

HOUSE BILL 371

K4

8lr0232
CF SB 214

By: **The Speaker (By Request - Administration) and Delegates Aumann, Bobo, Bohanan, Branch, Bronrott, Busch, Cane, Cardin, G. Clagett, Dumais, Eckardt, Elmore, Feldman, Frick, Gaines, George, Guzzone, Hammen, Haynes, Healey, Hecht, Hubbard, James, Jones, Kaiser, Kramer, Krebs, Kullen, Lee, Levy, Love, Manno, Mathias, Minnick, Montgomery, Morhaim, Nathan-Pulliam, O'Donnell, Proctor, Riley, Rosenberg, Rudolph, Schuh, Shank, Smigiel, Sophocleus, Stein, Tarrant, and Waldstreicher**

Introduced and read first time: January 25, 2008

Assigned to: Appropriations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: April 2, 2008

CHAPTER _____

1 AN ACT concerning

2 **Divestiture from Iran and Sudan**

3 FOR the purpose of requiring the Board of Trustees for the State Retirement and
4 Pension System to review certain investment holdings; requiring the Board of
5 Trustees to provide written notice to certain companies; requiring certain
6 companies to provide certain comments to the Board of Trustees within a
7 certain period of time; requiring the Board of Trustees to take divestment action
8 with regard to certain investments; providing certain exceptions to required
9 divestment actions; prohibiting the Board of Trustees from making certain new
10 investments; requiring the Board of Trustees to submit certain reports
11 containing certain information on or before a certain date; providing certain
12 immunities from liability for certain persons; requiring the Board of Trustees to
13 act in good faith in taking certain actions in a certain manner; providing for the
14 construction of this Act; repealing certain other divestment laws; defining
15 certain terms; ~~providing for the abrogation of this Act~~ requiring the Board of
16 Trustees to make certain recommendations to the Joint Committee on Pensions
17 within a certain period of time under certain circumstances; making the
18 provisions of this Act severable; providing for a delayed effective date; and
19 generally relating to sanctions against Iran or Sudan.

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.



1 BY repealing

2 Article – State Personnel and Pensions

3 Section 21–123.1

4 Annotated Code of Maryland

5 (2004 Replacement Volume and 2007 Supplement)

6 BY adding to

7 Article – State Personnel and Pensions

8 Section ~~21–123.2~~ 21–123.1

9 Annotated Code of Maryland

10 (2004 Replacement Volume and 2007 Supplement)

11 Preamble

12 WHEREAS, According to a former chair of the United States Securities and
13 Exchange Commission (SEC), the fact that a foreign company is doing material
14 business with a country, government, or entity on the sanctions list issued by the
15 United States Treasury Department’s Office of Foreign Asset Control (OFAC) is, in the
16 SEC staff’s view, substantially likely to be significant to a reasonable investor’s
17 decision about whether to invest in that company; and

18 WHEREAS, A 2006 report by the United States House of Representatives states
19 that “a company’s association with sponsors of terrorism and human rights abuses, no
20 matter how large or small, can have a materially adverse result on a public company’s
21 operations, financial condition, earnings, and stock prices, all of which can negatively
22 affect the value of an investment”; and

23 WHEREAS, In response to the financial risk posed by investments in companies
24 doing business with a state that sponsors terrorists, the SEC established its Office of
25 Global Security Risk to provide for enhanced disclosure of material information
26 regarding such companies; and

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

30 WHEREAS, A resolution of the United Nations Security Council imposes
31 sanctions on Iran for its failure to suspend its uranium–enrichment activities; and

32 WHEREAS, The United Nations Security Council voted unanimously for an
33 additional embargo on Iranian arms exports, ~~which is~~ and a freeze on assets abroad of
34 an expanded list of individuals and companies involved in Iran’s nuclear and ballistic
35 missile programs, and calls for nations and institutions to bar new grants or loans to
36 Iran except for humanitarian and developmental purposes; and

37 WHEREAS, Foreign entities have invested in Iran’s petroleum–energy sector
38 despite United States and United Nations sanctions against Iran; and

1 WHEREAS, All entities that have invested more than \$20,000,000 in Iran's
2 energy sector in any given year since August 5, 1996, are subject to sanctions under
3 United States law pursuant to the Iran Sanctions Act of 1996, which was renewed in
4 2001 and 2006; and

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

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

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

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

18 WHEREAS, ~~While divestiture~~ Divestiture should be considered with the intent
19 to improve investment performance and, by the rules of prudence, fiduciaries must
20 take into account all relevant substantive factors in arriving at an investment
21 decision; and

22 WHEREAS, The State is deeply concerned about investments in publicly traded
23 companies that have invested in Iran's petroleum-energy sector ~~as a financial risk to~~
24 ~~the shareholders; and~~

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

28 ~~WHEREAS, By investing in publicly traded companies which have invested in~~
29 ~~Iran's petroleum-energy sector, the Board of Trustees for the State Retirement and~~
30 ~~Pension System is putting the funds it oversees at substantial financial risk; and~~

31 WHEREAS, The General Assembly finds that this Act should remain in effect
32 only insofar as it continues to be consistent with and does not unduly interfere with
33 the foreign policy of the United States as determined by the federal government; now,
34 therefore,

35 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
36 MARYLAND, That Section(s) 21-123.1 of the Article – State Personnel and Pensions
37 of the Annotated Code of Maryland be repealed.

