

HOUSE BILL 1336

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7lr3071
CF SB 543

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**

Introduced and read first time: February 28, 2007

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

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
9 securities; requiring the Board of Trustees to take certain issues into account
10 prior to taking certain actions; requiring the Board of Trustees to publish
11 certain reports containing certain information on or before a certain date;
12 defining certain terms; providing for the termination of this Act under certain
13 circumstances; and generally relating to the divestment of investments from the
14 Republic of Sudan.

15 BY adding to
16 Article – State Personnel and Pensions
17 Section 21–123.1
18 Annotated Code of Maryland
19 (2004 Replacement Volume and 2006 Supplement)

20 Preamble

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

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

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

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

9 WHEREAS, It is the prerogative and desire of the State, in respect to
10 investment resources in its control and to the extent reasonable, with due
11 consideration for, among other things, return on investment, on behalf of itself and its
12 investment beneficiaries, not to participate in an ownership or capital-providing
13 capacity with entities that provide significant practical support for genocide, including
14 certain international companies presently doing business in Sudan; and

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

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

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

25 **Article – State Personnel and Pensions**

26 **21-123.1.**

27 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
28 MEANINGS INDICATED.

29 (2) “COMPANY” MEANS ANY CORPORATION, UTILITY,
30 PARTNERSHIP, JOINT VENTURE, FRANCHISOR, FRANCHISEE, TRUST, ENTITY,
31 INVESTMENT VEHICLE, FINANCIAL INSTITUTION, OR ITS WHOLLY OWNED
32 SUBSIDIARY;

1 (3) (I) **“ACTIVELY MANAGED SEPARATE ACCOUNTS” MEANS**
2 **THE ACCOUNTS OF THE SEVERAL SYSTEMS THAT ARE ACTIVELY MANAGED AT**
3 **THE DIRECTION OF THE BOARD OF TRUSTEES AND HELD IN SEPARATE**
4 **ACCOUNTS.**

5 (II) **“ACTIVELY MANAGED SEPARATE ACCOUNTS” DOES NOT**
6 **MEAN INDEXED FUNDS, PRIVATE EQUITY FUNDS, REAL ESTATE FUNDS, AND**
7 **OTHER COMMINGLED OR PASSIVELY MANAGED FUNDS.**

8 (4) **“DIVESTMENT ACTION” MEANS SELLING, REDEEMING,**
9 **TRANSFERRING, EXCHANGING, OR OTHERWISE DISPOSING OF OR REFRAINING**
10 **FROM FURTHER INVESTMENT IN CERTAIN INVESTMENTS.**

11 (5) **“DOING BUSINESS IN SUDAN” MEANS MAINTAINING**
12 **EQUIPMENT, FACILITIES, PERSONNEL, OR OTHER APPARATUS OF BUSINESS OR**
13 **COMMERCE IN SUDAN, INCLUDING OWNERSHIP OF REAL OR PERSONAL**
14 **PROPERTY IN SUDAN, OR ENGAGING IN ANY BUSINESS ACTIVITY WITH THE**
15 **GOVERNMENT OF SUDAN.**

16 (6) **“ELIGIBLE ACCOUNTS” MEANS ACTIVELY MANAGED**
17 **SEPARATE ACCOUNTS CONTAINING FUNDS OF THE SEVERAL SYSTEMS.**

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

20 (I) **THE OWNERSHIP OR CONTROL OF A SHARE OR**
21 **INTEREST IN THE COMPANY; OR**

22 (II) **THE OWNERSHIP OR CONTROL OF A BOND OR OTHER**
23 **DEBT INSTRUMENT BY A COMPANY.**

24 (8) (I) **“SUDAN” MEANS THE GOVERNMENT IN KHARTOUM,**
25 **SUDAN, THAT IS LED BY THE NATIONAL CONGRESS PARTY (FORMERLY KNOWN**
26 **AS THE NATIONAL ISLAMIC FRONT) OR ANY SUCCESSOR GOVERNMENT FORMED**
27 **ON OR AFTER OCTOBER 13, 2006, INCLUDING THE COALITION NATIONAL UNITY**
28 **GOVERNMENT AGREED ON IN THE COMPREHENSIVE PEACE AGREEMENT FOR**
29 **SUDAN.**

1 (II) “SUDAN” DOES NOT MEAN THE REGIONAL
2 GOVERNMENT OF SOUTHERN SUDAN.

