

HB0371/394761/1

BY: Appropriations Committee

AMENDMENTS TO HOUSE BILL 371

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, after “Iran” insert “and Sudan”; in line 5, after “companies;” insert “requiring certain companies to provide certain comments to the Board of Trustees within a certain period of time;”; in line 10, after “date;” insert “providing certain immunities from liability for certain persons; requiring the Board of Trustees to act in good faith in taking certain actions in a certain manner; providing for the construction of this Act; repealing certain other divestment laws;”; in the same line, strike “providing for the abrogation of this Act” and substitute “requiring the Board of Trustees to make certain recommendations to the Joint Committee on Pensions within a certain period of time”; in line 11, after “severable;” insert “providing for a delayed effective date;”; in line 12, after “Iran” insert “or Sudan”; after line 12, insert:

“BY repealing

Article – State Personnel and Pensions

Section 21-123.1

Annotated Code of Maryland

(2004 Replacement Volume and 2007 Supplement)”;

and in line 15, strike “21-123.2” and substitute “21-123.1”.

AMENDMENT NO. 2

On page 2, strike in their entirety lines 13 through 15, inclusive; in line 19, strike “, which is” and substitute “and”; in line 21, strike the comma; after line 28, insert:

(Over)

“WHEREAS, Beginning in 2004, and several times since, the United States government has labeled ongoing atrocities by the government of Sudan and its Janjaweed allies in Darfur to be a genocide; and

WHEREAS, The United States government has imposed sanctions against the government of Sudan since 1997 that are monitored through the United States Treasury Department’s Office of Foreign Assets Control; and

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

WHEREAS, On December 31, 2007, the President of the United States signed into law the Sudan Accountability and Divestment Act of 2007, which authorizes state and local governments that comply with the Act to divest assets in companies that conduct business operations in Sudan; and”;

in line 29, strike “While divestiture” and substitute “Divestiture”; strike beginning with “as” in line 33 down through “shareholders” in line 34; after line 34, insert:

“WHEREAS, The Maryland Court of Appeals has indicated that the fiduciaries of public pension plans in the State may consider humanitarian and other social issues in their analysis of investments if the associated costs are de minimis; and”;

and strike in their entirety lines 35 through 37, inclusive.

AMENDMENT NO. 3

On page 3, in line 6, after “That” insert “Section(s) 21-123.1 of the Article – State Personnel and Pensions of the Annotated Code of Maryland be repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That”;

in line 8, strike “**21-123.2.**” and substitute “**21-123.1.**”; in line 31, after “**PETROLEUM**” insert “**OR NATURAL GAS**”; after line 31, insert:

“(6) “DOING BUSINESS IN SUDAN” MEANS ENGAGING IN COMMERCE IN SUDAN BY MAINTAINING OR LEASING EQUIPMENT, FACILITIES, PERSONNEL, OR OTHER APPARATUS OF BUSINESS OR COMMERCE IN OIL-RELATED ACTIVITIES, MINERAL EXTRACTION ACTIVITIES, POWER PRODUCTION ACTIVITIES, OR PRODUCTION OF MILITARY EQUIPMENT OF SUDAN.”;

and in line 32, strike “**(6)**” and substitute “**(7)**”.

On page 4, in lines 1, 4, and 10, strike “**(7)**”, “**(8)**”, and “**(9)**”, respectively, and substitute “**(8)**”, “**(9)**”, and “**(10)**”, respectively; in line 9, strike “**BY**” and substitute “**OF**”; strike in their entirety lines 11 and 12; and after line 12, insert:

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

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

AMENDMENT NO. 4

On page 4, in line 16, after “**IRAN**” insert “**OR SUDAN**”; in line 17, after “**(C)**” insert “**(1)**”; in the same line, strike “**(D)**” and substitute “**(E)**”; in line 19, after “**TITLE**” insert “**AND ALL OTHER APPLICABLE LAW**”; and in the same line, strike the colon and substitute “**SHALL, WITHIN 30 DAYS OF ITS REVIEW UNDER SUBSECTION**

(B) OF THIS SECTION, PROVIDE WRITTEN NOTICE AND OPPORTUNITY TO COMMENT TO A COMPANY IN WHICH ELIGIBLE ACCOUNTS ARE INVESTED AND THAT HAS BEEN IDENTIFIED AS DOING BUSINESS IN IRAN OR SUDAN.