1 ~~(6)~~ (7) **“ELIGIBLE ACCOUNTS” MEANS ACTIVELY MANAGED**
2 **SEPARATE ACCOUNTS CONTAINING FUNDS OF THE SEVERAL SYSTEMS.**

3 ~~(7)~~ (8) **“GOVERNMENT OF IRAN” MEANS THE GOVERNMENT OF**
4 **IRAN, ITS INSTRUMENTALITIES, AND COMPANIES OWNED OR CONTROLLED BY**
5 **THE GOVERNMENT OF IRAN.**

6 ~~(8)~~ (9) **“INVESTMENT” MEANS THE COMMITMENT OF FUNDS OR**
7 **OTHER ASSETS TO A COMPANY, INCLUDING:**

8 **(I) THE OWNERSHIP OR CONTROL OF A SHARE OR**
9 **INTEREST IN THE COMPANY; OR**

10 **(II) THE OWNERSHIP OR CONTROL OF A BOND OR OTHER**
11 **DEBT INSTRUMENT ~~BY~~ OF A COMPANY.**

12 ~~(9)~~ (10) **“IRAN” MEANS THE ISLAMIC REPUBLIC OF IRAN.**

13 ~~(10) “IRAN’S PETROLEUM ENERGY SECTOR” MEANS PETROLEUM~~
14 ~~AND NATURAL GAS.~~

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

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

23 **(B) THE BOARD OF TRUSTEES SHALL REVIEW THE INVESTMENT**
24 **HOLDINGS IN ELIGIBLE ACCOUNTS FOR THE PURPOSE OF DETERMINING THE**
25 **EXTENT TO WHICH FUNDS IN ELIGIBLE ACCOUNTS ARE INVESTED IN COMPANIES**
26 **DOING BUSINESS IN IRAN OR SUDAN.**

27 **(C) (1) EXCEPT AS PROVIDED IN SUBSECTION ~~(D)~~ (E) OF THIS**
28 **SECTION, AND CONSISTENT WITH THE FIDUCIARY DUTIES OF THE BOARD OF**
29 **TRUSTEES UNDER SUBTITLE 2 OF THIS TITLE AND ALL OTHER APPLICABLE**
30 **LAW, THE BOARD OF TRUSTEES; SHALL, WITHIN 30 DAYS OF ITS REVIEW UNDER**
31 **SUBSECTION (B) OF THIS SECTION, PROVIDE WRITTEN NOTICE AND**
32 **OPPORTUNITY TO COMMENT TO A COMPANY IN WHICH ELIGIBLE ACCOUNTS ARE**
33 **INVESTED AND THAT HAS BEEN IDENTIFIED AS DOING BUSINESS IN IRAN OR**
34 **SUDAN.**

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

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

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

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

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

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

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

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

33 **(1) SHALL NOTIFY A COMPANY IN WHICH ELIGIBLE ACCOUNTS**
34 **ARE INVESTED AND THAT IS DOING BUSINESS IN IRAN THAT IT WILL BE SUBJECT**
35 **TO DIVESTMENT BY THE BOARD OF TRUSTEES WITHIN 90 DAYS UNLESS THE**

1 ~~COMPANY PRODUCES AND ANNOUNCES A PLAN WITHIN 90 DAYS TO END DOING~~
 2 ~~BUSINESS IN IRAN WITHIN 1 YEAR;~~

3 (D) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (E) OF THIS
 4 SECTION, THE BOARD OF TRUSTEES:

5 ~~(2)~~ (1) SHALL TAKE DIVESTMENT ACTION IN ELIGIBLE
 6 ACCOUNTS WITH REGARD TO CURRENT INVESTMENTS:

7 (I) IN ANY COMPANY DOING BUSINESS IN IRAN OR SUDAN;
 8 OR

9 (II) IN ANY SECURITY OR INSTRUMENT ISSUED BY IRAN OR
 10 SUDAN; AND

11 ~~(3)~~ (2) MAY NOT MAKE ANY NEW INVESTMENTS FROM NET NEW
 12 FUNDS IN AN ELIGIBLE ACCOUNT IN ANY COMPANY THAT IS DOING BUSINESS IN
 13 IRAN OR SUDAN AS DETERMINED IN ACCORDANCE WITH THE PROCEDURES SET
 14 FORTH IN SUBSECTION (C) OF THIS SECTION.

