HB 619

Department of Legislative Services

Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 619 (Delegate Marriott)
Health and Government Operations

Sanctions Against the Republic of Sudan

This bill imposes economic sanctions against the Republic of Sudan. State agencies are prohibited from purchasing products made in the Republic of Sudan or investing State funds in any company that does business with or in the Republic of Sudan.

The bill takes effect July 1, 2005.

Fiscal Summary

State Effect: Potential cost increase if the Treasurer must renegotiate contracts with financial institutions. Additionally, the State Retirement and Pension System could potentially incur investment gains or losses through the divestiture of certain assets.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The State Treasurer is prohibited from using any financial institution as a depository unless the institution certifies that it has no direct or indirect loans outstanding to a governmental unit or national corporation of the Republic of Sudan. The prohibition does not apply to subsidiaries of the institution, if the loan was made without the subsidiary's participation.

A unit of State government is prohibited from purchasing supplies produced in the Republic of Sudan. All procurements over $100,000 must include a certification that the bidder or offeror is not doing business with or in the Republic of Sudan, or subcontracting with an entity that does so. These requirements may be waived by the Board of Public Works for a procurement that is essential or in the best interests of the State and there is no other known source for the procurement at a reasonable price.

The bill also provides that external investment managers of the State Retirement and Pension System may not invest any funds in any stock, security, or other obligation of any company that does business with or in the Republic of Sudan.

Current Law: There are no existing similar prohibitions in the State procurement or pension laws. The State imposed similar sanctions against the Republic of South Africa during the 1980s.

Background: The Republic of Sudan is located in eastern Africa. Since achieving independence in 1956 the nation has been involved in a series of civil wars between the military government and rebel groups in the southern portion of the country. More than 2 million people have died, and more than 4 million are internally displaced or have become refugees as a result of the civil war and war-related impacts.

The U.S. Department of State's Human Rights report released on March 31, 2003 outlined numerous human rights abuses perpetrated by the Sudanese government including extra-judicial killings, torture, forced conscription, and rape. The most sobering violation of human rights in Sudan is the existence of slavery or slavery-like indenture. Currently in the Darfur region of Sudan, the Sudanese government has backed militias that have burned crops, killed cattle, and committed atrocious violations of human rights on civilian populations. An estimated 1.1 million people in the Darfur region are displaced, a million more are at risk, and nearly 200,000 have taken refuge in neighboring nation of Chad. Food shortages and disease outbreaks threaten to increase the death toll in the region. On September 9, 2004 the U.S. Secretary of State told the Senate Foreign Relations Committee that "genocide has been committed in Darfur and that the Government of Sudan bears responsibility."

Sudan's link with international terrorist organizations represented a special matter of concern for the U.S. government, leading to Sudan's 1993 designation as a state sponsor of terrorism and a 1996 suspension of U.S. Embassy operations. The United States added Sudan to its terrorism list in 1993 because Sudan was a safe haven for Islamic terrorist groups and because Sudan supported insurrections in Algeria, Egypt, Eritrea, Ethiopia, Tunisia, and Uganda. In October 1997, the United States imposed comprehensive economic, trade, and financial sanctions against Sudan. The United States launched military strikes against the country's capital (Khartoum) in 1998. Sudan remains on the federal government's state sponsors of terrorism list.

Sanctions Against South Africa

The State of Maryland imposed similar sanctions against the Republic of South Africa during the 1980s due to that nation's enforcement of apartheid. The first sanction, requiring the State Treasurer not to deposit State funds in financial institutions making loans to South Africa, was enacted in 1984 while the last sanction, which concerned higher education private incentive funds, was repealed in 1996. Most of the sanctions were repealed by Chapter 88 of 1994. The major sanctions were prohibitions against the State Treasurer depositing State funds in financial institutions with loans in South Africa, the retirement systems investing money in companies doing business in South Africa, and State agencies from procuring goods from companies doing business in South Africa.

Court Ruling

In 1996, Massachusetts passed a law barring state entities from buying products or services from companies doing business with Burma. The National Foreign Trade Council, which had several members affected by the State law, filed suit against the state in federal court. In the 2000 U.S. Supreme Court Case, *Crosby v. National Foreign Trade Council (530 U.S. 363)*, the court struck down the Massachusetts law. The court found that the doctrine of preemption and the supremacy clause of the U.S. Constitution restricted Massachusetts's ability to impose additional sanctions. The Court found that "even without an express preemption provision, state law must yield to a congressional Act if Congress intends to occupy the field, or to the extent of any conflict with a federal statute."

Executive Order No. 13067 was issued in 1997, declaring the Sudanese government policy and its "support for international terrorist, ongoing efforts to destabilize neighboring governments, and the prevalence of human rights violations, including slavery and the denial of religious freedom, constituted an unusual and extraordinary threat to the national security and foreign policy of the United States" under the International Emergency Economic Powers Act. The order imposed a trade embargo against Sudan and a total asset freeze against the Government of Sudan. Executive Order No. 13067 does not constitute an act of Congress under *Crosby,* however, the order was premised on the International Emergency Economic Powers Act, a Congressional act.

State Fiscal Effect: The State Treasurer's Office maintains contracts with multiple financial institutions. If one or more of the institutions could not provide the certification required under this bill, costs could increase to find an alternate vendor institution. In that the bill does not apply to loans outstanding prior to June 30, 2005, any costs will likely be minimal. Should a change in vendor be required, different costs are associated with rebidding different types of contracts. Contracts for institutions acting as depositories were recently rebid competitively, at a cost increase of $600,000 over the previous set of depository contracts.

The State Retirement Agency noted that it is the policy of the retirement system to not knowingly make investments in companies that do business with the Republic of Sudan. The investment processes are designed to identify and manage investment risks. The board's fiduciary responsibilities mandate that investment decisions be made solely in the interest of the participants in the retirement plans and for the exclusive purpose of providing retirement benefits to them. The system's external money managers are, in turn, required by contract to act as fiduciaries as to the system and its participants and to use care, skill, prudence, and diligence in making investment decisions.

However, an advocacy group has estimated that the State Retirement and Pension System had investments in 26 companies doing business with or in the Republic of Sudan, at a total value of $496.2 million. This information has not been verified by the State Retirement Agency. If the system was forced to divest these assets, any costs associated would come in the form of fees, commissions, and capital losses incurred by the sale. After assets have been realigned, investment returns may yield gains or losses by the divestiture.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Milliman USA, Department of General Services, Board of Public Works, State Treasurer's Office, University System of Maryland, Maryland Department of Transportation, Maryland State Retirement Agency, Department of Budget and Management, United Nations, U.S. Department of State, Department of Legislative Services

Fiscal Note History: First Reader - February 23, 2005
ncs/hlb

Analysis by: Martin L. Levine

Direct Inquiries to:
(410) 946-5510
(301) 970-5510