

# HOUSE BILL 1336

K4

(71r3071)

## **ENROLLED BILL**

— Appropriations / Budget and Taxation —

Introduced by **Delegates Branch, Anderson, Benson, Burns, Cane, Davis, Gaines, Glenn, Griffith, Harrison, Holmes, Howard, Jones, Kirk, Levi, Morhaim, Nathan-Pulliam, Oaks, Pena-Melnyk, Proctor, Rice, Stukes, Tarrant, Taylor, F. Turner, Vaughn, and Walker**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **2007 Darfur Protection Act – Divestiture from the Republic of Sudan**

3 FOR the purpose of requiring the Board of Trustees of the State Retirement and  
4 Pension System to review certain investment holdings; requiring the Board of  
5 Trustees to encourage certain companies to take certain actions; requiring the  
6 Board of Trustees to provide written notice to certain companies; authorizing  
7 the Board of Trustees to take divestment action with regard to certain  
8 investments; prohibiting the Board of Trustees from acquiring certain

---

### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics indicate opposite chamber / conference committee amendments.*



1 securities; requiring the Board of Trustees to take certain issues into account  
2 prior to taking certain actions; requiring the Board of Trustees to publish  
3 certain reports containing certain information on or before a certain date;  
4 defining certain terms; providing for the termination of this Act under certain  
5 circumstances; and generally relating to the divestment of investments from the  
6 Republic of Sudan.

7 BY adding to

8 Article – State Personnel and Pensions

9 Section 21–123.1

10 Annotated Code of Maryland

11 (2004 Replacement Volume and 2006 Supplement)

12 Preamble

13 WHEREAS, On September 9, 2004, Secretary of State Colin L. Powell told the  
14 United States Senate Foreign Relations Committee that “genocide has occurred and  
15 may still be occurring in Darfur” and “the Government of Sudan and the Janjaweed  
16 bear responsibility”; and

17 WHEREAS, On September 21, 2004, addressing the United Nations General  
18 Assembly, President George W. Bush affirmed the Secretary of State’s finding and  
19 stated, “at this hour, the world is witnessing terrible suffering and horrible crimes in  
20 the Darfur region of Sudan, crimes my government has concluded are genocide”; and

21 WHEREAS, On September 25, 2006, the United States Congress reaffirmed  
22 that “the genocide unfolding in the Darfur region of Sudan is characterized by acts of  
23 terrorism and atrocities directed against civilians, including mass murder, rape, and  
24 sexual violence committed by the Janjaweed and associated militias with the  
25 complicity and support of the National Congress Party–led faction of the Government  
26 of Sudan”; and

27 WHEREAS, On September 26, 2006, the United States Congress stated that “an  
28 estimated 300,000 to 400,000 people have been killed by the Government of Sudan and  
29 its Janjaweed allies since the Darfur crisis began in 2003, more than 2,000,000 people  
30 have been displaced from their homes, and more than 250,000 people from Darfur  
31 remain in refugee camps in Chad”; and

32 WHEREAS, The Darfur crisis represents the first time the United States  
33 Government has labeled ongoing atrocities a genocide; and

1 WHEREAS, The federal government has imposed sanctions against the  
2 Government of Sudan since 1997, that are monitored through the United States  
3 Treasury Department’s Office of Foreign Assets Control (OFAC); and

4 WHEREAS, According to a former chair of the United States Securities and  
5 Exchange Commission (SEC), “the fact that a foreign company is doing material  
6 business with a country, government, or entity on OFAC’s sanctions list is, in the SEC  
7 staff’s view, substantially likely to be significant to a reasonable investor’s decision  
8 about whether to invest in that company”; and

9 WHEREAS, In response to the financial risk posed by investments in companies  
10 doing business with a terrorist–sponsoring state, the SEC established its Office of  
11 Global Security Risk to provide for enhanced disclosure of material information  
12 regarding such companies; and

