S T A T E O F N E W Y O R K

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I N A S S E M B L Y

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Introduced by M. of A. SILVER, FARRELL, CANESTRARI, LAVINE, WEINSTEIN, ENGLEBRIGHT, GLICK, MORELLE, P. RIVERA, CAHILL -- Multi-Sponsored by -- M. of A. BENEDETTO, BRAUNSTEIN, BRINDISI, COLTON, COOK, CRESPO, CYMBROWITZ, DINOWITZ, ESPINAL, GABRYSZAK, GOLDFEDER, GOTTFRIED, HOOPER, JACOBS, LANCMAN, LATIMER, LIFTON, MAGEE, MAISEL, MARKEY, McENENY, NOLAN, ORTIZ, PAULIN, PEOPLES-STOKES, REILLY, ROBERTS, RYAN, SCARBOROUGH, SCHIMEL, SIMANOWITZ, SIMOTAS, SPANO, SWEENEY, THIELE, TITONE, WEISENBERG -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law and the general municipal law, in relation to enacting the Iran divestment act of 2012

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "Iran Divestment Act of 2012".

S 2. The legislature hereby finds and declares all of the following:

(a) In imposing United States sanctions on Iran, Congress and the President have determined that the illicit nuclear activities of the Government of Iran, combined with its development of unconventional weapons and ballistic missiles, and its support of international terrorism, represent a serious threat to the security of the United States, Israel, and other United States allies in Europe, the Middle East, and around the world.

(b) The International Atomic Energy Agency has repeatedly called attention to Iran's unlawful nuclear activities, and, as a result, the United Nations Security Council has adopted a range of sanctions designed to encourage the government of Iran to cease those activities and comply with its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons (commonly known as the "Nuclear Non-Proliferation Treaty").

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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

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

(e) The human rights situation in Iran has steadily deteriorated as punctuated by transparently fraudulent elections and the brutal repression and murder, arbitrary arrests, and show trials of peaceful dissidents.

(f) The concerns of the state of New York regarding Iran are strictly the result of the actions of the government of Iran and should not be construed as enmity towards the Iranian people.

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

(h) It is the intent of the legislature to implement the authority granted under Section 202 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111-195).

S 3. The state finance law is amended by adding a new section 165-a to read as follows:

S 165-A. IRAN DIVESTMENT. 1. AS USED IN THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(A) "ENERGY SECTOR" OF IRAN MEANS ACTIVITIES TO DEVELOP PETROLEUM OR NATURAL GAS RESOURCES OR NUCLEAR POWER IN IRAN.

(B) "FINANCIAL INSTITUTION" MEANS THE TERM AS USED IN SECTION 14 OF THE IRAN SANCTIONS ACT OF 1996 (PUBLIC LAW 104-172; 50 U.S.C. 1701 NOTE).

(C) "INVESTMENT" MEANS A COMMITMENT OR CONTRIBUTION OF FUNDS OR PROPERTY, A LOAN OR OTHER EXTENSION OF CREDIT; AND THE ENTRY INTO OR RENEWAL OF A CONTRACT FOR GOODS OR SERVICES.

(D) "IRAN" INCLUDES THE GOVERNMENT OF IRAN AND ANY AGENCY OR INSTRUMENTALITY OF IRAN.

(E) "PERSON" MEANS ANY OF THE FOLLOWING:

(1) A NATURAL PERSON, CORPORATION, COMPANY, LIMITED LIABILITY COMPANY, BUSINESS ASSOCIATION, PARTNERSHIP, SOCIETY, TRUST, OR ANY OTHER NONGOVERNMENTAL ENTITY, ORGANIZATION, OR GROUP.

(2) ANY GOVERNMENTAL ENTITY OR INSTRUMENTALITY OF A GOVERNMENT, INCLUDING A MULTILATERAL DEVELOPMENT INSTITUTION, AS DEFINED IN SECTION 1701(C)(3) OF THE INTERNATIONAL FINANCIAL INSTITUTIONS ACT (22 U.S.C. 262R(C)(3)).

(3) ANY SUCCESSOR, SUBUNIT, PARENT ENTITY, OR SUBSIDIARY OF, OR ANY ENTITY UNDER COMMON OWNERSHIP OR CONTROL WITH, ANY ENTITY DESCRIBED IN SUBPARAGRAPH ONE OR TWO OF THIS PARAGRAPH.

