

Senate Bill No. 397

(By Senators Unger, Kessler (Mr. President) and Beach)

[Introduced February 28, 2013; referred to the Committee on
Government Organization; and then to the Committee on Finance.]

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §12-6D-1, §12-6D-2,
12 §12-6D-3, §12-6D-4, §12-6D-5, §12-6D-6, §12-6D-7, §12-6D-8 and
13 §12-6D-9, all relating to investments of the West Virginia
14 Investment Management Board; creating the Protecting West
15 Virginia’s Investments Act; providing legislative findings;
16 providing definitions; requiring the West Virginia Investment
17 Management Board to identify all companies in which public
18 moneys are invested that are doing certain types of
19 investments in Iran; requiring the board to create and
20 maintain certain scrutinized company lists that name all such
21 companies; providing that a company may be removed from the
22 list under certain conditions; providing for reintroduction of
23 a company onto the list; requiring the board to divest of all
24 directly held, publicly traded securities of a scrutinized

1 company under certain conditions; providing exceptions to the
2 divestment requirement; prohibiting the board from acquiring
3 securities of scrutinized companies that have certain active
4 investments; providing exceptions to the investment
5 prohibition; providing an additional exception from the
6 divestment requirement and the investment prohibition to
7 certain indirect holdings in actively managed investment
8 funds; requiring the board to file a report with each member
9 of the West Virginia Investment Management Board, the
10 President of the Senate and the Speaker of the House of
11 Delegates within a specified period after creation of each
12 scrutinized companies list; requiring the annual filing of an
13 updated report; requiring that the report contain certain
14 information; requiring annual updates to such reports when
15 applicable; requiring certain information to be included in
16 the investment policy statement; providing for severability;
17 and providing an effective date.

18 *Be it enacted by the Legislature of West Virginia:*

19 That the Code of West Virginia, 1931, as amended, be amended
20 by adding thereto a new article, designated §12-6D-1, §12-6D-2,
21 §12-6D-3, §12-6D-4, §12-6D-5, §12-6D-6, §12-6D-7, §12-6D-8 and
22 §12-6D-9, all to read as follows:

23 **ARTICLE 6D. PROTECTING WEST VIRGINIA'S INVESTMENTS ACT.**

24 **§12-6D-1. Short Title.**

1 This Act may be cited as the "Protecting West Virginia's
2 Investments Act."

3 **§12-6D-2. Legislative Findings.**

4 The West Virginia Legislature hereby makes the following
5 findings:

6 (a) That in 2001, the Securities and Exchange Commission (SEC)
7 determined that companies with business operations in
8 terrorist-sponsoring states are exposed to a special risk category
9 known as Global Security Risk: The risk to share value and
10 corporate reputation stemming from the intersection of a publicly
11 traded company's international business activities and
12 security-related concerns, such as terrorism and weapons
13 proliferation;

14 (b) That in response to the financial risk posed by
15 investments in companies doing business with a state that sponsors
16 terrorists, the Securities and Exchange Commission established its
17 Office of Global Security Risk to provide for enhanced disclosure
18 of material information regarding such companies;

19 (c) That according to the former chair of the United States
20 Securities and Exchange Commission Laura Unger, the fact that a
21 foreign company is doing material business with a country,
22 government, or entity on OFAC's sanctions list is, in the SEC
23 staff's view, substantially likely to be significant to a
24 reasonable investor's decision about whether to invest in that

1 company;

2 (d) That Iran tops the United States. State department's list
3 of state sponsors of terrorism, funding such groups as Hamas,
4 Hizballah, Islamic Jihad, as well as fueling the insurgency in Iraq
5 via its Al-Quds force;

6 (e) That the United States imposed sanctions on Iran by
7 designating the Islamic Revolutionary Guard Corps (IRGC), its
8 al-Quds Force and three state-owned banks as weapons proliferators
9 and supporters of terrorism;