13 WHEREAS, Despite significant pressure from the United States government,  
14 the Republic of Sudan fails to take necessary actions to disassociate itself from its ties  
15 to terrorism and genocide; and

16 WHEREAS, Companies supporting such ties with terrorism and genocide  
17 present further material risk to remaining investors of these companies; and

18 WHEREAS, It is a fundamental responsibility of the State to decide where, how,  
19 and by whom financial resources in its control should be invested, taking into account  
20 numerous pertinent factors; and

21 WHEREAS, It is the prerogative and desire of the State, in respect to  
22 investment resources in its control and to the extent reasonable, with due  
23 consideration for, among other things, return on investment, on behalf of itself and its  
24 investment beneficiaries, not to participate in an ownership or capital–providing  
25 capacity with entities that provide significant practical support for genocide, including  
26 certain international companies presently doing business in Sudan; and

27 WHEREAS, It is the judgment of the General Assembly that this Act should  
28 remain in effect only insofar as it continues to be consistent with, and does not unduly  
29 interfere with, the foreign policy of the United States as determined by the federal  
30 government; and

31 WHEREAS, It is the judgment of the General Assembly that divestment of  
32 public funds from certain companies is a measure that should be employed sparingly  
33 and judiciously – a United States Congressional and Presidential declaration of  
34 genocide satisfying this high threshold; now, therefore,

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – State Personnel and Pensions**

4 **21-123.1.**

5 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
6 MEANINGS INDICATED.

7 (2) “COMPANY” MEANS ANY CORPORATION, UTILITY,  
8 PARTNERSHIP, JOINT VENTURE, FRANCHISOR, FRANCHISEE, TRUST, ENTITY,  
9 INVESTMENT VEHICLE, FINANCIAL INSTITUTION, OR ITS WHOLLY OWNED  
10 SUBSIDIARY;

11 (3) (I) “ACTIVELY MANAGED SEPARATE ACCOUNTS” MEANS  
12 THE ACCOUNTS OF THE SEVERAL SYSTEMS THAT ARE ACTIVELY MANAGED AT  
13 THE DIRECTION OF THE BOARD OF TRUSTEES AND HELD IN SEPARATE  
14 ACCOUNTS.

15 (II) “ACTIVELY MANAGED SEPARATE ACCOUNTS” DOES NOT  
16 MEAN INDEXED FUNDS, PRIVATE EQUITY FUNDS, REAL ESTATE FUNDS, ~~AND OR~~  
17 OTHER COMMINGLED OR PASSIVELY MANAGED FUNDS.

18 (4) “DIVESTMENT ACTION” MEANS SELLING, REDEEMING,  
19 TRANSFERRING, EXCHANGING, OR OTHERWISE DISPOSING OF OR REFRAINING  
20 FROM FURTHER INVESTMENT IN CERTAIN INVESTMENTS.

21 (5) “DOING BUSINESS IN SUDAN” MEANS MAINTAINING  
22 EQUIPMENT, FACILITIES, PERSONNEL, OR OTHER APPARATUS OF BUSINESS OR  
23 COMMERCE IN SUDAN, INCLUDING OWNERSHIP OF REAL OR PERSONAL  
24 PROPERTY IN SUDAN, OR ENGAGING IN ANY BUSINESS ACTIVITY WITH THE  
25 GOVERNMENT OF SUDAN.

26 (6) “ELIGIBLE ACCOUNTS” MEANS ACTIVELY MANAGED  
27 SEPARATE ACCOUNTS CONTAINING FUNDS OF THE SEVERAL SYSTEMS.

28 (7) “INVESTMENT” MEANS THE COMMITMENT OF FUNDS OR  
29 OTHER ASSETS TO A COMPANY, INCLUDING:

1                   (I) THE OWNERSHIP OR CONTROL OF A SHARE OR  
2 INTEREST IN THE COMPANY; OR

3                   (II) THE OWNERSHIP OR CONTROL OF A BOND OR OTHER  
4 DEBT INSTRUMENT BY A COMPANY.

