

HOUSE BILL NO. 2

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES GATTO AND LYNN

Introduced: 1/18/11

Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain investments of the Alaska permanent fund, the state's
2 retirement systems, the State of Alaska Supplemental Annuity Plan, and the deferred
3 compensation program for state employees in certain companies that do business in
4 Iran, and restricting those investments; and providing for an effective date."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 37.10 is amended by adding new sections to read:

7 **Sec. 37.10.072. Iran divestment.** (a) The commissioner or a fiduciary of a
8 fund subject to this title may not invest in and shall cause the fund to divest ownership,
9 if any, in the publicly traded securities of a company that the commissioner places on
10 a list of scrutinized companies that conduct or have direct investments in business
11 operations in Iran. Divestment of an ownership interest in a scrutinized company shall
12 occur within 90 days after it is placed on the list created and updated under (c) of this
13 section if the investment is managed by the commissioner or fiduciary. On or before
14 January 31 of each year, if a fund has investments managed by an outside investment

1 manager, the fiduciary shall direct the investment manager not to invest in and to
2 divest, within 90 days after receiving the direction, ownership, if any, in the publicly
3 traded securities of a company that the commissioner places on a list of scrutinized
4 companies that conduct or have direct investments in business operations in Iran.

5 (b) If an investment in a fund under (a) of this section is managed as a
6 commingled investment or other business structure in which the fund is not the sole
7 owner of the investment interest or if the investment is an index fund, the provisions
8 of (a) of this section do not apply. The commissioner shall require that, on or before
9 January 31 of each year, the fiduciary submit letters to the managers of commingled
10 investments requesting the managers to consider removing from the commingled
11 investment any company on the list of scrutinized companies.

12 (c) The commissioner shall create and update quarterly, before the first day of
13 the immediately succeeding calendar quarter, a list of scrutinized companies.

14 (d) The commissioner shall make reasonable efforts to investigate publicly
15 traded companies to determine whether the company is a scrutinized company for the
16 purposes of this section. In conducting the investigation, the commissioner may use
17 the following:

18 (1) credible publicly available information regarding companies with
19 active business operations compiled by nonprofit organizations, research firms,
20 international organizations, and government entities;

21 (2) information supplied by institutional investors that have divested
22 from scrutinized companies.

23 (e) The commissioner shall provide written notice and an opportunity to
24 comment in writing to each company identified as a scrutinized company under (d) of
25 this section.

26 (f) The commissioner shall add a company identified under (d) of this section
27 to the list of scrutinized companies not earlier than 90 days after providing written
28 notice under (e) of this section, unless the company demonstrates to the commissioner
29 that it does not conduct or have direct investments in business operations in Iran that
30 exceed the \$20,000,000 threshold referred to in P.L. 104-172 (Iran Sanctions Act of
31 1996), as amended.

1 (g) The commissioner shall make every effort to avoid erroneously adding a
 2 company to the list of scrutinized companies. The commissioner shall verify that a
 3 company qualifies as a scrutinized company before adding it to the list of scrutinized
 4 companies.

5 (h) Annually, on or before January 31, the commissioner shall advise the
 6 president of the senate, the speaker of the house of representatives, and the United
 7 States presidential special envoy for Iran of the companies on the list of scrutinized
 8 companies.

9 (i) The commissioner may adopt regulations under AS 44.62 to carry out the
 10 purposes of the section.

11 (j) In this section,

12 (1) "business operations"

13 (A) means power production activities, mineral extraction
 14 activities, oil-related activities, or the production of military equipment;

15 (B) does not include operations that the company can
 16 demonstrate

17 (i) are conducted under a license from the United States
 18 Department of the Treasury, Office of Foreign Assets Control, or are
 19 expressly exempted from licensure under federal law;

20 (ii) consist of providing goods or services to an
 21 internationally recognized peacekeeping force or humanitarian
 22 organization;

23 (iii) consist of providing goods or services that are used
 24 only to promote health or education;

25 (iv) have been voluntarily suspended; or

26 (v) consist of the retail sale of petroleum products;

27 (2) "commissioner" means the commissioner of revenue;

28 (3) "direct investment" means an investment that directly and
 29 significantly contributes to the enhancement of Iran's ability to develop petroleum
 30 resources, military equipment, and nuclear capabilities;