2. FOR PURPOSES OF THIS SECTION, A PERSON ENGAGES IN INVESTMENT ACTIVITIES IN IRAN IF:

(A) THE PERSON PROVIDES GOODS OR SERVICES OF TWENTY MILLION DOLLARS OR MORE IN THE ENERGY SECTOR OF IRAN, INCLUDING A PERSON THAT PROVIDES OIL

OR LIQUEFIED NATURAL GAS TANKERS, OR PRODUCTS USED TO CONSTRUCT OR MAINTAIN PIPELINES USED TO TRANSPORT OIL OR LIQUEFIED NATURAL GAS, FOR THE ENERGY SECTOR OF IRAN; OR

(B) THE PERSON IS A FINANCIAL INSTITUTION THAT EXTENDS TWENTY MILLION DOLLARS OR MORE IN CREDIT TO ANOTHER PERSON, FOR FORTY-FIVE DAYS OR MORE, IF THAT PERSON WILL USE THE CREDIT TO PROVIDE GOODS OR SERVICES IN THE ENERGY SECTOR IN IRAN AND IS IDENTIFIED ON A LIST CREATED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION THREE OF THIS SECTION AS A PERSON ENGAGING IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION.

3. (A) (1) A PERSON THAT IS IDENTIFIED ON A LIST CREATED PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION AS A PERSON ENGAGING IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, SHALL NOT BE DEEMED A RESPONSIVE BIDDER OR OFFERER PURSUANT TO SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE.

(2) A PERSON THAT ENGAGES IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION SHALL NOT BE DEEMED A RESPONSIVE BIDDER OR OFFERER PURSUANT TO SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE.

(B) (1) NOT LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE COMMISSIONER SHALL, USING CREDIBLE INFORMATION AVAILABLE TO THE PUBLIC, DEVELOP, OR CONTRACT TO DEVELOP, A LIST OF PERSONS IT DETERMINES ENGAGE IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION.

(2) THE COMMISSIONER SHALL UPDATE THE LIST EVERY ONE HUNDRED EIGHTY DAYS.

(3) BEFORE FINALIZING AN INITIAL LIST PURSUANT TO SUBPARAGRAPH ONE OF THIS PARAGRAPH OR AN UPDATED LIST PURSUANT TO SUBPARAGRAPH TWO OF THIS PARAGRAPH, THE COMMISSIONER SHALL DO ALL OF THE FOLLOWING BEFORE A PERSON IS INCLUDED ON THE LIST:

(A) PROVIDE NINETY DAYS' WRITTEN NOTICE OF THE COMMISSIONER'S INTENT TO INCLUDE THE PERSON ON THE LIST. THE NOTICE SHALL INFORM THE PERSON THAT INCLUSION ON THE LIST WOULD MAKE THE PERSON A NON-RESPONSIVE BIDDER OR OFFERER PURSUANT TO SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE. THE NOTICE SHALL SPECIFY THAT THE PERSON, IF IT CEASES ITS ENGAGEMENT IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, MAY BE REMOVED FROM THE LIST.

(B) THE COMMISSIONER SHALL PROVIDE A PERSON WITH AN OPPORTUNITY TO COMMENT IN WRITING THAT IT IS NOT ENGAGED IN INVESTMENT ACTIVITIES IN IRAN. IF THE PERSON DEMONSTRATES TO THE COMMISSIONER THAT THE PERSON IS NOT ENGAGED IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, THE PERSON SHALL NOT BE INCLUDED ON THE LIST.

(4) THE COMMISSIONER SHALL MAKE EVERY EFFORT TO AVOID ERRONEOUSLY INCLUDING A PERSON ON THE LIST.

(5) A PERSON THAT HAS A CONTRACT WITH THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM, THE NEW YORK STATE AND LOCAL POLICE AND FIRE RETIREMENT SYSTEM, OR THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM, SHALL NOT BE DEEMED A PERSON THAT ENGAGES IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED BY SUBDIVISION TWO OF THIS SECTION ON THE BASIS OF THOSE INVESTMENTS WITH SUCH RETIREMENT SYSTEMS, PROVIDED HOWEVER, THAT NOTHING IN THIS SUBPARAGRAPH SHALL PREVENT THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM, NEW YORK STATE AND LOCAL POLICE AND FIRE RETIREMENT SYSTEM OR THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM FROM PURSUING A POLICY OF DIVESTMENT IN THE IRANIAN ECONOMY.