5                   (8) (I) "SUDAN" MEANS THE GOVERNMENT IN KHARTOUM,  
6 SUDAN, THAT IS LED BY THE NATIONAL CONGRESS PARTY (FORMERLY KNOWN  
7 AS THE NATIONAL ISLAMIC FRONT) OR ANY SUCCESSOR GOVERNMENT FORMED  
8 ON OR AFTER OCTOBER 13, 2006, INCLUDING THE COALITION NATIONAL UNITY  
9 GOVERNMENT AGREED ON IN THE COMPREHENSIVE PEACE AGREEMENT FOR  
10 SUDAN.

11                   (II) "SUDAN" DOES NOT MEAN THE REGIONAL  
12 GOVERNMENT OF SOUTHERN SUDAN.

13                   (B) THE BOARD OF TRUSTEES SHALL REVIEW THE INVESTMENT  
14 HOLDINGS IN ELIGIBLE ACCOUNTS FOR THE PURPOSE OF DETERMINING THE  
15 EXTENT TO WHICH FUNDS IN ELIGIBLE ACCOUNTS ARE INVESTED IN COMPANIES  
16 DOING BUSINESS IN SUDAN.

17                   (C) CONSISTENT WITH THE FIDUCIARY DUTIES OF THE BOARD OF  
18 TRUSTEES UNDER SUBTITLE 2 OF THIS TITLE, AND THE PROVISIONS OF  
19 SUBSECTION (D) OF THIS SECTION, THE BOARD OF TRUSTEES:

20                   (1) SHALL ENCOURAGE COMPANIES IN WHICH ELIGIBLE  
21 ACCOUNTS ARE INVESTED AND THAT ARE DOING BUSINESS IN SUDAN TO ACT  
22 RESPONSIBLY AND AVOID ACTIONS THAT PROMOTE OR OTHERWISE ENABLE  
23 HUMAN RIGHTS VIOLATIONS IN SUDAN;

24                   (2) MAY TAKE DIVESTMENT ACTION IN ELIGIBLE ACCOUNTS WITH  
25 REGARD TO INVESTMENTS:

26                   (I) IN ANY COMPANY DOING BUSINESS IN SUDAN; OR

27                   (II) IN ANY SECURITY OR INSTRUMENT ISSUED BY SUDAN;

28 AND

1           **(3) MAY NOT MAKE ANY NEW INVESTMENTS FROM NET NEW**  
2 **FUNDS IN AN ELIGIBLE ACCOUNT IN ANY COMPANY THAT IS DOING BUSINESS IN**  
3 **SUDAN.**

4           **(D) IN DETERMINING WHETHER TO TAKE DIVESTMENT ACTION UNDER**  
5 **SUBSECTION (C) OF THIS SECTION WITH REGARD TO THE INVESTMENT OF**  
6 **FUNDS IN ELIGIBLE ACCOUNTS IN A COMPANY DOING BUSINESS IN SUDAN, THE**  
7 **BOARD OF TRUSTEES SHALL CONSIDER THE FOLLOWING:**

8           **(1) REVENUES PAID BY A COMPANY DIRECTLY TO THE**  
9 **GOVERNMENT OF SUDAN;**

10           **(2) WHETHER A COMPANY SUPPLIES INFRASTRUCTURE OR**  
11 **RESOURCES USED BY THE GOVERNMENT OF SUDAN TO IMPLEMENT ITS**  
12 **POLICIES OF GENOCIDE IN DARFUR OR OTHER REGIONS OF SUDAN;**

13           **(3) WHETHER A COMPANY KNOWINGLY OBSTRUCTS LAWFUL**  
14 **INQUIRIES INTO ITS OPERATIONS AND INVESTMENTS IN SUDAN;**

