

Calendar No. 939

110TH CONGRESS
2D SESSION

S. 3445

[Report No. 110-443]

To impose sanctions with respect to Iran, to provide for the divestment of assets in Iran by State and local governments and other entities, to identify locations of concern with respect to transshipment, reexportation, or diversion of certain sensitive items to Iran, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2008

Mr. DODD, from the Committee on Banking, Housing, and Urban Affairs, reported the following original bill; which was read twice and placed on the calendar

A BILL

To impose sanctions with respect to Iran, to provide for the divestment of assets in Iran by State and local governments and other entities, to identify locations of concern with respect to transshipment, reexportation, or diversion of certain sensitive items to Iran, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Comprehensive Iran Sanctions, Accountability, and Di-
4 vestment Act of 2008”.

5 (b) TABLE OF CONTENTS.—The table of contents for
6 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—SANCTIONS

Sec. 101. Definitions.

Sec. 102. Clarification and expansion of definitions.

Sec. 103. Economic sanctions relating to Iran.

Sec. 104. Liability of parent companies for violations of sanctions by foreign subsidiaries.

Sec. 105. Increased capacity for efforts to combat unlawful or terrorist financing.

Sec. 106. Reporting requirements.

Sec. 107. Sense of Congress regarding the imposition of sanctions on the Central Bank of Iran.

TITLE II—DIVESTMENT FROM CERTAIN COMPANIES THAT
INVEST IN IRAN

Sec. 201. Definitions.

Sec. 202. Authority of State and local governments to divest from certain companies that invest in Iran.

Sec. 203. Safe harbor for changes of investment policies by asset managers.

Sec. 204. Sense of Congress regarding certain ERISA plan investments.

TITLE III—PREVENTION OF TRANSSHIPMENT, REEXPORTATION,
OR DIVERSION OF SENSITIVE ITEMS TO IRAN

Sec. 301. Definitions.

Sec. 302. Identification of locations of concern with respect to transshipment, reexportation, or diversion of certain items to Iran.

Sec. 303. Destinations of Possible Diversion Concern and Destinations of Diversion Concern.

Sec. 304. Report on expanding diversion concern system to countries other than Iran.

TITLE IV—EFFECTIVE DATE; SUNSET

Sec. 401. Effective date; sunset.

7 **TITLE I—SANCTIONS**

8 **SEC. 101. DEFINITIONS.**

9 In this title:

1 (1) AGRICULTURAL COMMODITY.—The term
2 “agricultural commodity” has the meaning given
3 that term in section 102 of the Agricultural Trade
4 Act of 1978 (7 U.S.C. 5602).

5 (2) APPROPRIATE CONGRESSIONAL COMMIT-
6 TEES.—The term “appropriate congressional com-
7 mittees” has the meaning given that term in section
8 14(2) of the Iran Sanctions Act of 1996 (Public
9 Law 104–172; 50 U.S.C. 1701 note).

10 (3) EXECUTIVE AGENCY.—The term “executive
11 agency” has the meaning given that term in section
12 4 of the Office of Federal Procurement Policy Act
13 (41 U.S.C. 403).

14 (4) FAMILY MEMBER.—The term “family mem-
15 ber” means, with respect to an individual, the
16 spouse, children, grandchildren, or parents of the in-
17 dividual.

18 (5) INFORMATION AND INFORMATIONAL MATE-
19 RIALS.—The term “information and informational
20 materials”—

21 (A) means information and informational
22 materials described in section 203(b)(3) of the
23 International Emergency Economic Powers Act
24 (50 U.S.C. 1702(b)(3)); and

1 (B) does not include information or infor-
2 mational materials—

3 (i) the exportation of which is other-
4 wise controlled—

5 (I) under section 5 of the Export
6 Administration Act of 1979 (50
7 U.S.C. App. 2404) (as in effect pur-
8 suant to the International Emergency
9 Economic Powers Act (50 U.S.C.
10 1701 et seq.)); or

11 (II) under section 6 of that Act
12 (50 U.S.C. App. 2405), to the extent
13 that such controls promote the non-
14 proliferation or antiterrorism policies
15 of the United States; or

16 (ii) with respect to which acts are pro-
17 hibited by chapter 37 of title 18, United
18 States Code.

19 (6) INVESTMENT.—The term “investment” has
20 the meaning given that term in section 14(9) of the
21 Iran Sanctions Act of 1996 (Public Law 104–172;
22 50 U.S.C. 1701 note).

23 (7) IRANIAN DIPLOMATS AND REPRESENTA-
24 TIVES OF OTHER GOVERNMENT AND MILITARY OR
25 QUASI-GOVERNMENTAL INSTITUTIONS OF IRAN.—

1 The term “Iranian diplomats and representatives of
2 other government and military or quasi-govern-
3 mental institutions of Iran” has the meaning given
4 that term in section 14(11) of the Iran Sanctions
5 Act of 1996 (Public Law 104–172; 50 U.S.C. 1701
6 note).