10 (f) That the United Nations Security Council has twice voted
11 unanimously to impose sanctions on Iran for its failure to suspend
12 its uranium-enrichment activities calling for an additional embargo
13 on Iranian arms exports, which is a freeze on assets abroad of an
14 expanded list of individuals and companies involved in Iran's
15 nuclear and ballistic missile programs, and calls for nations and
16 institutions to bar new grants or loans to Iran except for
17 humanitarian and developmental purposes;

18 (g) That foreign entities have invested in Iran's
19 petroleum-energy sector despite United States and United Nations
20 sanctions against Iran;

21 (h) That all entities that have invested more than \$20 million
22 in any given year in Iran's petroleum sector since August 5, 1996
23 are subject to sanctions under United States law pursuant to the
24 Iran Sanctions Act of 1996;

1 (i) That the United States renewed the Iran Sanctions Act of
2 1996 in 2001 and 2006;

3 (j) That it is a fundamental responsibility of the State of
4 West Virginia to decide where, how, and by whom financial resources
5 in its control should be invested, taking into account numerous
6 pertinent factors;

7 (k) That divestiture should be considered with the intent to
8 improve investment performance and, by the rules of prudence,
9 fiduciaries must take into account all relevant substantive factors
10 in arriving at an investment decision;

11 (l) That the State of West Virginia is deeply concerned about
12 investments in publicly traded companies that have investments in
13 Iran's petroleum sector as a financial risk to the shareholders;

14 (m) That by investing in publicly traded companies having
15 investments in Iran's petroleum sector, the West Virginia
16 Investment Management Board is putting the funds it oversees at
17 substantial financial risk;

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

22 (o) That this article should remain in effect only insofar as
23 it continues to be consistent with and does not unduly interfere
24 with the foreign policy of the United States as determined by the

1 Federal Government; and

2 (p) That to protect West Virginia's assets, it is in the best
3 interest of the state to enact a statutory prohibition regarding
4 the investments managed by the West Virginia Investment Management
5 Board doing business in Iran's petroleum-energy sector.

6 **§12-6D-3. Definitions.**

7 As used in this article, the term:

8 (a) "Company" means any sole proprietorship, organization,
9 association, corporation, partnership, joint venture, limited
10 partnership, limited liability partnership, limited liability
11 company, or other entity or business association that exists for
12 the purpose of making profit.

13 (b) "Direct holdings" in a company means all securities of
14 that company that are held directly by the public fund or in an
15 account or fund in which the public fund owns all shares or
16 interests.

17 (c) "Government of Iran" means the government of Iran, its
18 instrumentalities, and companies owned or controlled by the
19 government of Iran.

20 (d) "Inactive business Activities" means the mere continued
21 holding or renewal of rights to property previously operated for
22 the purpose of generating revenues but not presently deployed for
23 such purpose.

24 (e) "Indirect holdings" in a company means all securities of

1 that company that are held in an account or fund, such as a mutual
2 fund, managed by one or more persons not employed by the public
3 fund, in which the public fund owns shares or interests together
4 with other investors not subject to the provisions of this article.

5 (f) "Iran" means the Islamic Republic of Iran.

6 (g) "Petroleum resources" means petroleum or natural gas.

7 (h) "Public fund" means all funds, assets, trustee, and other
8 designates controlled by article six of this chapter.

9 (i) "Scrutinized business Activities" means business
10 Activities that have resulted in a company becoming a scrutinized
11 company.

12 (j) "Scrutinized company" means any company that has, with
13 actual knowledge, on or after August 5, 1996, made an investment of
14 \$20 million or more in Iran's petroleum sector which directly or
15 significantly contributes to the enhancement of Iran's ability to
16 develop the petroleum resources of Iran.

17 (k) "Substantial action specific to Iran" means adopting,
18 publicizing, and implementing a formal plan to cease scrutinized
19 business Activities within one year and to refrain from any such
20 new business Activities.

