

By: Senator(s) Collins, Gandy, Hill

To: Finance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2807

1 AN ACT TO ENACT THE IRAN DIVESTMENT ACT OF 2015; TO PROHIBIT
2 CERTAIN INVESTMENTS AND CONTRACTS WITH PERSONS DEEMED TO BE
3 ENGAGING IN INVESTMENT ACTIVITIES IN IRAN; TO DIRECT THE EXECUTIVE
4 DIRECTOR OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO
5 DEVELOP OR CONTRACT TO DEVELOP A LIST OF PERSONS HE DETERMINES
6 ENGAGES IN INVESTMENT ACTIVITIES IN IRAN; TO PROVIDE EXCEPTIONS TO
7 STATE CONTRACTING PROHIBITION; TO REQUIRE ANY PERSON CONTRACTING
8 WITH THE STATE TO CERTIFY THAT HE IS NOT IDENTIFIED ON A LIST
9 CREATED PURSUANT TO THIS ACT; TO PROVIDE APPLICATION OF THIS ACT
10 TO POLITICAL SUBDIVISIONS; TO PROVIDE INDEMNIFICATION OF EMPLOYEES
11 AND OFFICIALS FOR COMPLIANCE WITH THIS ACT; AND FOR RELATED
12 PURPOSES.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

14 **SECTION 1. Short title.** This act may be known and cited as
15 the "Iran Divestment Act of 2015."

16 **SECTION 2. Legislative findings.** (1) Congress and the
17 President have determined that the illicit nuclear activities of
18 the Government of Iran, combined with its development of
19 unconventional weapons and ballistic missiles, and its support of
20 international terrorism, represent a serious threat to the
21 security of the United States, Israel, and other United States
22 allies in Europe, the Middle East, and around the world.



23 (2) The International Atomic Energy Agency has repeatedly
24 called attention to Iran's unlawful nuclear activities, and, as a
25 result, the United Nations Security Council has adopted a range of
26 sanctions designed to encourage the Government of Iran to cease
27 those activities and comply with its obligations under the Treaty
28 on the Non-Proliferation of Nuclear Weapons.

29 (3) On July 1, 2010, President Barack Obama signed into law
30 H.R. 2194, the "Comprehensive Iran Sanctions, Accountability, and
31 Divestment Act of 2010" (Public Law 111-195), which expressly
32 authorizes states and local governments to prevent investment in,
33 including prohibiting entry into or renewing contracts with,
34 companies operating in Iran's energy sector with investments that
35 have the result of directly or indirectly supporting the efforts
36 of the Government of Iran to achieve nuclear weapons capability.

37 (4) The serious and urgent nature of the threat from Iran
38 demands that states, local governments and private institutions
39 work together with the federal government and American allies to
40 do everything possible diplomatically, politically and
41 economically to prevent Iran from acquiring nuclear weapons
42 capability.

43 (5) Respect for human rights in Iran has steadily
44 deteriorated as demonstrated by transparently fraudulent elections
45 and the brutal repression and murder, arbitrary arrests, and show
46 trials of peaceful dissidents.



47 (6) The concerns of the State of Mississippi regarding Iran
48 are strictly the result of the actions of the Government of Iran
49 and should not be construed as enmity towards the Iranian people.

50 (7) In order to effectively address the need for this state
51 to respond to the policies of Iran in a uniform fashion,
52 prohibiting contracts with persons engaged in investment
53 activities in the energy sector of Iran must be accomplished on a
54 statewide basis.

55 (8) It is the intent of the Legislature to fully implement
56 the authority granted under Section 202 of the Comprehensive Iran
57 Sanctions, Accountability, and Divestment Act of 2010 (Public Law
58 111-195).

59 **SECTION 3. Definitions.** As used in this act, unless the
60 context clearly requires otherwise:

61 (a) "Energy sector of Iran" means activities to develop
62 petroleum or natural gas resources or nuclear power in Iran.

63 (b) "Expense" means all explicit costs associated with
64 divesting of investments, including, but not limited to, trading
65 costs, brokerage commissions, and any realized losses, and all
66 implicit costs, including, but not limited to, lost opportunity
67 costs resulting from the prohibition from making certain
68 investments.