7 (8) MEDICAL DEVICE.—The term “medical de-
8 vice” has the meaning given the term “device” in
9 section 201 of the Federal Food, Drug, and Cos-
10 metic Act (21 U.S.C. 321).

11 (9) MEDICINE.—The term “medicine” has the
12 meaning given the term “drug” in section 201 of the
13 Federal Food, Drug, and Cosmetic Act (21 U.S.C.
14 321).

15 **SEC. 102. CLARIFICATION AND EXPANSION OF DEFINI-**
16 **TIONS.**

17 (a) PERSON.—Section 14(13)(B) of the Iran Sanc-
18 tions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701
19 note) is amended—

20 (1) by inserting “financial institution, insurer,
21 underwriter, guarantor, and any other business or-
22 ganization, including any foreign subsidiary, parent,
23 or affiliate of the foregoing,” after “trust,”; and

24 (2) by inserting “, such as an export credit
25 agency” before the semicolon.

1 (b) PETROLEUM RESOURCES.—Section 14(14) of the
 2 Iran Sanctions Act of 1996 (Public Law 104–172; 50
 3 U.S.C. 1701 note) is amended by striking “petroleum and
 4 natural gas resources” and inserting “petroleum, petro-
 5 leum by-products, oil or liquefied natural gas, oil or lique-
 6 fied natural gas tankers, and products used to construct
 7 or maintain pipelines used to transport oil or liquefied nat-
 8 ural gas”.

9 **SEC. 103. ECONOMIC SANCTIONS RELATING TO IRAN.**

10 (a) IN GENERAL.—Notwithstanding any other provi-
 11 sion of law, and in addition to any other sanction in effect,
 12 beginning on the date that is 15 days after the effective
 13 date of this Act, the economic sanctions described in sub-
 14 section (b) shall apply with respect to Iran.

15 (b) SANCTIONS.—The sanctions described in this
 16 subsection are the following:

17 (1) PROHIBITION ON IMPORTS.—

18 (A) IN GENERAL.—Except as provided in
 19 subparagraph (B), no article that is the growth,
 20 product, or manufacture of Iran may be im-
 21 ported directly or indirectly into the United
 22 States.

23 (B) EXCEPTION.—The prohibition in sub-
 24 paragraph (A) does not apply to imports from

1 Iran of information and informational mate-
2 rials.

3 (2) PROHIBITION ON EXPORTS.—

4 (A) IN GENERAL.—Except as provided in
5 subparagraph (B), no article that is the growth,
6 product, or manufacture of the United States
7 may be exported directly or indirectly to Iran.

8 (B) EXCEPTIONS.—The prohibition in sub-
9 paragraph (A) does not apply to exports to Iran
10 of—

11 (i) agricultural commodities, food,
12 medicine, or medical devices;

13 (ii) articles exported to Iran to pro-
14 vide humanitarian assistance to the people
15 of Iran;

16 (iii) information or informational ma-
17 terials; or

18 (iv) goods, services, or technologies
19 necessary to ensure the safe operation of
20 commercial passenger aircraft produced in
21 the United States if the exportation of
22 such goods, services, or technologies is ap-
23 proved by the Secretary of the Treasury, in
24 consultation with the Secretary of Com-
25 merce, pursuant to regulations for licens-

1 ing the exportation of such goods, services,
2 or technologies, if appropriate.

3 (3) FREEZING ASSETS.—

4 (A) IN GENERAL.—At such time as the
5 United States has access to the names of per-
6 sons in Iran, including Iranian diplomats and
7 representatives of other government and mili-
8 tary or quasi-governmental institutions of Iran,
9 that are determined to be subject to sanctions
10 imposed under the authority of the Inter-
11 national Emergency Economic Powers Act (50
12 U.S.C. 1701 et seq.) or any other provision of
13 law relating to the imposition of sanctions with
14 respect to Iran, the President shall take such
15 action as may be necessary to freeze imme-
16 diately the funds and other assets belonging to
17 anyone so named and any family members or
18 associates of those so named to whom assets or
19 property of those so named were transferred on
20 or after January 1, 2008. The action described
21 in the preceding sentence includes requiring any
22 United States financial institution that holds
23 funds and assets of a person so named to re-
24 port promptly to the Office of Foreign Assets

1 Control information regarding such funds and
2 assets.

3 (B) ASSET REPORTING REQUIREMENT.—

4 Not later than 14 days after a decision is made
5 to freeze the property or assets of any person
6 under this paragraph, the President shall report
7 the name of such person to the appropriate con-
8 gressional committees.

9 (4) UNITED STATES GOVERNMENT CON-
10 TRACTS.—The head of an executive agency may not
11 procure, or enter into a contract for the procurement
12 of, any goods or services from a person that meets
13 the criteria for the imposition of sanctions under
14 section 5(a) of the Iran Sanctions Act of 1996 (Pub-
15 lic Law 104–172; 50 U.S.C. 1701 note).

