

## CHAPTER 342

(Senate Bill 214)

AN ACT concerning

### **Divestiture from Iran and Sudan**

FOR the purpose of requiring the Board of Trustees for the State Retirement and Pension System to review certain investment holdings; requiring the Board of Trustees to provide written notice to certain companies; requiring certain companies to provide certain comments to the Board of Trustees within a certain period of time; requiring the Board of Trustees to take divestment action with regard to certain investments; providing certain exceptions to required divestment actions; prohibiting the Board of Trustees from making certain new investments; requiring the Board of Trustees to submit certain reports containing certain information on or before a certain date; 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; defining certain terms; providing for the application of certain provisions of this Act; providing for the abrogation of this Act requiring the Board of Trustees to make certain recommendations to the Joint Committee on Pensions within a certain period of time under certain circumstances; making the provisions of this Act severable; providing for a delayed effective date; and generally relating to sanctions against Iran or Sudan.

BY repealing

Article – State Personnel and Pensions

Section 21–123.1

Annotated Code of Maryland

(2004 Replacement Volume and 2007 Supplement)

BY adding to

Article – State Personnel and Pensions

Section ~~21–123.2~~ 21–123.1

Annotated Code of Maryland

(2004 Replacement Volume and 2007 Supplement)

Preamble

WHEREAS, According to a former chair of the United States Securities and Exchange Commission (SEC), the fact that a foreign company is doing material business with a country, government, or entity on the sanctions list issued by the United States Treasury Department's Office of Foreign Asset Control (OFAC) is, in the

SEC staff's view, substantially likely to be significant to a reasonable investor's decision about whether to invest in that company; and

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

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

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

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

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

WHEREAS, Foreign entities have invested in Iran's petroleum-energy sector despite United States and United Nations sanctions against Iran; and

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

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

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

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

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

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

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

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

**Article – State Personnel and Pensions**

~~**21-123.2.**~~ **21-123.1.**

(A) (1) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

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

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

(3) **“COMPANY” MEANS ANY CORPORATION, UTILITY, PARTNERSHIP, JOINT VENTURE, FRANCHISOR, FRANCHISEE, TRUST, ENTITY INVESTMENT VEHICLE, FINANCIAL INSTITUTION, OR A WHOLLY OWNED SUBSIDIARY OF ANY OF THESE ENTITIES.**

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

(5) **“DOING BUSINESS IN IRAN” MEANS THE COMPANY HAS, WITH ACTUAL KNOWLEDGE, ON OR AFTER AUGUST 5, 1996, MADE AN INVESTMENT OF \$20,000,000 OR MORE, OR ANY COMBINATION OF INVESTMENTS OF AT LEAST \$10,000,000 EACH, WHICH IN THE AGGREGATE EQUALS OR EXCEEDS \$20,000,000 IN ANY 12-MONTH PERIOD, AND WHICH DIRECTLY OR SIGNIFICANTLY CONTRIBUTES TO THE ENHANCEMENT OF IRAN’S ABILITY TO DEVELOP THE PETROLEUM OR NATURAL GAS RESOURCES OF IRAN.**

**(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.**

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

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

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

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

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

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

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

(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.

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

(C) (1) EXCEPT AS *OTHERWISE* PROVIDED IN ~~SUBSECTION (D)~~ ~~(E)~~ OF THIS SECTION, AND CONSISTENT WITH THE FIDUCIARY DUTIES OF THE BOARD OF TRUSTEES UNDER SUBTITLE 2 OF THIS TITLE AND ALL OTHER APPLICABLE LAW, THE BOARD OF TRUSTEES; 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.**

~~**(1) SHALL NOTIFY A COMPANY IN WHICH ELIGIBLE ACCOUNTS ARE INVESTED AND THAT IS DOING BUSINESS IN IRAN THAT IT WILL BE SUBJECT TO DIVESTMENT BY THE BOARD OF TRUSTEES WITHIN 90 DAYS UNLESS THE COMPANY PRODUCES AND ANNOUNCES A PLAN WITHIN 90 DAYS TO END DOING BUSINESS IN IRAN WITHIN 1 YEAR;**~~

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) A LIST OF COMPANIES DOING BUSINESS IN IRAN OR SUDAN WHICH THE BOARD OF TRUSTEES HAS DETERMINED TO BE INELIGIBLE FOR

**INVESTMENTS OF NET NEW FUNDS UNDER SUBSECTION ~~(C)(3)~~ (D)(2) OF THIS SECTION; AND**

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

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

**(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.**

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

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

~~(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: Notwithstanding any other provision of this Act, Section 2 of this Act may not be applied to investments or divestment actions by the Board of Trustees of the State Retirement and Pension System in connection with companies doing business in Iran if:~~

~~(1) (i) with regard to Iran divestment, 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 Iran is no longer seeking a nuclear weapons capability and no longer supports international terrorism; or~~

~~(2) (ii) 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 ~~of the type from Iran~~ 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) or (ii) of this subsection. Within 6 months after a declaration under either paragraph (1)(i) or (ii) of this subsection, the Board of Trustees shall recommend to the Joint Committee on Pensions legislation that would amend Section 2 of this Act to repeal any reference to Iran divestment.~~

~~(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: Notwithstanding any other provision of this Act, Section 2 of this Act may not be applied to investments or divestment actions by the Board of Trustees of the State Retirement and Pension System in connection with companies doing business in Sudan 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. Within 6 months after a~~

declaration or other action under either paragraph (1)(i), (ii), or (iii) of this subsection, the Board of Trustees shall recommend to the Joint Committee on Pensions legislation that would amend Section 2 of this Act to repeal any reference to Sudan divestment.

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

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

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

**Approved by the Governor, May 13, 2008.**