31 (4) "Government of Iran" means the government of the Islamic

1 Republic of Iran or its instrumentalities or political subdivisions and companies owned
2 or controlled by the Islamic Republic of Iran;

3 (5) "military equipment"

4 (A) means weapons, arms, military supplies, and equipment
5 that readily may be used for military purposes;

6 (B) includes radar systems or military-grade transport vehicles,
7 supplies, or services sold or provided directly to a force actively participating
8 in armed conflict in Iran;

9 (6) "mineral extraction activities"

10 (A) means exploring, extracting, processing, transporting, or
11 wholesale selling or trading of elemental minerals, associated metal alloys,
12 oxides, or ore;

13 (B) includes activities involving gold, copper, chromium,
14 chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc;

15 (7) "oil-related activities" means

16 (A) exporting, extracting, producing, refining, processing,
17 exploring for, transporting, selling, or trading oil; and

18 (B) constructing, maintaining, or operating a pipeline, refinery,
19 or other oil field infrastructure;

20 (8) "power production activities" includes establishing power-
21 generating plants or hydroelectric dams, selling or installing components for the
22 project, or providing service contracts related to the installation or maintenance of the
23 project;

24 (9) "scrutinized company" means

25 (A) any company engaging in any and all active business
26 operations that are subject or liable to sanctions under P.L. 104-172 (Iran
27 Sanctions Act of 1996), as amended, and that involve the maintenance of a
28 company's existing assets or investments in Iran, or the deployment of new
29 investments to Iran that meet or exceed the \$20,000,000 threshold referred to
30 in P.L. 104-172 (Iran Sanctions Act of 1996), as amended; or

31 (B) the subsidiary of a company described in (A) of this

paragraph if the parent company holds a controlling interest in the subsidiary.

Sec. 37.10.073. Divestment exemptions, immunity, and indemnification.

For actions taken, or inaction done in good faith, in compliance with AS 37.10.072, the commissioner of revenue, a fiduciary, an agent, attorney, trustee, officer, employee, staff, custodian, research firm, or investment manager under contract of the commissioner of revenue or the fiduciary, and board members complying with AS 37.10.220 or AS 37.13.120 are

(1) exempt from a conflicting state statutory or common law obligation, including an obligation with respect to choice of an asset manager, investment fund, or investment for the securities portfolio of the public fund;

(2) immune from liability under state or local law;

(3) indemnified and held harmless by the State of Alaska from claims, demands, suits, actions, damages, judgments, costs, charges, and expenses, including costs and attorney fees, and against all liability, losses, and damages of any nature that the commissioner of revenue, the fiduciary, the agent, attorney, trustee, officer, employee, staff, custodian, research firm, or investment manager under contract of the commissioner of revenue or the fiduciary, or the board member may, at any time, sustain because of a decision to restrict, reduce, or eliminate an investment made in compliance with AS 37.10.072; and

(4) immune from adverse licensing actions under AS 08.

* **Sec. 2.** AS 37.10.220 is amended by adding a new subsection to read:

(d) The board shall comply with AS 37.10.072.

* **Sec. 3.** AS 37.13.120 is amended by adding a new subsection to read:

(f) The board shall comply with AS 37.10.072.

* **Sec. 4.** AS 37.10.072, 37.10.073, 37.10.220(d); and AS 37.13.120(f) are repealed on the day after

(1) Iran is removed from the United States Department of State's list of countries that have been determined to repeatedly provide for acts of international terrorism; or

(2) the United States Congress or the President of the United States, through legislation or executive order, declares that the Iran divestment authorized in AS 37.10.072

1 interferes with the conduct of United States foreign policy.

2 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 INITIAL IDENTIFICATION OF SCRUTINIZED COMPANIES. Within 90 days
5 after the effective date of this Act, the commissioner of revenue shall diligently work to
6 identify all scrutinized companies in which a fund under AS 37 has direct holdings. The
7 commissioner may use the sources in AS 37.10.072(d)(1) and (2), as enacted by sec. 1 of this
8 Act, as appropriate, to identify a scrutinized company.

9 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 NOTICE. Not later than 30 days after the enactment of this Act, the Department of
12 Law is directed to submit written notice to the Attorney General of the United States
13 describing this Act.

14 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).