16 (c) WAIVER.—The President may waive the applica-
17 tion of the sanctions described in subsection (b) if the
18 President—

19 (1) determines that such a waiver is in the na-
20 tional interest of the United States; and

21 (2) submits to the appropriate congressional
22 committees a report describing the reasons for the
23 determination.

1 **SEC. 104. LIABILITY OF PARENT COMPANIES FOR VIOLA-**
2 **TIONS OF SANCTIONS BY FOREIGN SUBSIDI-**
3 **ARIES.**

4 (a) DEFINITIONS.—In this section:

5 (1) ENTITY.—The term “entity” means a part-
6 nership, association, trust, joint venture, corpora-
7 tion, or other organization.

8 (2) OWN OR CONTROL.—The term “own or con-
9 trol” means, with respect to an entity—

10 (A) to hold more than 50 percent of the
11 equity interest by vote or value in the entity;

12 (B) to hold a majority of seats on the
13 board of directors of the entity; or

14 (C) to otherwise control the actions, poli-
15 cies, or personnel decisions of the entity.

16 (3) SUBSIDIARY.—The term “subsidiary”
17 means an entity that is owned or controlled, directly
18 or indirectly, by a United States person.

19 (4) UNITED STATES PERSON.—The term
20 “United States person” means—

21 (A) a natural person who is a citizen, resi-
22 dent, or national of the United States; and

23 (B) an entity that is organized under the
24 laws of the United States, any State or terri-
25 tory thereof, or the District of Columbia, if nat-

1 ural persons described in subparagraph (A) own
2 or control the entity.

3 (b) IN GENERAL.—A United States person shall be
4 subject to a penalty for a violation of the provisions of
5 Executive Order 12959 (50 U.S.C. 1701 note) or Execu-
6 tive Order 13059 (50 U.S.C. 1701 note), or any other pro-
7 hibition on transactions with respect to Iran imposed
8 under the authority of the International Emergency Eco-
9 nomic Powers Act (50 U.S.C. 1701 et seq.), if—

10 (1) the President determines that the United
11 States person establishes or maintains a subsidiary
12 outside of the United States for the purpose of cir-
13 cumventing such provisions; and

14 (2) that subsidiary engages in an act that, if
15 committed in the United States or by a United
16 States person, would violate such provisions.

17 (c) WAIVER.—The President may waive the applica-
18 tion of subsection (b) if the President—

19 (1) determines that such a waiver is in the na-
20 tional interest of the United States; and

21 (2) submits to the appropriate congressional
22 committees a report describing the reasons for the
23 determination.

24 (d) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Subsection (b) shall take ef-
 2 fect on the date of the enactment of this Act and
 3 apply with respect to acts described in subsection
 4 (b)(2) that are—

5 (A) commenced on or after the date of the
 6 enactment of this Act; or

7 (B) except as provided in paragraph (2),
 8 commenced before such date of enactment, if
 9 such acts continue on or after such date of en-
 10 actment.

11 (2) EXCEPTION.—Subsection (b) shall not
 12 apply with respect to an act described in paragraph
 13 (1)(B) by a subsidiary owned or controlled by a
 14 United States person if the United States person di-
 15 vests or terminates its business with the subsidiary
 16 not later than 90 days after such date of enactment.

17 **SEC. 105. INCREASED CAPACITY FOR EFFORTS TO COMBAT**
 18 **UNLAWFUL OR TERRORIST FINANCING.**

19 (a) FINDING.—Congress finds that the work of the
 20 Office of Terrorism and Financial Intelligence of the De-
 21 partment of the Treasury, which includes the Office of
 22 Foreign Assets Control and the Financial Crimes Enforce-
 23 ment Network, is critical to ensuring that the inter-
 24 national financial system is not used for purposes of sup-

1 porting terrorism and developing weapons of mass de-
 2 struction.

3 (b) AUTHORIZATION OF APPROPRIATIONS FOR OF-
 4 FICE OF TERRORISM AND FINANCIAL INTELLIGENCE.—

5 There is authorized to be appropriated to the Secretary
 6 of the Treasury for the Office of Terrorism and Financial
 7 Intelligence—

8 (1) \$61,712,000 for fiscal year 2009; and

9 (2) such sums as may be necessary for each of
 10 the fiscal years 2010 and 2011.

11 (c) AUTHORIZATION OF APPROPRIATIONS FOR THE
 12 FINANCIAL CRIMES ENFORCEMENT NETWORK.—Section
 13 310(d)(1) of title 31, United States Code, is amended by
 14 striking “such sums as may be necessary for fiscal years
 15 2002, 2003, 2004, and 2005” and inserting “\$91,335,000
 16 for fiscal year 2009 and such sums as may be necessary
 17 for each of the fiscal years 2010 and 2011”.

