



Rep. Lou Lang

Filed: 5/18/2007

09500SB1621ham001

LRB095 10598 AMC 36617 a

1 AMENDMENT TO SENATE BILL 1621

2 AMENDMENT NO. _____. Amend Senate Bill 1621 by inserting
3 the following immediately above the enacting clause:

4 "WHEREAS, A resolution of the United Nations Security
5 Council imposes sanctions on Iran for its failure to suspend
6 its uranium-enrichment activities; and

7 WHEREAS, The United Nations Security Council voted
8 unanimously for an additional embargo on Iranian arms exports,
9 which is a freeze on assets abroad of an expanded list of
10 individuals and companies involved in Iran's nuclear and
11 ballistic missile programs and calls for nations and
12 institutions to bar new grants or loans to Iran except for
13 humanitarian and developmental purposes; and

14 WHEREAS, Iran's financial ability to pay its debts to
15 foreign entities involved in the petroleum-energy sector
16 amounting to more than \$20 million is put at risk by the Iran

1 and Libya Sanctions Act embargo and sanctions; and

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

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

9 WHEREAS, The United States renewed the Iran and Libya
10 Sanctions Act of 1996 in 2001 and 2006; and

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

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

20 WHEREAS, The State of Illinois is deeply concerned about

1 investments in publicly traded companies that have business
2 activities in and ties to Iran's petroleum-energy sector as a
3 financial risk to the shareholders; and

4 WHEREAS, By investing in publicly traded companies having
5 ties to Iran's petroleum-energy sector, retirement systems are
6 putting the funds they oversee at substantial financial risk;
7 and

8 WHEREAS, to protect Illinois' assets, it is in the best
9 interest of the State to enact a statutory prohibition
10 regarding investments in or with Iran's petroleum-energy
11 sector; therefore"; and

12 by replacing everything after the enacting clause with the
13 following:

14 "Section 5. The Illinois Procurement Code is amended by
15 adding Section 50-36 as follows:

16 (30 ILCS 500/50-36 new)

17 Sec. 50-36. Disclosure of business in Iran.

18 (a) As used in this Section:

19 "Business operations" means engaging in commerce in any
20 form in Iran, including, but not limited to, acquiring,
21 developing, maintaining, owning, selling, possessing, leasing,

1 or operating equipment, facilities, personnel, products,
2 services, personal property, real property, or any other
3 apparatus of business or commerce.

4 "Company" means any sole proprietorship, organization,
5 association, corporation, partnership, joint venture, limited
6 partnership, limited liability partnership, limited liability
7 company, or other entity or business association, including all
8 wholly owned subsidiaries, majority-owned subsidiaries, parent
9 companies, or affiliates of those entities or business
10 associations, that exists for the purpose of making profit.

11 "Mineral-extraction activities" include exploring,
12 extracting, processing, transporting, or wholesale selling or
13 trading of elemental minerals or associated metal alloys or
14 oxides (ore), including gold, copper, chromium, chromite,
15 diamonds, iron, iron ore, silver, tungsten, uranium, and zinc,
16 as well as facilitating such activities, including, providing
17 supplies or services in support of such activities.

18 "Oil-related activities" include, but are not limited to,
19 owning rights to oil blocks; exporting, extracting, producing,
20 refining, processing, exploring for, transporting, selling, or
21 trading of oil; constructing, maintaining, or operating a
22 pipeline, refinery, or other oil-field infrastructure; and
23 facilitating such activities, including providing supplies or
24 services in support of such activities, except that the mere
25 retail sale of gasoline and related consumer products is not
26 considered an oil-related activity.

1 "Petroleum resources" means petroleum, petroleum
2 by-products, or natural gas.

3 "Substantial action" means adopting, publicizing, and
4 implementing a formal plan to cease scrutinized business
5 operations within one year and to refrain from any such new
6 business operations.

7 (b) Each bid, offer, or proposal submitted for a State
8 contract, other than a small purchase defined in Section 20-20,
9 shall include a disclosure of whether or not the bidder,
10 offeror, or proposing entity, or any of its corporate parents
11 or subsidiaries, within the 24 months before submission of the
12 bid, offer, or proposal had business operations that involved
13 contracts with or provision of supplies or services to the
14 Government of Iran, companies in which the Government of Iran
15 has any direct or indirect equity share, consortiums or
16 projects commissioned by the Government of Iran, or companies
17 involved in consortiums or projects commissioned by the
18 Government of Iran and:

19 (1) more than 10% of the company's revenues or assets
20 linked to Iran involve oil-related activities or
21 mineral-extraction activities; less than 75% of the
22 company's revenues or assets linked to Iran involve
23 contracts with or provision of oil-related or
24 mineral-extraction products or services to the Government
25 of Iran or a project or consortium created exclusively by
26 that government; and the company has failed to take

1 substantial action; or

2 (2) the company has, with actual knowledge, on or after
3 August 5, 1996, made an investment of \$20 million or more,
4 or any combination of investments of at least \$10 million
5 each that in the aggregate equals or exceeds \$20 million in
6 any 12-month period, that directly or significantly
7 contributes to the enhancement of Iran's ability to develop
8 petroleum resources of Iran.