3 (B) THE BOARD OF TRUSTEES SHALL REVIEW THE INVESTMENT
4 HOLDINGS IN ELIGIBLE ACCOUNTS FOR THE PURPOSE OF DETERMINING THE
5 EXTENT TO WHICH FUNDS IN ELIGIBLE ACCOUNTS ARE INVESTED IN COMPANIES
6 DOING BUSINESS IN SUDAN.

7 (C) CONSISTENT WITH THE FIDUCIARY DUTIES OF THE BOARD OF
8 TRUSTEES UNDER SUBTITLE 2 OF THIS TITLE, AND THE PROVISIONS OF
9 SUBSECTION (D) OF THIS SECTION, THE BOARD OF TRUSTEES:

10 (1) SHALL ENCOURAGE COMPANIES IN WHICH ELIGIBLE
11 ACCOUNTS ARE INVESTED AND THAT ARE DOING BUSINESS IN SUDAN TO ACT
12 RESPONSIBLY AND AVOID ACTIONS THAT PROMOTE OR OTHERWISE ENABLE
13 HUMAN RIGHTS VIOLATIONS IN SUDAN;

14 (2) MAY TAKE DIVESTMENT ACTION IN ELIGIBLE ACCOUNTS WITH
15 REGARD TO INVESTMENTS:

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

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

18 AND

19 (3) MAY NOT MAKE ANY NEW INVESTMENTS FROM NET NEW
20 FUNDS IN AN ELIGIBLE ACCOUNT IN ANY COMPANY THAT IS DOING BUSINESS IN
21 SUDAN.

22 (D) IN DETERMINING WHETHER TO TAKE DIVESTMENT ACTION UNDER
23 SUBSECTION (C) OF THIS SECTION WITH REGARD TO THE INVESTMENT OF
24 FUNDS IN ELIGIBLE ACCOUNTS IN A COMPANY DOING BUSINESS IN SUDAN, THE
25 BOARD OF TRUSTEES SHALL CONSIDER THE FOLLOWING:

26 (1) REVENUES PAID BY A COMPANY DIRECTLY TO THE
27 GOVERNMENT OF SUDAN;

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

4 (3) WHETHER A COMPANY KNOWINGLY OBSTRUCTS LAWFUL
5 INQUIRIES INTO ITS OPERATIONS AND INVESTMENTS IN SUDAN;

6 (4) WHETHER A COMPANY ATTEMPTS TO CIRCUMVENT ANY
7 APPLICABLE SANCTIONS OF THE UNITED STATES;

8 (5) THE EXTENT OF ANY HUMANITARIAN ACTIVITIES
9 UNDERTAKEN BY A COMPANY IN SUDAN;

10 (6) WHETHER A COMPANY IS ENGAGED SOLELY IN THE PROVISION
11 OF GOODS AND SERVICES INTENDED TO RELIEVE HUMAN SUFFERING, OR TO
12 PROMOTE WELFARE, HEALTH, EDUCATION, OR RELIGIOUS OR SPIRITUAL
13 ACTIVITIES;

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

16 (8) EVIDENCE THAT A COMPANY HAS ENGAGED THE
17 GOVERNMENT OF SUDAN TO CEASE ITS ABUSES IN DARFUR OR OTHER REGIONS
18 IN SUDAN;

19 (9) WHETHER A COMPANY IS ENGAGED SOLELY IN JOURNALISTIC
20 ACTIVITIES; AND

21 (10) ANY OTHER FACTOR THAT THE BOARD OF TRUSTEES DEEMS
22 PRUDENT.

23 (E) IF THE BOARD OF TRUSTEES TAKES DIVESTMENT ACTION UNDER
24 SUBSECTION (C) OF THIS SECTION, WITH RESPECT TO INVESTMENTS IN A
25 COMPANY, THE BOARD OF TRUSTEES SHALL PROVIDE THE COMPANY WITH
26 WRITTEN NOTICE OF ITS DECISION AND REASONS FOR THE DECISION.

27 (F) ON OR BEFORE OCTOBER 1 OF EACH YEAR, AND EVERY 3 MONTHS
28 THEREAFTER, THE BOARD OF TRUSTEES SHALL SUBMIT A REPORT IN
29 ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE TO THE

1 **SENATE BUDGET AND TAXATION COMMITTEE, THE HOUSE APPROPRIATIONS**
2 **COMMITTEE, AND THE JOINT COMMITTEE ON PENSIONS THAT PROVIDES:**

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

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

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

10 **(4) OTHER DEVELOPMENTS RELEVANT TO INVESTMENT IN**
11 **COMPANIES DOING BUSINESS IN SUDAN.**

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

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