18 **SEC. 106. REPORTING REQUIREMENTS.**

19 (a) FOREIGN INVESTMENT IN IRAN.—

20 (1) IN GENERAL.—Not later than 180 days
 21 after the date of the enactment of this Act, the
 22 President shall submit to the appropriate congres-
 23 sional committees a report on—

24 (A) any foreign investments of
 25 \$20,000,000 or more made in Iran’s energy

1 sector on or after January 1, 2008, and before
2 the date on which the President submits the re-
3 port; and

4 (B) the determination of the President on
5 whether each such investment qualifies as a
6 sanctionable offense under section 5(a) of the
7 Iran Sanctions Act of 1996 (Public Law 104–
8 172; 50 U.S.C. 1701 note).

9 (2) SUBSEQUENT REPORTS.—Not later than 1
10 year after the date of the enactment of this Act, and
11 every 180 days thereafter, the President shall sub-
12 mit to the appropriate congressional committees a
13 report on—

14 (A) any foreign investments of
15 \$20,000,000 or more made in Iran’s energy
16 sector during the 180-day period preceding the
17 submission of the report; and

18 (B) the determination of the President on
19 whether each such investment qualifies as a
20 sanctionable offense under section 5(a) of the
21 Iran Sanctions Act of 1996 (Public Law 104–
22 172; 50 U.S.C. 1701 note).

23 (b) FORM OF REPORTS.—The reports required under
24 subsection (a) shall be submitted in unclassified form, but
25 may contain a classified annex.

1 **SEC. 107. SENSE OF CONGRESS REGARDING THE IMPOSI-**
 2 **TION OF SANCTIONS ON THE CENTRAL BANK**
 3 **OF IRAN.**

4 Congress urges the President, in the strongest terms,
 5 to consider immediately using the authority of the Presi-
 6 dent to impose sanctions on the Central Bank of Iran and
 7 any other Iranian bank engaged in proliferation activities
 8 or support of terrorist groups.

9 **TITLE II—DIVESTMENT FROM**
 10 **CERTAIN COMPANIES THAT**
 11 **INVEST IN IRAN**

12 **SEC. 201. DEFINITIONS.**

13 In this title:

14 (1) **ENERGY SECTOR.**—The term “energy sec-
 15 tor” refers to activities to develop petroleum or nat-
 16 ural gas resources or nuclear power.

17 (2) **FINANCIAL INSTITUTION.**—The term “fi-
 18 nancial institution” has the meaning given that term
 19 in section 14(5) of the Iran Sanctions Act of 1996
 20 (Public Law 104–172; 50 U.S.C. 1701 note).

21 (3) **IRAN.**—The term “Iran” includes any agen-
 22 cy or instrumentality of Iran.

23 (4) **PERSON.**—The term “person” means—

24 (A) a natural person, corporation, com-
 25 pany, business association, partnership, society,

1 trust, or any other nongovernmental entity, or-
2 ganization, or group;

3 (B) any governmental entity or instrumen-
4 tality of a government, including a multilateral
5 development institution (as defined in section
6 1701(c)(3) of the International Financial Insti-
7 tutions Act (22 U.S.C. 262r(c)(3))); and

8 (C) any successor, subunit, parent com-
9 pany, or subsidiary of any entity described in
10 subparagraph (A) or (B).

11 (5) STATE.—The term “State” means each of
12 the several States, the District of Columbia, the
13 Commonwealth of Puerto Rico, the United States
14 Virgin Islands, Guam, American Samoa, and the
15 Commonwealth of the Northern Mariana Islands.

16 (6) STATE OR LOCAL GOVERNMENT.—The term
17 “State or local government” includes—

18 (A) any State and any agency or instru-
19 mentality thereof;

20 (B) any local government within a State,
21 and any agency or instrumentality thereof;

22 (C) any other governmental instrumen-
23 tality; and

1 (D) any public institution of higher edu-
2 cation within the meaning of the Higher Edu-
3 cation Act of 1965 (20 U.S.C. 1001 et seq.).

4 **SEC. 202. AUTHORITY OF STATE AND LOCAL GOVERN-**
5 **MENTS TO DIVEST FROM CERTAIN COMPA-**
6 **NIES THAT INVEST IN IRAN.**

7 (a) SENSE OF CONGRESS.—It is the sense of Con-
8 gress that the United States Government should support
9 the decision of any State or local government to divest
10 from, or to prohibit the investment of assets of the State
11 or local government in, a person that the State or local
12 government determines poses a financial or reputational
13 risk.

14 (b) AUTHORITY TO DIVEST.—Notwithstanding any
15 other provision of law, a State or local government may
16 adopt and enforce measures that meet the requirements
17 of subsection (d) to divest the assets of the State or local
18 government from, or prohibit investment of the assets of
19 the State or local government in, any person that the
20 State or local government determines, using credible infor-
21 mation available to the public, engages in investment ac-
22 tivities in Iran described in subsection (c).