9 (c) A bid, offer, or proposal that does not include the
10 disclosure required by subsection (b) shall not be considered
11 responsive. A chief procurement officer may consider the
12 disclosure when evaluating the bid, offer, or proposal or
13 awarding the contract.

14 (d) Each chief procurement officer shall provide the State
15 Comptroller with the name of each entity disclosed under
16 subsection (b) as doing business or having done business in
17 Iran. The State Comptroller shall post that information on his
18 or her official website.

19 Section 10. The Illinois Pension Code is amended by adding
20 Section 1-110.10 as follows:

21 (40 ILCS 5/1-110.10 new)

22 Sec. 1-110.10. Transactions prohibited by retirement
23 systems; Iran.

24 (a) As used in this Section:

1 "Active business operations" means all business operations
2 that are not inactive business operations.

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

9 "Company" means any sole proprietorship, organization,
10 association, corporation, partnership, joint venture, limited
11 partnership, limited liability partnership, limited liability
12 company, or other entity or business association, including all
13 wholly owned subsidiaries, majority-owned subsidiaries, parent
14 companies, or affiliates of those entities or business
15 associations, that exists for the purpose of making profit.

16 "Direct holdings" in a company means all securities of that
17 company that are held directly by the retirement system or in
18 an account or fund in which the retirement system owns all
19 shares or interests.

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

24 "Indirect holdings" in a company means all securities of
25 that company which are held in an account or fund, such as a
26 mutual fund, managed by one or more persons not employed by the

1 retirement system, in which the retirement system owns shares
2 or interests together with other investors not subject to the
3 provisions of this Section.

4 "Mineral-extraction activities" include exploring,
5 extracting, processing, transporting, or wholesale selling or
6 trading of elemental minerals or associated metal alloys or
7 oxides (ore), including gold, copper, chromium, chromite,
8 diamonds, iron, iron ore, silver, tungsten, uranium, and zinc,
9 as well as facilitating such activities, including, providing
10 supplies or services in support of such activities.

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

20 "Petroleum resources" means petroleum, petroleum
21 by-products, or natural gas.

22 Private market fund" means any private equity fund, private
23 equity fund of funds, venture capital fund, hedge fund, hedge
24 fund of funds, real estate fund, or other investment vehicle
25 that is not publicly traded.

26 "Retirement system" means the State Employees' Retirement

1 System of Illinois, the Judges Retirement System of Illinois,
2 the General Assembly Retirement System, the State Universities
3 Retirement System, and the Teachers' Retirement System of the
4 State of Illinois.

5 "Scrutinized company" means the company has business
6 operations that involve contracts with or provision of supplies
7 or services to the Government of Iran, companies in which the
8 Government of Iran has any direct or indirect equity share,
9 consortiums or projects commissioned by the Government of Iran,
10 or companies involved in consortiums or projects commissioned
11 by the Government of Iran and:

12 (1) more than 10% of the company's revenues or assets
13 linked to Iran involve oil-related activities or
14 mineral-extraction activities; less than 75% of the
15 company's revenues or assets linked to Iran involve
16 contracts with or provision of oil-related or
17 mineral-extraction products or services to the Government
18 of Iran or a project or consortium created exclusively by
19 that government; and the company has failed to take
20 substantial action; or

21 (2) the company has, with actual knowledge, on or after
22 August 5, 1996, made an investment of \$20 million or more,
23 or any combination of investments of at least \$10 million
24 each that in the aggregate equals or exceeds \$20 million in
25 any 12-month period, that directly or significantly
26 contributes to the enhancement of Iran's ability to develop

1 petroleum resources of Iran.

2 "Substantial action" means adopting, publicizing, and
3 implementing a formal plan to cease scrutinized business
4 operations within one year and to refrain from any such new
5 business operations.

6 (b) Within 90 days after the effective date of this
7 Section, a retirement system shall make its best efforts to
8 identify all scrutinized companies in which the retirement
9 system has direct or indirect holdings or could possibly have
10 such holdings in the future.

11 These efforts shall include the following:

12 (1) reviewing and relying, as appropriate in the
13 retirement system's judgment, on publicly available
14 information regarding companies having business operations
15 in Iran, including information provided by nonprofit
16 organizations, research firms, international
17 organizations, and government entities;

18 (2) contacting asset managers contracted by the
19 retirement system that invest in companies having business
20 operations in Iran; and

21 (3) Contacting other institutional investors that have
22 divested from or engaged with companies that have business
23 operations in Iran.

24 The retirement system may retain an independent research
25 firm to identify scrutinized companies in which the retirement
26 system has direct or indirect holdings. By the first meeting of

1 the retirement system following the 90-day period described in
2 this subsection (b), the retirement system shall assemble all
3 scrutinized companies identified into a scrutinized companies
4 list.

5 The retirement system shall update the scrutinized
6 companies list quarterly based on evolving information from,
7 among other sources, those listed in this subsection (b).

8 (c) The retirement system shall adhere to the following
9 procedures for companies on the scrutinized companies list:

10 (1) The retirement system shall immediately determine
11 the companies on the scrutinized companies list in which
12 the retirement system owns direct or indirect holdings.