(C) NOTWITHSTANDING PARAGRAPH (A) OF THIS SUBDIVISION, A STATE AGENCY MAY PERMIT A PERSON ENGAGED IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED BY SUBDIVISION TWO OF THIS SECTION TO BE DEEMED A RESPONSIVE BIDDER OR OFFERER, ON A CASE-BY-CASE BASIS WITH A STATE AGENCY IF:

(1) THE INVESTMENT ACTIVITIES IN IRAN WERE MADE BEFORE THE EFFECTIVE DATE OF THIS SECTION, THE INVESTMENT ACTIVITIES IN IRAN HAVE NOT BEEN EXPANDED OR RENEWED AFTER THE EFFECTIVE DATE OF THIS SECTION, AND THE PERSON HAS ADOPTED, PUBLICIZED, AND IS IMPLEMENTING A FORMAL PLAN TO CEASE THE INVESTMENT ACTIVITIES IN IRAN AND TO REFRAIN FROM ENGAGING IN ANY NEW INVESTMENTS IN IRAN; OR

(2) THE STATE AGENCY MAKES A PUBLIC FINDING THAT THE COMMODITIES OR SERVICES ARE NECESSARY FOR THE STATE AGENCY TO PERFORM ITS FUNCTIONS AND THAT, ABSENT SUCH AN EXEMPTION, THE STATE AGENCY WOULD BE UNABLE TO OBTAIN THE COMMODITIES OR SERVICES FOR WHICH THE CONTRACT IS OFFERED. SUCH FINDING SHALL BE ENTERED INTO THE PROCUREMENT RECORD.

4. A STATE AGENCY SHALL REQUIRE A PERSON THAT SUBMITS A BID OR PROPOSAL, OR OTHERWISE PROPOSES TO ENTER INTO OR RENEW A CONTRACT WITH A STATE AGENCY WITH RESPECT TO A CONTRACT FOR COMMODITIES OR SERVICES TO CERTIFY, AT THE TIME THE BID IS SUBMITTED OR THE CONTRACT IS RENEWED, THAT THE PERSON IS NOT IDENTIFIED ON A LIST CREATED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION THREE OF THIS SECTION AS A PERSON ENGAGING IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, OR AS A PERSON DESCRIBED IN PARAGRAPH (B) OF SUCH SUBDIVISION, AS APPLICABLE. A STATE AGENCY SHALL INCLUDE CERTIFICATION INFORMATION IN THE PROCUREMENT RECORD.

5. UPON RECEIVING INFORMATION THAT A PERSON WHO HAS MADE THE CERTIFICATION REQUIRED BY SUBDIVISION FOUR OF THIS SECTION IS IN VIOLATION THEREOF, THE STATE AGENCY SHALL REVIEW SUCH INFORMATION AND OFFER THE PERSON AN OPPORTUNITY TO RESPOND. IF THE STATE AGENCY FINDS THAT A VIOLATION HAS OCCURRED, IT SHALL TAKE SUCH ACTION AS MAY BE APPROPRIATE AND PROVIDED FOR BY LAW, RULE OR CONTRACT, INCLUDING, BUT NOT LIMITED TO, IMPOSING SANCTIONS, SEEKING COMPLIANCE, RECOVERING DAMAGES OR DECLARING THE CONTRACTOR IN DEFAULT.

6. THE COMMISSIONER SHALL REPORT TO THE GOVERNOR AND THE LEGISLATURE ANNUALLY ON OR BEFORE OCTOBER FIRST, ON THE STATUS OF THE FEDERAL "COMPREHENSIVE IRAN SANCTIONS, ACCOUNTABILITY, AND DIVESTMENT ACT OF 2010" (PUBLIC LAW 111-195), "THE IRAN DIVESTMENT ACT OF 2012", AND ANY RULES OR REGULATIONS ADOPTED THEREUNDER.

S 4. The general municipal law is amended by adding a new section 103-g to read as follows:

S 103-G. IRANIAN ENERGY SECTOR DIVESTMENT. 1. AS USED IN THIS SECTION.

A. "ENERGY SECTOR" SHALL HAVE THE SAME MEANING AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FIVE-A OF THE STATE FINANCE LAW.

B. "FINANCIAL INSTITUTION" SHALL HAVE THE SAME MEANING AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FIVE-A OF THE STATE FINANCE LAW.

C. "INVESTMENT" SHALL HAVE THE SAME MEANING AS DEFINED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FIVE-A OF THE STATE FINANCE LAW.

D. "IRAN" SHALL HAVE THE SAME MEANING AS DEFINED IN PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FIVE-A OF THE STATE FINANCE LAW.

E. "PERSON" SHALL HAVE THE SAME MEANING AS DEFINED IN PARAGRAPH (E) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FIVE-A OF THE STATE FINANCE LAW.