15 ~~(E)~~ (E) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THE
 16 BOARD OF TRUSTEES MAY EXCLUDE FROM THE PROVISIONS OF ~~SUBSECTION~~
 17 SUBSECTIONS (C) AND (D) OF THIS SECTION, A COMPANY:

18 (1) THAT THE UNITED STATES GOVERNMENT AFFIRMATIVELY
 19 DECLARES TO BE EXCLUDED FROM ITS FEDERAL SANCTIONS REGIME RELATING
 20 TO IRAN; OR SUDAN; AND

21 ~~(2) WHOSE DIVESTMENT WOULD REDUCE THE VALUE OF ALL~~
 22 ~~ASSETS UNDER MANAGEMENT IN ELIGIBLE ACCOUNTS BY ONE HALF OF ONE~~
 23 ~~PERCENTAGE POINT OR MORE; AND~~

24 ~~(3)~~ (2) WHOSE DIVESTMENT CANNOT BE EXECUTED FOR FAIR
 25 MARKET VALUE OR GREATER.

26 ~~(F)~~ (F) IF THE BOARD OF TRUSTEES TAKES DIVESTMENT ACTION
 27 UNDER SUBSECTION ~~(C)~~ (D) OF THIS SECTION, WITH RESPECT TO INVESTMENTS
 28 IN A COMPANY, THE BOARD OF TRUSTEES SHALL PROVIDE THE COMPANY WITH
 29 WRITTEN NOTICE OF ITS DECISION AND REASONS FOR THE DECISION.

30 ~~(G)~~ (G) ON OR BEFORE OCTOBER 1 OF EACH YEAR, AND EVERY 6
 31 MONTHS THEREAFTER, THE BOARD OF TRUSTEES SHALL SUBMIT A REPORT IN
 32 ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE TO THE
 33 SENATE BUDGET AND TAXATION COMMITTEE, THE HOUSE APPROPRIATIONS
 34 COMMITTEE, AND THE JOINT COMMITTEE ON PENSIONS THAT PROVIDES:

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

3 (2) ALL DIVESTMENT ACTIONS TAKEN BY THE BOARD OF
4 TRUSTEES IN ACCORDANCE WITH THIS SECTION;

5 (3) A LIST OF COMPANIES DOING BUSINESS IN IRAN OR SUDAN
6 WHICH THE BOARD OF TRUSTEES HAS DETERMINED TO BE INELIGIBLE FOR
7 INVESTMENTS OF NET NEW FUNDS UNDER SUBSECTION ~~(C)(3)~~ (D)(2) OF THIS
8 SECTION; AND

9 (4) OTHER DEVELOPMENTS RELEVANT TO INVESTMENT IN
10 COMPANIES DOING BUSINESS IN IRAN OR SUDAN.

11 ~~(G)~~ (H) THE BOARD OF TRUSTEES, OR ANY OTHER FIDUCIARY OF THE
12 SEVERAL SYSTEMS, MAY NOT BE HELD LIABLE FOR ANY ACTIONS TAKEN OR
13 DECISIONS MADE IN GOOD FAITH FOR THE PURPOSE OF COMPLYING WITH OR
14 EXECUTING THE REQUIREMENTS OF ANY DIVESTMENT PROVISIONS UNDER THIS
15 SUBTITLE.

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

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

26 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That:

27 (a) ~~This Act shall be abrogated and of no further force and effect if:~~

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

31 ~~(1)~~ (i) with regard to Iran divestment, the Congress or President of the
32 United States affirmatively and unambiguously declares, by means including, but not
33 limited to, legislation, executive order, or written certification from the President to

1 Congress that Iran is no longer seeking a nuclear weapons capability and no longer
2 supports international terrorism; or

3 ~~(2)~~ (ii) the Congress or President of the United States affirmatively and
4 unambiguously declares, by means including, but not limited to, legislation, executive
5 order, or written certification from the President to Congress, that mandatory
6 divestment ~~of the type from Iran as provided for in this Act~~ interferes with the conduct
7 of United States foreign policy.

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

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

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

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

18 2. ceased attacks on civilians;

19 3. demobilized and demilitarized the Janjaweed and
20 associated militias;

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

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

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

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

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

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1 (b) ~~Within 5 working days of the abrogation of this Act under subsection (a)~~
 2 ~~of this section, the Board of Trustees for the State Retirement and Pension System~~
 3 ~~shall notify the Department of Legislative Services in writing of the rescission or~~
 4 ~~repeal at 90 State Circle, Annapolis, Maryland 21401.~~

5 SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That if any provision of this
 6 Act or the application thereof to any person or circumstance is held invalid for any
 7 reason in a court of competent jurisdiction, the invalidity does not affect other
 8 provisions or any other application of this Act that can be given effect without the
 9 invalid provision or application, and for this purpose the provisions of this Act are
 10 declared severable.

11 SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That, subject to the
 12 provisions of Section ~~2~~ 3 of this Act, this Act shall take effect ~~July 1, 2008~~ January 1,
 13 2009.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.