13 (2) For each company identified in item (1) of this
14 subsection (c) that has only inactive business operations,
15 the retirement system shall send a written notice informing
16 the company of this Section and encouraging it to continue
17 to refrain from initiating active business operations in
18 Iran until it is able to avoid scrutinized business
19 operations. The retirement system shall continue such
20 correspondence semiannually.

21 (3) For each company newly identified in item (1) of
22 this subsection (c) that has active business operations,
23 the retirement system shall send a written notice informing
24 the company of its scrutinized company status and that it
25 may become subject to divestment by the retirement system.
26 The notice must inform the company of the opportunity to

1 clarify its Iran-related activities and encourage the
2 company, within 90 days, to cease its scrutinized business
3 operations or convert such operations to inactive business
4 operations in order to avoid qualifying for divestment by
5 the retirement system.

6 (4) If, within 90 days after the retirement system's
7 first engagement with a company pursuant to this subsection
8 (c), that company ceases scrutinized business operations,
9 the company shall be removed from the scrutinized companies
10 list and the provisions of this Section shall cease to
11 apply to it unless it resumes scrutinized business
12 operations. If, within 90 days after the retirement
13 system's first engagement, the company converts its
14 scrutinized active business operations to inactive
15 business operations, the company is subject to all
16 provisions relating thereto.

17 (d) If, after 90 days following the retirement system's
18 first engagement with a company pursuant to subsection (c), the
19 company continues to have scrutinized active business
20 operations, and only while such company continues to have
21 scrutinized active business operations, the retirement system
22 shall sell, redeem, divest, or withdraw all publicly traded
23 securities of the company, except as provided in paragraph (f),
24 from the retirement system's assets under management within 12
25 months after the company's most recent appearance on the
26 scrutinized companies list.

1 If a company that ceased scrutinized active business
2 operations following engagement pursuant to subsection (c)
3 resumes such operations, this subsection (d) immediately
4 applies, and the retirement system shall send a written notice
5 to the company. The company shall also be immediately
6 reintroduced onto the scrutinized companies list.

7 (e) The retirement system may not acquire securities of
8 companies on the scrutinized companies list that have active
9 business operations, except as provided in subsection(f).

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

15 (g) Notwithstanding the provisions of this Section,
16 paragraphs (d) and (e) do not apply to indirect holdings in a
17 private market fund. However, the retirement system shall
18 submit letters to the managers of those investment funds
19 containing companies that have scrutinized active business
20 operations requesting that they consider removing the
21 companies from the fund or create a similar actively managed
22 fund having indirect holdings devoid of the companies. If the
23 manager creates a similar fund, the retirement system shall
24 replace all applicable investments with investments in the
25 similar fund in an expedited timeframe consistent with prudent
26 investing standards.

1 (h) The retirement system shall file a report with the
2 Public Pension Division of the Department of Financial and
3 Professional Regulation that includes the scrutinized
4 companies list within 30 days after the list is created. This
5 report shall be made available to the public.

6 The retirement system shall file an annual report with the
7 Public Pension Division, which shall be made available to the
8 public, that includes all of the following:

9 (1) A summary of correspondence with companies engaged
10 by the retirement system under items (2) and (3) of
11 subsection (c).

12 (2) All investments sold, redeemed, divested, or
13 withdrawn in compliance with subsection (d).

14 (3) All prohibited investments under subsection (e).

15 (4) A summary of correspondence with private market
16 funds notified under subsection (g).

17 (i) This Section expires upon the occurrence of any of the
18 following:

19 (1) The United States revokes all sanctions imposed
20 against the Government of Iran.

21 (2) The Congress or President of the United States
22 declares that the Government of Iran has ceased to acquire
23 weapons of mass destruction and to support international
24 terrorism.

25 (3) The Congress or President of the United States,
26 through legislation or executive order, declares that

1 mandatory divestment of the type provided for in this
2 Section interferes with the conduct of United States
3 foreign policy.

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

11 (k) Notwithstanding any other provision of this Section to
12 the contrary, the retirement system may cease divesting from
13 certain scrutinized companies pursuant to subsection (d) or
14 reinvest in certain scrutinized companies from which it
15 divested pursuant to subsection (d) if clear and convincing
16 evidence shows that the value of all assets under management by
17 the retirement system becomes equal to or less than 99.50%, or
18 50 basis points, of the hypothetical value of all assets under
19 management by the retirement system assuming no divestment for
20 any company had occurred under subsection (d). Cessation of
21 divestment, reinvestment, or any subsequent ongoing investment
22 authorized by this Section is limited to the minimum steps
23 necessary to avoid the contingency set forth in this subsection
24 (k). For any cessation of divestment, reinvestment, or
25 subsequent ongoing investment authorized by this Section, the
26 retirement system shall provide a written report to the Public

1 Pension Division 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 Section does not apply to
7 reinvestment in companies on the grounds that they have ceased
8 to have scrutinized active business operations.

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

15 Section 99. Effective date. This Act takes effect upon
16 becoming law.".