2. FOR PURPOSES OF THIS SECTION, A PERSON ENGAGES IN INVESTMENT ACTIVITIES IN IRAN IF:

A. THE PERSON PROVIDES GOODS OR SERVICES OF TWENTY MILLION DOLLARS OR MORE IN THE ENERGY SECTOR OF IRAN, INCLUDING A PERSON THAT PROVIDES OIL OR LIQUEFIED NATURAL GAS TANKERS, OR PRODUCTS USED TO CONSTRUCT OR MAINTAIN PIPELINES USED TO TRANSPORT OIL OR LIQUEFIED NATURAL GAS, FOR THE ENERGY SECTOR OF IRAN; OR

B. THE PERSON IS A FINANCIAL INSTITUTION THAT EXTENDS TWENTY MILLION DOLLARS OR MORE IN CREDIT TO ANOTHER PERSON, FOR FORTY-FIVE DAYS OR MORE, IF THAT PERSON WILL USE THE CREDIT TO PROVIDE GOODS OR SERVICES IN THE ENERGY SECTOR IN IRAN.

3. A. A PERSON THAT IS IDENTIFIED ON A LIST CREATED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION THREE OF SECTION ONE HUNDRED SIXTY-FIVE-A OF THE STATE FINANCE LAW AS A PERSON ENGAGING IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN PARAGRAPH A OF SUBDIVISION TWO OF THIS SECTION, SHALL NOT BE DEEMED A RESPONSIBLE BIDDER OR OFFERER PURSUANT TO SECTION ONE HUNDRED THREE OF THIS ARTICLE.

B. A PERSON THAT ENGAGES IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN PARAGRAPH B OF SUBDIVISION TWO OF THIS SECTION SHALL NOT BE DEEMED A RESPONSIBLE BIDDER OR OFFERER PURSUANT TO SECTION ONE HUNDRED THREE OF THIS ARTICLE.

4. EVERY BID OR PROPOSAL HEREAFTER MADE TO A POLITICAL SUBDIVISION OF THE STATE OR ANY PUBLIC DEPARTMENT, AGENCY OR OFFICIAL THEREOF WHERE COMPETITIVE BIDDING IS REQUIRED BY STATUTE, RULE, REGULATION OR LOCAL LAW, FOR WORK OR SERVICES PERFORMED OR TO BE PERFORMED OR GOODS SOLD OR TO BE SOLD, SHALL CONTAIN THE FOLLOWING STATEMENT SUBSCRIBED BY THE BIDDER AND AFFIRMED BY SUCH BIDDER AS TRUE UNDER THE PENALTIES OF PERJURY:

A. "BY SUBMISSION OF THIS BID, EACH BIDDER AND EACH PERSON SIGNING ON BEHALF OF ANY BIDDER CERTIFIES, AND IN THE CASE OF A JOINT BID EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF ITS KNOWLEDGE AND BELIEF THAT EACH BIDDER IS NOT ON THE LIST CREATED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION 3 OF SECTION 165-A OF THE STATE FINANCE LAW."

B. NOTWITHSTANDING PARAGRAPH A OF THIS SUBDIVISION, THE STATEMENT OF NON-INVESTMENT IN THE IRANIAN ENERGY SECTOR MAY BE SUBMITTED ELECTRONICALLY IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION ONE OF SECTION ONE HUNDRED THREE OF THIS ARTICLE.

C. A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE THE CONDITION SET FORTH IN PARAGRAPH A OF THIS SUBDIVISION HAS NOT BEEN COMPLIED WITH; PROVIDED, HOWEVER, THAT IF IN ANY CASE THE BIDDER CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH WITH THE BID A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFOR. A POLITICAL SUBDIVISION MAY AWARD A BID TO A BIDDER WHO CANNOT MAKE THE CERTIFICATION PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION ON A CASE-BY-CASE BASIS IF:

(1) THE INVESTMENT ACTIVITIES IN IRAN WERE MADE BEFORE THE EFFECTIVE DATE OF THIS SECTION, THE INVESTMENT ACTIVITIES IN IRAN HAVE NOT BEEN EXPANDED OR RENEWED AFTER THE EFFECTIVE DATE OF THIS SECTION, AND THE PERSON HAS ADOPTED, PUBLICIZED, AND IS IMPLEMENTING A FORMAL PLAN TO CEASE THE INVESTMENT ACTIVITIES IN IRAN AND TO REFRAIN FROM ENGAGING IN ANY NEW INVESTMENTS IN IRAN; OR

(2) THE POLITICAL SUBDIVISION MAKES A PUBLIC FINDING THAT THE GOODS OR SERVICES ARE NECESSARY FOR THE POLITICAL SUBDIVISION TO PERFORM ITS FUNCTIONS AND THAT, ABSENT SUCH AN EXEMPTION, THE POLITICAL SUBDIVISION WOULD BE UNABLE TO OBTAIN THE GOODS OR SERVICES FOR WHICH THE CONTRACT IS OFFERED. SUCH FINDING SHALL BE MADE IN WRITING AND SHALL BE A PUBLIC DOCUMENT.

S 5. The secretary of state shall submit to the attorney general of the United States a written notice describing this act within 30 days after the effective date of this act.

S 6. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S 7. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.