69 (c) "Financial institution" means the term as used in
70 Section 14 of the Iran Sanctions Act of 1996 (Public Law 104-172;
71 50 USC 1701 note).



72 (d) "Investment" means a commitment or contribution of
73 funds or property, whatever the source, a loan or other extension
74 of credit, and the entry into or renewal of a contract for goods
75 or services. It does not include indirect beneficial ownership
76 through index funds, commingled funds, limited partnerships,
77 derivative instruments, or the like.

78 (e) "Iran" includes the Government of Iran and any
79 agency or instrumentality of Iran.

80 (f) "Person" means any of the following:

81 (i) A natural person, corporation, company,
82 limited liability company, business association, partnership,
83 society, trust, or any other nongovernmental entity, organization,
84 or group;

85 (ii) Any governmental entity or instrumentality of
86 a government, including a multilateral development institution, as
87 defined in Section 1701(c)(3) of the International Financial
88 Institutions Act (22 USC Section 262r(c)(3));

89 (iii) Any successor, subunit, parent entity, or
90 subsidiary of, or any entity under common ownership or control
91 with, any entity described in subparagraphs (i) and (ii) of this
92 paragraph.

93 (g) "State agency" means each state board, commission,
94 department, executive department or officer, institution, and
95 instrumentality.

96 **SECTION 4. Inapplicability to small procurement contracts.**



97 This act does not apply to a procurement or contract valued at One
98 Thousand Dollars (\$1,000.00) or less.

99 **SECTION 5. Persons engaged in investment activities.** For
100 purposes of this act, a person engages in investment activities in
101 Iran if the person provides goods or services valued at Twenty
102 Million Dollars (\$20,000,000.00) or more in the energy sector of
103 Iran, including a person that provides oil or liquefied natural
104 gas tankers or products used to construct or maintain pipelines
105 used to transport oil or liquefied natural gas for the energy
106 sector of Iran.

107 **SECTION 6. Duties of the Executive Director of the**
108 **Department of Finance and Administration.** (1) (a) No more than
109 one hundred twenty (120) days after the effective date of this
110 act, the Executive Director of the Department of Finance and
111 Administration shall develop or contract to develop, using
112 credible information available to the public, a list of persons it
113 determines engages in investment activities in Iran as described
114 in this section. If the executive director has contracted to
115 develop the list, the list shall be finally developed no more than
116 one hundred twenty (120) days after the effective date of this
117 act. The list, when completed, shall be posted on the website of
118 the Department of Finance and Administration.

119 (b) The executive director shall update the list every
120 one hundred eighty (180) days.



121 (c) Before finalizing an initial list or an updated
122 list, the executive director must do all of the following before a
123 person is included on the list:

124 (i) Provide ninety (90) days' written notice of
125 the executive director's intent to include the person on the list.
126 The notice shall inform the person that inclusion on the list
127 would make the person ineligible to contract with the state. The
128 notice shall specify that the person, if it ceases its engagement
129 in investment activities in Iran, may be removed from the list.

130 (ii) The executive director shall provide a person
131 with an opportunity to comment in writing that it is not engaged
132 in investment activities in Iran. If the person demonstrates to
133 the executive director that the person is not engaged in
134 investment activities in Iran, the person shall not be included on
135 the list.

136 (d) The executive director shall make every effort to
137 avoid erroneously including a person on the list.

138 (2) A person that is identified on a list created pursuant
139 to subsection (1) of this section as a person engaging in
140 investment activities in Iran as described in Section 5 of this
141 act, is ineligible to contract with the state.

142 (3) Any contract entered into with a person that is
143 ineligible to contract with the state shall be void a initio.