15           **(4) WHETHER A COMPANY ATTEMPTS TO CIRCUMVENT ANY**  
16 **APPLICABLE SANCTIONS OF THE UNITED STATES;**

17           **(5) THE EXTENT OF ANY HUMANITARIAN ACTIVITIES**  
18 **UNDERTAKEN BY A COMPANY IN SUDAN;**

19           **(6) WHETHER A COMPANY IS ENGAGED SOLELY IN THE PROVISION**  
20 **OF GOODS AND SERVICES INTENDED TO RELIEVE HUMAN SUFFERING, OR TO**  
21 **PROMOTE WELFARE, HEALTH, EDUCATION, OR RELIGIOUS OR SPIRITUAL**  
22 **ACTIVITIES;**

23           **(7) WHETHER A COMPANY IS AUTHORIZED BY THE FEDERAL**  
24 **GOVERNMENT OF THE UNITED STATES TO DO BUSINESS IN SUDAN;**

25           **(8) EVIDENCE THAT A COMPANY HAS ENGAGED THE**  
26 **GOVERNMENT OF SUDAN TO CEASE ITS ABUSES IN DARFUR OR OTHER REGIONS**  
27 **IN SUDAN;**

28           **(9) WHETHER A COMPANY IS ENGAGED SOLELY IN JOURNALISTIC**  
29 **ACTIVITIES; AND**

1           **(10) ANY OTHER FACTOR THAT THE BOARD OF TRUSTEES DEEMS**  
2 **PRUDENT.**

3           **(E) IF THE BOARD OF TRUSTEES TAKES DIVESTMENT ACTION UNDER**  
4 **SUBSECTION (C) OF THIS SECTION, WITH RESPECT TO INVESTMENTS IN A**  
5 **COMPANY, THE BOARD OF TRUSTEES SHALL PROVIDE THE COMPANY WITH**  
6 **WRITTEN NOTICE OF ITS DECISION AND REASONS FOR THE DECISION.**

7           **(F) ON OR BEFORE OCTOBER 1 OF EACH YEAR, AND EVERY 3 MONTHS**  
8 **THEREAFTER, THE BOARD OF TRUSTEES SHALL SUBMIT A REPORT IN**  
9 **ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE TO THE**  
10 **SENATE BUDGET AND TAXATION COMMITTEE, THE HOUSE APPROPRIATIONS**  
11 **COMMITTEE, AND THE JOINT COMMITTEE ON PENSIONS THAT PROVIDES:**

12           **(1) A SUMMARY OF CORRESPONDENCE WITH COMPANIES**  
13 **ENGAGED BY THE BOARD OF TRUSTEES UNDER THIS SECTION;**

14           **(2) ALL DIVESTMENT ACTIONS TAKEN BY THE BOARD OF**  
15 **TRUSTEES IN ACCORDANCE WITH THIS SECTION;**

16           **(3) A LIST OF COMPANIES DOING BUSINESS IN SUDAN WHICH THE**  
17 **BOARD OF TRUSTEES HAS DETERMINED TO BE INELIGIBLE FOR INVESTMENTS**  
18 **OF NET NEW FUNDS UNDER SUBSECTION (C)(3) OF THIS SECTION; AND**

19           **(4) OTHER DEVELOPMENTS RELEVANT TO INVESTMENT IN**  
20 **COMPANIES DOING BUSINESS IN SUDAN.**

21           SECTION 2. AND BE IT FURTHER ENACTED, That if the President of the  
22 United States rescinds or repeals Executive Order 13067, with no further action  
23 required by the General Assembly, this Act shall be abrogated and of no further force  
24 and effect. Within 5 working days of the President of the United States rescinding or  
25 repealing Executive Order 13067, the Board of Trustees for the State Retirement and  
26 Pension System shall notify the Department of Legislative Services in writing of the  
27 rescission or repeal at 90 State Circle, Annapolis, Maryland 21401.

28           SECTION 3. AND BE IT FURTHER ENACTED, That, subject to the provisions  
29 of Section 2 of this Act, this Act shall take effect July 1, 2007.