23 (c) INVESTMENT ACTIVITIES DESCRIBED.—A person
24 engages in investment activities in Iran described in this
25 subsection if the person—

1 (1) has an investment of \$20,000,000 or
2 more—

3 (A) in the energy sector of Iran; or

4 (B) in a person that provides oil or
5 liquified natural gas tankers, or products used
6 to construct or maintain pipelines used to
7 transport oil or liquified natural gas, for the en-
8 ergy sector in Iran; or

9 (2) is a financial institution that extends
10 \$20,000,000 or more in credit to another person, for
11 45 days or more, if that person will use the credit
12 to invest in the energy sector in Iran.

13 (d) REQUIREMENTS.—Any measure taken by a State
14 or local government under subsection (b) shall meet the
15 following requirements:

16 (1) NOTICE.—The State or local government
17 shall provide written notice to each person to which
18 a measure is to be applied.

19 (2) TIMING.—The measure shall apply to a per-
20 son not earlier than the date that is 90 days after
21 the date on which written notice is provided to the
22 person under paragraph (1).

23 (3) OPPORTUNITY FOR HEARING.—The State
24 or local government shall provide an opportunity to
25 comment in writing to each person to which a meas-

1 ure is to be applied. If the person demonstrates to
2 the State or local government that the person does
3 not engage in investment activities in Iran described
4 in subsection (c), the measure shall not apply to the
5 person.

6 (4) SENSE OF CONGRESS ON AVOIDING ERRO-
7 NEOUS TARGETING.—It is the sense of Congress
8 that a State or local government should not adopt
9 a measure under subsection (b) with respect to a
10 person unless the State or local government has
11 made every effort to avoid erroneously targeting the
12 person and has verified that the person engages in
13 investment activities in Iran described in subsection
14 (c).

15 (e) NOTICE TO DEPARTMENT OF JUSTICE.—Not
16 later than 30 days after adopting a measure pursuant to
17 subsection (b), a State or local government shall submit
18 written notice to the Attorney General describing the
19 measure.

20 (f) NONPREEMPTION.—A measure of a State or local
21 government authorized under subsection (b) is not pre-
22 empted by any Federal law or regulation.

23 (g) DEFINITIONS.—In this section:

1 (1) INVESTMENT.—The “investment” of assets,
 2 with respect to a State or local government, in-
 3 cludes—

4 (A) a commitment or contribution of as-
 5 sets;

6 (B) a loan or other extension of credit; and

7 (C) the entry into or renewal of a contract
 8 for goods or services.

9 (2) ASSETS.—

10 (A) IN GENERAL.—Except as provided in
 11 subparagraph (B), the term “assets” refers to
 12 public monies and includes any pension, retire-
 13 ment, annuity, or endowment fund, or similar
 14 instrument, that is controlled by a State or
 15 local government.

16 (B) EXCEPTION.—The term “assets” does
 17 not include employee benefit plans covered by
 18 title I of the Employee Retirement Income Se-
 19 curity Act of 1974 (29 U.S.C. 1001 et seq.).

20 (h) EFFECTIVE DATE.—

21 (1) IN GENERAL.—Except as provided in para-
 22 graph (2), this section applies to measures adopted
 23 by a State or local government before, on, or after
 24 the date of the enactment of this Act.

1 (2) NOTICE REQUIREMENTS.—Subsections (d)
 2 and (e) apply to measures adopted by a State or
 3 local government on or after the date of the enact-
 4 ment of this Act.

5 **SEC. 203. SAFE HARBOR FOR CHANGES OF INVESTMENT**
 6 **POLICIES BY ASSET MANAGERS.**

7 (a) IN GENERAL.—Section 13(c)(1) of the Invest-
 8 ment Company Act of 1940 (15 U.S.C. 80a–13(c)(1)) is
 9 amended to read as follows:

10 “(1) IN GENERAL.—Notwithstanding any other
 11 provision of Federal or State law, no person may
 12 bring any civil, criminal, or administrative action
 13 against any registered investment company, or any
 14 employee, officer, director, or investment adviser
 15 thereof, based solely upon the investment company
 16 divesting from, or avoiding investing in, securities
 17 issued by persons that the investment company de-
 18 termines, using credible information available to the
 19 public—

20 “(A) conduct or have direct investments in
 21 business operations in Sudan described in sec-
 22 tion 3(d) of the Sudan Accountability and Di-
 23 vestment Act of 2007 (50 U.S.C. 1701 note); or

24 “(B) engage in investment activities in
 25 Iran described in section 202(c) of the Com-

1 prehensive Iran Sanctions, Accountability, and
2 Divestment Act of 2008.”.