21 **§12-6D-4. Identification of companies.**

22 (a) Within forty five days after the effective date of this
23 Act, the public fund shall make its best efforts to identify all
24 scrutinized companies in which the public fund has direct or

1 indirect holdings. Such efforts include: Reviewing and relying, as
2 appropriate in the public fund's judgment, on publicly available
3 information regarding companies that have invested more than \$20
4 million in any given year since August 5, 1996 in Iran's petroleum
5 energy sector, including information provided by nonprofit
6 organizations, research firms, international organizations, and
7 government entities;

8 (b) By the first meeting of the public fund following the
9 forty-five day period described in paragraph (a), the public fund
10 shall assemble all scrutinized companies that fit criteria
11 specified in subsection (j), section three of this article into a
12 "Scrutinized Companies with Activities in the Iran Petroleum Energy
13 Sector List."

14 (c) The public fund shall update and make publicly available
15 annually from the effective date of this article the Scrutinized
16 Companies with Activities in the Iran Petroleum Energy Sector List
17 based on evolving information from, among other sources, those
18 listed in subsection (a).

19 **§12-6D-5. Required Action.**

20 The public fund shall adhere to the following procedure for
21 assembling companies on the Scrutinized Companies with Activities
22 in the Iran Petroleum Energy Sector List:

23 (a) Engagement.--

24 (1) For each company in which the public fund has direct

1 holdings newly identified under subsection (b), section four of
2 this article, the public fund shall send a written notice informing
3 the company of its scrutinized company status and that it may
4 become subject to divestment by the public fund. The notice must
5 inform the company of the opportunity to clarify its Iran-related
6 Activities and encourage the company, within ninety days, to cease
7 its scrutinized business activities or convert such activities to
8 inactive business activities in order to avoid qualifying for
9 divestment by the public fund. Such notice shall be sent no later
10 than one hundred thirty-five days after the effective date of this
11 Act.

12 (2) If, within ninety days after the public fund's first
13 engagement with a company pursuant to this subsection, the company
14 announces by public disclosure substantial action specific to Iran,
15 the public fund may maintain its direct holdings, but the company
16 shall remain on the Scrutinized Companies with Activities in the
17 Iran Petroleum Energy Sector List pending completion of its
18 cessation of scrutinized business activities.

19 (b) Divestment.--

20 (1) If, after ninety days following the public fund's first
21 engagement with a company pursuant to subsection (a), the company
22 has not announced by public disclosure substantial action specific
23 to Iran, or the public fund determines or becomes aware that the
24 company continues to have scrutinized business activities, the

1 public fund within eight months after the expiration of such ninety
2 day period shall sell, redeem, divest, or withdraw all publicly
3 traded securities of the company from the public fund's direct
4 holdings.

5 (2) If the public fund determines or becomes aware that a
6 company that ceased scrutinized business activities following
7 engagement pursuant to subsection (a) has resumed such activities,
8 the public fund shall send a written notice to the company under
9 subsection (a) and this subsection also applies. The company also
10 shall be immediately reintroduced onto the Scrutinized Companies
11 with Activities in the Iran Petroleum Energy Sector List.

12 (3) The public fund shall monitor the scrutinized company that
13 has announced by public disclosure substantial action specific to
14 Iran and, if after one year the public fund determines or becomes
15 aware that the company has not implemented such plan, within three
16 months after the expiration of such one year period shall sell,
17 redeem, divest, or withdraw all publicly traded securities of the
18 company from the public fund's direct holdings, and the company
19 also shall be immediately reintroduced onto the Scrutinized
20 Companies with Activities in the Iran Petroleum Energy Sector List.

21 (c) Prohibition.--The public fund may not acquire securities
22 of companies on the Scrutinized Companies with Activities in the
23 Iran Petroleum Energy Sector List.

24 (d) Excluded securities.-- Notwithstanding the provisions of

1 this article, subsections (b) and (e) do not apply to the public
2 fund's indirect holdings. However, the public fund shall submit
3 letters to the managers of any managed investment funds containing
4 companies on the Scrutinized Companies with Activities in the Iran
5 Petroleum Energy Sector List that they consider removing such
6 companies from the fund or create a similar actively managed fund
7 having indirect holdings devoid of such companies. If the manager
8 creates a similar fund devoid of such securities or if such funds
9 are created elsewhere, the board shall determine within six months
10 whether to replace all applicable investments with investments in
11 the similar fund in an expedited time frame consistent with prudent
12 investing standards. For the purposes of this section, a private
13 equity fund is deemed to be an actively managed investment fund.

