T L E   A M E N D M E N T =====

20 And the title is amended as follows:

21           Delete everything before the enacting clause

22  
 23 and insert:

24                                   A bill to be entitled  
 25           An act relating to divestment of public funds  
 26           related to Iran; providing definitions;  
 27           requiring the State Board of Administration to  
 28           identify all companies doing certain types of  
 29           business in or with Iran in which public moneys  
 30           are invested; requiring the board to create and  
 31           maintain a Scrutinized Company List that names

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1 all such companies; requiring the board to  
2 periodically contact all scrutinized companies  
3 and encourage them to refrain from engaging in  
4 certain types of business in or with Iran;  
5 requiring the board to inform scrutinized  
6 companies of their status as a scrutinized  
7 company and to ask for clarification as to the  
8 nature of each company's business activities;  
9 providing that a company may be removed from  
10 the list under certain conditions; providing  
11 for reintroduction of a company onto the list;  
12 requiring the board to divest the company of  
13 all publicly traded securities of a scrutinized  
14 company under certain conditions; providing  
15 exceptions to the divestment requirement;  
16 prohibiting the board from acquiring securities  
17 of scrutinized companies that have active  
18 business operations; providing exceptions to  
19 the investment prohibition; providing an  
20 additional exception from the divestment  
21 requirement and the investment prohibition  
22 concerning certain indirect holdings in  
23 actively managed investment funds; requiring  
24 the board to request that the managers of such  
25 investment funds consider removing scrutinized  
26 companies from the fund or create a similar  
27 fund that excludes such companies; requiring  
28 the board to file a report to the Board of  
29 Trustees of the State Board of Administration  
30 and the Legislature within a specified period  
31 after creation of the Scrutinized Company List;

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1 requiring the annual filing of an updated  
2 report; requiring that all such reports be made  
3 available to the public; requiring that the  
4 report include certain information; providing  
5 for the expiration of the act; exempting the  
6 board from certain statutory or common law  
7 obligations; authorizing the board to cease  
8 divesting or to reinvest in certain scrutinized  
9 companies if the value of all assets under  
10 management by the board becomes equal to or  
11 less than a specified amount; requiring the  
12 board to file a written report to the Board of  
13 Trustees of the State Board of Administration  
14 and the Legislature before such reinvestment;  
15 requiring that the report contain certain  
16 information; requiring semiannual updates to  
17 such reports when applicable; providing for  
18 severability; providing an effective date.

19  
20 WHEREAS, a resolution of the United Nations Security  
21 Council imposes sanctions on Iran for its failure to suspend  
22 its uranium-enrichment activities, and

23 WHEREAS, the United Nations Security Council voted  
24 unanimously for an additional embargo on Iranian arms exports  
25 which is a freeze on assets abroad of an expanded list of  
26 individuals and companies involved in Iran's nuclear and  
27 ballistic missile programs and calls for nations and  
28 institutions to bar new grants or loans to Iran except for  
29 humanitarian and developmental purposes, and

30 WHEREAS, Iran's financial ability to pay its debts to  
31 foreign entities involved in the petroleum-energy sector

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1 amounting to more than \$20 million is put at risk by the Iran  
2 and Libya Sanctions Act embargo and sanctions, and

3           WHEREAS, foreign entities have invested in Iran's  
4 petroleum-energy sector despite United States and United  
5 Nations sanctions against Iran, and

6           WHEREAS, all United States and foreign entities that  
7 have invested more than \$20 million in Iran's energy sector  
8 since August 5, 1996, are subject to sanctions under United  
9 States law pursuant to the Iran and Libya Sanctions Act of  
10 1996, and

11           WHEREAS, United States renewed the Iran and Libya  
12 Sanctions Act of 1996 in 2001 and 2006, and

13           WHEREAS, while divestiture should be considered with  
14 the intent to improve investment performance and, by the rules  
15 of prudence, fiduciaries must take into account all relevant  
16 substantive factors in arriving at an investment decision, and

17           WHEREAS, divestiture from markets that are vulnerable  
18 to embargo, loan restrictions, and sanctions from the United  
19 States and the international community, including the United  
20 Nations Security Council, is in accordance with the rules of  
21 prudence, and

22           WHEREAS, the State of Florida is deeply concerned about  
23 investments in publicly traded companies that have business  
24 activities in and ties to Iran's petroleum-energy sector as a  
25 financial risk to the shareholders, and

26           WHEREAS, by investing in publicly traded companies  
27 having ties to Iran's petroleum-energy sector, the Florida  
28 State Board of Administration is putting the funds it oversees  
29 at substantial financial risk, and

30           WHEREAS, to protect Florida's assets, it is in the best  
31 interest of the state to enact a statutory prohibition

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1 regarding the investments managed by the State Board of  
2 Administration doing business in or with Iran's  
3 petroleum-energy sector, NOW, THEREFORE,

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