3 (b) SEC REGULATIONS.—Not later than 120 days
4 after the date of the enactment of this Act, the Securities
5 and Exchange Commission shall issue any revisions the
6 Commission determines to be necessary to the regulations
7 requiring disclosure by each registered investment com-
8 pany that divests itself of securities in accordance with
9 section 13(c) of the Investment Company Act of 1940 to
10 include divestments of securities in accordance with para-
11 graph (1)(B) of such section, as added by subsection (a).

12 **SEC. 204. SENSE OF CONGRESS REGARDING CERTAIN**
13 **ERISA PLAN INVESTMENTS.**

14 It is the sense of Congress that a fiduciary of an em-
15 ployee benefit plan, as defined in section 3(3) of the Em-
16 ployee Retirement Income Security Act of 1974 (29
17 U.S.C. 1002(3)), may divest plan assets from, or avoid
18 investing plan assets in, any person the fiduciary deter-
19 mines engages in investment activities in Iran described
20 in section 202(c) of this Act, without breaching the re-
21 sponsibilities, obligations, or duties imposed upon the fidu-
22 ciary by section 404 of the Employee Retirement Income
23 Security Act of 1974 (29 U.S.C. 1104), if—

1 (1) the fiduciary makes such determination
 2 using credible information that is available to the
 3 public; and

4 (2) such divestment or avoidance of investment
 5 is conducted in accordance with section 2509.94–1
 6 of title 29, Code of Federal Regulations (as in effect
 7 on the day before the date of the enactment of this
 8 Act).

9 **TITLE III—PREVENTION OF**
 10 **TRANSSHIPMENT, REEXPOR-**
 11 **TATION, OR DIVERSION OF**
 12 **SENSITIVE ITEMS TO IRAN**

13 **SEC. 301. DEFINITIONS.**

14 In this title:

15 (1) APPROPRIATE CONGRESSIONAL COMMIT-
 16 TEES.—The term “appropriate congressional com-
 17 mittees” means—

18 (A) the Committee on Banking, Housing,
 19 and Urban Affairs, the Committee on Foreign
 20 Relations, and the Select Committee on Intel-
 21 ligence of the Senate; and

22 (B) the Committee on Financial Services,
 23 the Committee on Foreign Affairs, and the Per-
 24 manent Select Committee on Intelligence of the
 25 House of Representatives.

1 (2) END-USER.—The term “end-user” means
2 an end-user as that term is used in the Export Ad-
3 ministration Regulations.

4 (3) ENTITY OWNED OR CONTROLLED BY THE
5 GOVERNMENT OF IRAN.—The term “entity owned or
6 controlled by the Government of Iran” includes—

7 (A) any corporation, partnership, associa-
8 tion, or other entity in which the Government
9 of Iran owns a majority or controlling interest;
10 and

11 (B) any entity that is otherwise controlled
12 by the Government of Iran.

13 (4) EXPORT ADMINISTRATION REGULATIONS.—
14 The term “Export Administration Regulations”
15 means subchapter C of chapter VII of title 15, Code
16 of Federal Regulations.

17 (5) GOVERNMENT.—The term “government”
18 includes any agency or instrumentality of a govern-
19 ment.

20 (6) IRAN.—The term “Iran” includes any agen-
21 cy or instrumentality of Iran.

22 (7) STATE SPONSOR OF TERRORISM.—The term
23 “state sponsor of terrorism” means any country the
24 government of which the Secretary of State has de-

1 terminated has repeatedly provided support for acts of
2 international terrorism pursuant to—

3 (A) section 6(j)(1)(A) of the Export Ad-
4 ministration Act of 1979 (50 U.S.C. App.
5 2405(j)(1)(A)) (or any successor thereto);

6 (B) section 40(d) of the Arms Export Con-
7 trol Act (22 U.S.C. 2780(d)); or

8 (C) section 620A(a) of the Foreign Assist-
9 ance Act of 1961 (22 U.S.C. 2371(a)).

10 (8) TRANSSHIPMENT, REEXPORTATION, OR DI-
11 VERSION.—The term “transshipment, reexportation,
12 or diversion” means the exportation, directly or indi-
13 rectly, of items that originated in the United States
14 to an end-user whose identity cannot be verified or
15 to an entity owned or controlled by the Government
16 of Iran in violation of the laws or regulations of the
17 United States by any means, including by—

18 (A) shipping such items through 1 or more
19 foreign countries; or

20 (B) by using false information regarding
21 the country of origin of such items.

1 **SEC. 302. IDENTIFICATION OF LOCATIONS OF CONCERN**
2 **WITH RESPECT TO TRANSSHIPMENT, RE-**
3 **EXPORTATION, OR DIVERSION OF CERTAIN**
4 **ITEMS TO IRAN.**

5 Not later than 180 days after the date of the enact-
6 ment of this Act, and annually thereafter, the Director
7 of National Intelligence shall submit to the Secretary of
8 Commerce, the Secretary of State, the Secretary of the
9 Treasury, and the appropriate congressional committees
10 a report that identifies all countries that the Director de-
11 termines are of concern with respect to transshipment, re-
12 exportation, or diversion of items subject to the provisions
13 of the Export Administration Regulations to an entity
14 owned or controlled by the Government of Iran.