14 (e) Further exclusions.--Notwithstanding any other provision
15 of this article, the public fund, when discharging its
16 responsibility for operation of a defined contribution plan, shall
17 engage the manager of the investment offerings in such plans
18 requesting that they consider removing scrutinized companies from
19 the investment offerings or create an alternative investment
20 offering devoid of scrutinized companies. If the manager creates
21 an alternative investment offering or if such funds are created
22 elsewhere and is deemed by the public fund to be consistent with
23 prudent investor standards, the public fund shall, within three or
24 six months, consider including such investment offering in the plan.

1 **§12-6D-6. Reporting.**

2 (a) The public fund shall file a report with each member of the
3 West Virginia Investment Management Board, the Governor, the
4 President of the Senate, and the Speaker of the House of
5 Representatives that includes the Scrutinized Companies with
6 Activities in the Iran Petroleum Energy Sector List within thirty
7 days after the list is created. This report shall be made available
8 to the public.

9 (b) Annual meeting of the Board of Trustees thereafter, the
10 public fund shall file a report, which shall be made available to
11 the public and to each member of the West Virginia Investment
12 Management Board, the Governor, the President of the Senate and the
13 Speaker of the House of Representatives which includes:

14 (1) A summary of correspondence with companies engaged by the
15 public fund under subsection (a), section five of this article;

16 (2) All investments sold, redeemed, divested, or withdrawn in
17 compliance with subsection (b), section five of this article;

18 (3) All prohibited investments under subsection (c), section
19 five of this article;

20 (4) Any progress made under subsection (d), section five of
21 this article; and

22 (5) A list of all publicly traded securities held directly by
23 this state.

24 **§12-6D-7. Expiration.**

1 This article expires upon the occurrence of any of the
2 following:

3 (a) The Congress or President of the United States
4 affirmatively and unambiguously states, by means including, but not
5 limited to, legislation, executive order, or written certification
6 from the President to Congress, that the government of Iran has
7 ceased to pursue the capabilities to develop nuclear weapons and
8 support international terrorism;

9 (b) The United States revokes all sanctions imposed against the
10 government of Iran; or

11 (c) The Congress or President of the United States
12 affirmatively and unambiguously declares, by means including, but
13 not limited to, legislation, executive order, or written
14 certification from the President to Congress, that mandatory
15 divestment of the type provided for in this article interferes with
16 the conduct of United States foreign policy.

17 **§12-6D-8. Investment policy statement obligations.**

18 With respect to Actions taken in compliance with this article,
19 including all good faith determinations regarding companies as
20 required by this article, the public fund is exempt from any
21 conflicting statutory or common law obligations, including any such
22 obligations with respect to choice of asset managers, investment
23 funds, or investments for the public fund's securities portfolios.

24 **§12-6D-9. Severability.**

1 If any provision of this article or its application to any
2 person or circumstance is held invalid, the invalidity does not
3 affect other provisions or applications of the article that can be
4 given effect without the invalid provision or application, and to
5 this end the provisions of this article are severable. The
6 Legislature hereby declares that it would have passed this article
7 and each provision of this article, irrespective of the fact that
8 any one or more provisions of this article might be declared
9 invalid, illegal, unenforceable or unconstitutional, including, but
10 not limited to, each of the engagement, divestment, and prohibition
11 provisions of this article.

12

NOTE: The purpose of this bill is to require the West Virginia Investment Management Board to identify all companies in which public moneys are invested that are doing certain types of investments in Iran; to require the board to create and maintain certain scrutinized company lists that name all such companies; to require the board to divest of all directly-held, publicly traded securities of a scrutinized company under certain conditions; to require the board to file a report with each member of the West Virginia Investment Management Board, the President of the Senate, and the Speaker of the House of Representatives within a specified period after creation of each scrutinized companies list; and to require the annual filing of an updated report.

This article is new; therefore, strike-throughs and underscoring have been omitted.