(2) ANY NOTICE PROVIDED BY THE BOARD OF TRUSTEES UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL STATE THAT THE COMPANY SHALL BE SUBJECT TO DIVESTMENT ACTION BY THE BOARD OF TRUSTEES UNLESS THE COMPANY PROVIDES WRITTEN COMMENTS WITHIN 90 DAYS TO THE BOARD OF TRUSTEES:

(I) DEMONSTRATING THAT THE COMPANY IS NOT DOING BUSINESS IN IRAN OR SUDAN; OR

(II) STATING THAT, WITHIN 60 DAYS OF PROVIDING WRITTEN COMMENTS TO THE BOARD OF TRUSTEES UNDER THIS PARAGRAPH, THE COMPANY WILL PRODUCE A PLAN TO END DOING BUSINESS IN IRAN OR SUDAN WITHIN 1 YEAR.

(3) IF THE COMPANY DEMONSTRATES TO THE SATISFACTION OF THE BOARD OF TRUSTEES THAT IT IS NOT DOING BUSINESS IN IRAN OR SUDAN, THE BOARD OF TRUSTEES MAY NOT TAKE ANY DIVESTMENT ACTION AGAINST THE COMPANY.

(4) (I) IF WITHIN 60 DAYS OF PROVIDING WRITTEN COMMENTS TO THE BOARD OF TRUSTEES UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE COMPANY PRODUCES A PLAN TO CEASE DOING BUSINESS IN IRAN OR SUDAN WITHIN 1 YEAR, THE BOARD OF TRUSTEES MAY NOT TAKE ANY DIVESTMENT ACTION AGAINST THE COMPANY.

(II) IF THE BOARD OF TRUSTEES DOES NOT TAKE ANY DIVESTMENT ACTION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE BOARD OF TRUSTEES SHALL MONITOR THE PROGRESS OF THE COMPANY'S PLAN TO CEASE DOING BUSINESS IN IRAN OR SUDAN OVER THE 12 MONTHS IMMEDIATELY FOLLOWING RECEIPT OF THE PLAN.

(III) IF THE COMPANY CEASES DOING BUSINESS IN IRAN OR SUDAN WITHIN 1 YEAR, THE BOARD OF TRUSTEES MAY NOT TAKE ANY DIVESTMENT ACTION AGAINST THE COMPANY.

(IV) IF THE COMPANY DOES NOT CEASE DOING BUSINESS IN IRAN OR SUDAN WITHIN 1 YEAR, THE BOARD OF TRUSTEES SHALL TAKE DIVESTMENT ACTION AGAINST THE COMPANY AS PROVIDED IN SUBSECTION (D) OF THIS SECTION.

AMENDMENT NO. 5

On page 4, strike in their entirety lines 20 through 24, inclusive; and after line 24, insert:

“(D) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (E) OF THIS SECTION, THE BOARD OF TRUSTEES:”;

in line 25, strike “(2)” and substitute “(1)”; in lines 27 and 28, in each instance, after “IRAN” insert “OR SUDAN”; in line 30, strike “(3)” and substitute “(2)”; and in line 32, after “IRAN” insert “OR SUDAN AS DETERMINED IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN SUBSECTION (C) OF THIS SECTION”.