15 **SEC. 303. DESTINATIONS OF POSSIBLE DIVERSION CON-**
16 **CERN AND DESTINATIONS OF DIVERSION**
17 **CONCERN.**

18 (a) DESTINATIONS OF POSSIBLE DIVERSION CON-
19 CERN.—

20 (1) DESIGNATION.—The Secretary of Com-
21 merce shall designate a country as a Destination of
22 Possible Diversion Concern if the Secretary, in con-
23 sultation with the Secretary of State and the Sec-
24 retary of the Treasury, determines that such des-
25 ignation is appropriate to carry out activities to

1 strengthen the export control systems of that coun-
2 try based on criteria that include—

3 (A) the volume of items that originated in
4 the United States that are transported through
5 the country to end-users whose identities cannot
6 be verified;

7 (B) the inadequacy of the export and reex-
8 port controls of the country;

9 (C) the unwillingness or demonstrated in-
10 ability of the government of the country to con-
11 trol diversion activities; and

12 (D) the unwillingness or inability of the
13 government of the country to cooperate with the
14 United States in interdiction efforts.

15 (2) STRENGTHENING EXPORT CONTROL SYS-
16 TEMS OF DESTINATIONS OF POSSIBLE DIVERSION
17 CONCERN.—If the Secretary of Commerce designates
18 a country as a Destination of Possible Diversion
19 Concern under paragraph (1), the United States
20 shall initiate government-to-government activities de-
21 scribed in paragraph (3) to strengthen the export
22 control systems of the country.

23 (3) GOVERNMENT-TO-GOVERNMENT ACTIVITIES
24 DESCRIBED.—The government-to-government activi-
25 ties described in this paragraph include—

1 (A) cooperation by agencies and depart-
2 ments of the United States with counterpart
3 agencies and departments in a country des-
4 ignated as a Destination of Possible Diversion
5 Concern under paragraph (1) to—

6 (i) develop or strengthen export con-
7 trol systems in the country;

8 (ii) strengthen cooperation and facili-
9 tate enforcement of export control systems
10 in the country; and

11 (iii) promote information and data ex-
12 changes among agencies of the country
13 and with the United States; and

14 (B) efforts by the Office of International
15 Programs of the Department of Commerce to
16 strengthen the export control systems of the
17 country to—

18 (i) facilitate legitimate trade in high-
19 technology goods; and

20 (ii) prevent terrorists and state spon-
21 sors of terrorism, including Iran, from ob-
22 taining nuclear, biological, and chemical
23 weapons, defense technologies, components
24 for improvised explosive devices, and other
25 defense items.

1 (b) DESTINATIONS OF DIVERSION CONCERN.—

2 (1) DESIGNATION.—The Secretary of Com-
3 merce shall designate a country as a Destination of
4 Diversion Concern if the Secretary, in consultation
5 with the Secretary of State and the Secretary of the
6 Treasury, determines—

7 (A) that the government of the country is
8 directly involved in transshipment, reexpor-
9 tation, or diversion of items that originated in
10 the United States to end-users whose identities
11 cannot be verified or to entities owned or con-
12 trolled by the Government of Iran; or

13 (B) 12 months after the Secretary of Com-
14 merce designates the country as a Destination
15 of Possible Diversion Concern under subsection
16 (a)(1), that the country has failed—

17 (i) to cooperate with the government-
18 to-government activities initiated by the
19 United States under subsection (a)(2); or

20 (ii) based on the criteria described in
21 subsection (a)(1), to adequately strengthen
22 the export control systems of the country.

23 (2) LICENSING CONTROLS WITH RESPECT TO
24 DESTINATIONS OF DIVERSION CONCERN.—

25 (A) REPORT ON SUSPECT ITEMS.—

1 (i) IN GENERAL.—Not later than 45
2 days after the date of the enactment of
3 this Act, the Secretary of Commerce, in
4 consultation with the Director of National
5 Intelligence, the Secretary of State, and
6 the Secretary of the Treasury, shall submit
7 to the appropriate congressional commit-
8 tees a report containing a list of items
9 that, if the items were transshipped, reex-
10 ported, or diverted to Iran, could con-
11 tribute to—

12 (I) Iran obtaining nuclear, bio-
13 logical, or chemical weapons, defense
14 technologies, components for impro-
15 vised explosive devices, or other de-
16 fense items; or

17 (II) support by Iran for acts of
18 international terrorism.