144 **SECTION 7. Exceptions to state contracting prohibition.**

145 Notwithstanding Section 6 of this act, a person engaged in



146 investment activities in Iran as described in Section 5 of this
147 act may contract with the state, on a case-by-case basis, if:

148 (a) The investment activities in Iran were made before
149 the effective date of this act, the investment activities in Iran
150 have not been expanded or renewed after the effective date of this
151 act, and the person has adopted, publicized, and is implementing a
152 formal plan to cease the investment activities in Iran and to
153 refrain from engaging in any new investments in Iran; or

154 (b) The state agency makes a determination that the
155 commodities or services are necessary to perform its functions and
156 that, absent such an exemption, the state agency would be unable
157 to obtain the commodities or services for which the contract is
158 offered. Such determination shall be entered into the procurement
159 record.

160 **SECTION 8. Certification required.** (1) A state agency or
161 entity shall require a person that attempts to contract with the
162 state, including a contract renewal or assumption, to certify, at
163 the time the bid is submitted or the contract is entered into,
164 renewed, or assigned, that the person or the assignee is not
165 identified on a list created pursuant to Section 6 of this act. A
166 state agency shall include certification information in the
167 procurement record.

168 (2) A person that contracts with the state, including a
169 contract renewal or assumption, shall not utilize, on the contract



170 with the state agency or entity, any subcontractor that is
171 identified on a list created pursuant to Section 6 of this act.

172 (3) Upon receiving information that a person who has made
173 the certification required by subsection (1) is in violation
174 thereof, the state agency or entity shall review such information
175 and offer the person an opportunity to respond. If the person
176 fails to demonstrate that it has ceased its engagement in the
177 investment which is in violation of this act within ninety (90)
178 days after the determination of such violation, then the state
179 agency or entity shall take such action as may be appropriate and
180 provided for by law, rule, or contract, including, but not limited
181 to, imposing sanctions, seeking compliance, recovering damages, or
182 declaring the contractor in default.

183 **SECTION 9. Annual reporting by the Executive Director of the**
184 **Department of Finance and Administration.** The executive director
185 shall report to the Governor, Lieutenant Governor, and the Speaker
186 of the House of Representatives annually by October 1st, on the
187 status of the federal "Comprehensive Iran Sanctions,
188 Accountability, and Divestment Act of 2010" (Public Law 111-195),
189 the "Iran Divestment Act of 2015," and any rules or regulations
190 adopted thereunder.

191 **SECTION 10. Application to political subdivisions.** A person
192 that is identified on a list created pursuant to Section 6 of this
193 act as a person engaging in investment activities in Iran as
194 described in Section 5 of this act shall be ineligible to contract



195 with any political subdivision of this state and any contract
196 entered into with a political subdivision of this state shall be
197 void ab initio.

198 **SECTION 11. Certification required.** After this act takes
199 effect, every bid or proposal made to a political subdivision of
200 the state or any public department, agency or official thereof
201 where competitive bidding is required by statute, rule,
202 regulation, or local law, for work or services performed or to be
203 performed or goods sold or to be sold, shall contain the following
204 statement subscribed by the bidder and affirmed by such bidder as
205 true under the penalties of perjury: "By submission of this bid,
206 each bidder and each person signing on behalf of any bidder
207 certifies, and in the case of a joint bid each party thereto
208 certifies as to its own organization, under penalty of perjury,
209 that to the best of its knowledge and belief that each bidder is
210 not on the list created pursuant to Section 6 of this act."

211 (2) Notwithstanding subsection (1) of this section, the
212 statement of noninvestment in the Iranian energy sector may be
213 submitted electronically.

214 (3) A bid shall not be considered for award nor shall any
215 award be made where the condition set forth in subsection (1) of
216 this section has not been complied with; provided, however, that
217 if in any case the bidder cannot make the foregoing certification,
218 the bidder shall so state and shall furnish with the bid a signed
219 statement which sets forth in detail the reasons therefor. A



220 political subdivision may award a bid to a bidder who cannot make
221 the certification pursuant to subsection (1) of this section, on a
222 case-by-case basis, if:

223 (a) The investment activities in Iran were made before
224 the effective date of this act, the investment activities in Iran
225 have not been expanded or renewed after the effective date of this
226 act, and the person has adopted, publicized, and is implementing a
227 formal plan to cease the investment activities in Iran and to
228 refrain from engaging in any new investments in Iran; or

229 (b) The political subdivision makes a determination
230 that the goods or services are necessary for the political
231 subdivision to perform its functions and that, absent such an
232 exemption, the political subdivision would be unable to obtain the
233 goods or services for which the contract is offered. Such
234 determination shall be made in writing and shall be a public
235 document.