AMENDMENT NO. 6

On page 5, in lines 1, 12, 16, and 30, strike “(D)”, “(E)”, “(F)”, and “(G)”, respectively, and substitute “(E)”, “(F)”, “(G)”, and “(H)”, respectively; in line 2, strike

“SUBSECTION” and substitute “SUBSECTIONS”; in line 3, after “(C)” insert “AND (D)”; in line 6, strike the semicolon and substitute “OR SUDAN; AND”; strike in their entirety lines 7 through 9, inclusive; in line 10, strike “(3)” and substitute “(2)”; in line 13, strike “(C)” and substitute “(D)”; in lines 25 and 29, in each instance, after “IRAN” insert “OR SUDAN”; in line 27, strike “(C)(3)” and substitute “(D)(2)”; in line 30, after “TRUSTEES” insert “, OR ANY OTHER FIDUCIARY OF THE SEVERAL SYSTEMS,”; and in line 32, after “OF” insert “ANY DIVESTMENT PROVISIONS UNDER”.

AMENDMENT NO. 7

On page 5, after line 32, insert:

“(I) THE BOARD OF TRUSTEES SHALL ACT IN GOOD FAITH TO CARRY OUT DIVESTMENT ACTION AS REQUIRED BY THIS SECTION IN COMPLIANCE WITH ALL APPLICABLE STATE AND FEDERAL LAW, INCLUDING RELEVANT JUDICIAL DECISIONS AND THE FEDERAL SUDAN ACCOUNTABILITY AND DIVESTMENT ACT OF 2007.

“(J) NOTHING IN THIS SECTION SHALL REQUIRE THE BOARD OF TRUSTEES TO TAKE ACTION AS DESCRIBED IN THIS SECTION UNLESS THE BOARD OF TRUSTEES DETERMINES, IN GOOD FAITH, THAT THE ACTION IS CONSISTENT WITH THE FIDUCIARY RESPONSIBILITIES OF THE BOARD OF TRUSTEES AS DESCRIBED IN SUBTITLE 2 OF THIS TITLE.”

AMENDMENT NO. 8

On page 6, in lines 1, 17, and 23, strike “2.”, “3.”, and “4.”, respectively, and substitute “3.”, “4.”, and “5.”, respectively; in line 2, strike “This Act shall be abrogated and of no further force and effect if:” and substitute “(1) The Board of Trustees of the State Retirement and Pension System shall recommend to the Joint Committee on Pensions legislation that would amend Section 2 of this Act to repeal any reference to Iran divestment if:”;

in line 3, strike “(1)” and substitute “(i) with regard to Iran divestment,”; in line 8, strike “(2)” and substitute “(ii)”; in line 11, strike “of the type” and substitute “from Iran as”; after line 12, insert:

“(2) Any recommendation made by the Board of Trustees under paragraph (1) of this subsection shall be made within 6 months of the occurrence of either paragraph (1)(i) or (ii) of this subsection.

(b) (1) The Board of Trustees of the State Retirement and Pension System shall recommend to the Joint Committee on Pensions legislation that would amend Section 2 of this Act to repeal any reference to Sudan divestment if:

(i) with regard to Sudan divestment, the Congress or President of the United States affirmatively declares that the government of Sudan has:

1. honored its commitments to abide by United Nations Security Council Resolution 1769 (2007);

2. ceased attacks on civilians;

3. demobilized and demilitarized the Janjaweed and associated militias;

4. granted free and unfettered access for delivery of humanitarian assistance; and

5. allowed for the safe and voluntary return of refugees and internally displaced persons;

(ii) with regard to Sudan divestment, the President of the United States rescinds or repeals Executive Order 13067; or

(iii) the Congress or President of the United States affirmatively and unambiguously declares, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory divestment from Sudan as provided for in this Act interferes with the conduct of United States foreign policy.

(2) Any recommendation made by the Board of Trustees under paragraph (1) of this subsection shall be made within 6 months of the occurrence of either paragraph (1)(i), (ii), or (iii) of this subsection.”;

strike in their entirety lines 13 through 16, inclusive; in line 24, strike “2” and substitute “3”; and in the same line, strike “July 1, 2008” and substitute “January 1, 2009”.