19 (ii) CONSIDERATIONS FOR LIST.—In
20 developing the list required under clause
21 (i), the Secretary of Commerce shall con-
22 sider—

23 (I) the items subject to licensing
24 requirements under section 742.8 of
25 title 15, Code of Federal Regulations

1 (or any corresponding similar regula-
2 tion or ruling) and other existing li-
3 censing requirements; and

4 (II) the items added to the list of
5 items for which a license is required
6 for exportation to North Korea by the
7 final rule of the Bureau of Export Ad-
8 ministration of the Department of
9 Commerce issued on June 19, 2000
10 (65 Fed. Reg. 38148; relating to ex-
11 port restrictions on North Korea).

12 (B) LICENSING REQUIREMENT.—Not later
13 than 180 days after the date of the enactment
14 of this Act, the Secretary of Commerce shall re-
15 quire a license to export an item on the list re-
16 quired under subparagraph (A)(i) to a country
17 designated as a Destination of Diversion Con-
18 cern.

19 (3) WAIVER.—The President may waive the im-
20 position of the licensing requirement under para-
21 graph (2)(B) with respect to a country designated as
22 a Destination of Diversion Concern if the Presi-
23 dent—

24 (A) determines that such a waiver is in the
25 national interest of the United States; and

1 (B) submits to the appropriate congres-
2 sional committees a report describing the rea-
3 sons for the determination.

4 (c) TERMINATION OF DESIGNATION.—The designa-
5 tion of a country as a Destination of Possible Diversion
6 Concern or a Destination of Diversion Concern shall ter-
7minate on the date on which the Secretary of Commerce
8 determines, based on the criteria described in subpara-
9 graphs (A) through (D) of subsection (a)(1), and certifies
10 to Congress and the President that the country has ade-
11 quately strengthened the export control systems of the
12 country to prevent transshipment, reexportation, and di-
13 version of items through the country to end-users whose
14 identities cannot be verified or to entities owned or con-
15 trolled by the Government of Iran.

16 (d) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated such sums as may be
18 necessary to carry out this section.

19 **SEC. 304. REPORT ON EXPANDING DIVERSION CONCERN**
20 **SYSTEM TO COUNTRIES OTHER THAN IRAN.**

21 Not later than 180 days after the date of the enact-
22 ment of this Act, the Director of National Intelligence, in
23 consultation with the Secretary of Commerce, the Sec-
24 retary of State, and the Secretary of the Treasury, shall

1 submit to the appropriate congressional committees a re-
 2 port that—

3 (1) identifies any country that the Director de-
 4 termines may be transshipping, reexporting, or di-
 5 verting items subject to the provisions of the Export
 6 Administration Regulations to another country if
 7 such other country—

8 (A) is seeking to obtain nuclear, biological,
 9 or chemical weapons, defense technologies, com-
 10 ponents for improvised explosive devices, or
 11 other defense items; or

12 (B) provides support for acts of inter-
 13 national terrorism; and

14 (2) assesses the feasibility and advisability of
 15 expanding the system established under section 303
 16 for designating countries as Destinations of Possible
 17 Diversion Concern and Destinations of Diversion
 18 Concern to include countries identified under para-
 19 graph (1).

20 **TITLE IV—EFFECTIVE DATE;** 21 **SUNSET**

22 **SEC. 401. EFFECTIVE DATE; SUNSET.**

23 (a) EFFECTIVE DATE.—Except as provided in sec-
 24 tions 202 and 303(b)(2)(A), the provisions of, and amend-

1 ments made by, this Act shall take effect on the date that
2 is 120 days after the date of the enactment of this Act.

3 (b) SUNSET.—The provisions of this Act shall termi-
4 nate on the date that is 30 days after the date on which
5 the President certifies to Congress that—

6 (1) the Government of Iran has ceased pro-
7 viding support for acts of international terrorism
8 and no longer satisfies the requirements for designa-
9 tion as a state sponsor of terrorism under—

10 (A) section 6(j)(1)(A) of the Export Ad-
11 ministration Act of 1979 (50 U.S.C. App.
12 2405(j)(1)(A)) (or any successor thereto);

13 (B) section 40(d) of the Arms Export Con-
14 trol Act (22 U.S.C. 2780(d)); or

15 (C) section 620A(a) of the Foreign Assist-
16 ance Act of 1961 (22 U.S.C. 2371(a)); and

17 (2) Iran has ceased the pursuit, acquisition,
18 and development of nuclear, biological, and chemical
19 weapons and ballistic missiles and ballistic missile
20 launch technology.

Calendar No. 939

110TH CONGRESS
2D Session

S. 3445

[Report No. 110-443]

A BILL

To impose sanctions with respect to Iran, to provide for the divestment of assets in Iran by State and local governments and other entities, to identify locations of concern with respect to transshipment, reexportation, or diversion of certain sensitive items to Iran, and for other purposes.

AUGUST 1, 2008

Read twice and placed on the calendar