236 **SECTION 12. Limitation on retirement and State Treasury**
237 **investments.** (1) Neither the Public Employees' Retirement System
238 of Mississippi or the State Treasurer may invest funds with a
239 person that is identified on a list created pursuant to Section 6
240 of this act as a person engaging in investment activities in Iran
241 as described in Section 5 of this act.

242 (2) Any existing investments in violation of subsection (1)
243 as of the effective date of this act must be divested when prudent
244 to do so but within a period not to exceed one hundred twenty



245 (120) days after the posting is made on the website of the
246 Department of Finance and Administration.

247 **SECTION 13. Exception to investment prohibition.**

248 Notwithstanding Section 12 of this act, an investment may be made
249 in a person engaged in investment activities in Iran as described
250 in Section 5 of this act, on a case-by-case basis, if:

251 (a) The investment activities in Iran were made before
252 the effective date of this act, the investment activities in Iran
253 have not been expanded or renewed after the effective date of this
254 act, and the person has adopted, publicized, and is implementing a
255 formal plan to cease the investment activities in Iran and to
256 refrain from engaging in any new investments in Iran; or

257 (b) The investor makes a determination that the
258 investments are necessary to perform its functions.

259 **SECTION 14. Limitation of act due to fiduciary obligations.**

260 Nothing in this act requires the Public Employees' Retirement
261 System of Mississippi or its agents to take action as described in
262 this act unless it is determined, in good faith, that the action
263 described in this act is consistent with the fiduciary
264 responsibilities of the Public Employees' Retirement System of
265 Mississippi or its agents and there are appropriated funds of the
266 state to absorb the expenses necessary to implement this act.

267 **SECTION 15. Indemnification of employees and officials for**
268 **compliance with this act.** Present, future and former board
269 members, officers and employees of the Department of Finance and



270 Administration, the Public Employees' Retirement System of
271 Mississippi, and agents retained by the commission, as well as
272 present, future and former State Treasurers, officers and
273 employees of the State Treasurer, and agents retained by the State
274 Treasurer must be indemnified from the General Fund of the state
275 and held harmless by the state from all claims, demands, suits,
276 actions, damages, judgments, costs, charges and expenses,
277 including court costs and attorney's fees, and against all
278 liability, losses, and damages of any nature whatsoever that these
279 present, future, or former board members, officers, employees,
280 agents or contract investment managers shall or may at any time
281 sustain by reason of any decision to restrict, reduce or eliminate
282 investments pursuant to this act.

283 **SECTION 16.** Continued application of this act. The
284 restrictions provided for in this act apply only until:

285 (a) The President or Congress of the United States, by
286 means including, but not limited to, legislation, executive order,
287 or written certification, declares that divestment of the type
288 provided for in this act interferes with the conduct of United
289 States' foreign policy; or

290 (b) The United States revokes its current sanctions
291 against Iran.

292 **SECTION 17.** Notice to the Attorney General of the United
293 States. The Secretary of State, in consultation with the
294 Mississippi Attorney General, shall submit to the Attorney General



295 of the United States a written notice describing this act within
296 thirty (30) days after the effective date of this act.

297 **SECTION 18. Severability.** If any section, subsection,
298 paragraph, subparagraph, sentence, clause, phrase or word of this
299 act is for any reason held to be unconstitutional or invalid, such
300 holding shall not affect the constitutionality or validity of the
301 remaining portions of this act, the Legislature hereby declaring
302 that it would have passed this act, and each and every section,
303 subsection, paragraph, subparagraph, sentence, clause, phrase and
304 word thereof, irrespective of the fact that any one or more other
305 sections, subsections, paragraphs, subparagraphs, sentences,
306 clauses, phrases or words hereof may be declared to be
307 unconstitutional, invalid or otherwise ineffective.

308 **SECTION 19.** This act shall take effect and be in force from
309 and after July 1, 2015, and shall stand repealed from and after
310 June 30, 2015.

