

SENATE BILL 214

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CF 8lr0232

By: **The President (By Request – Administration) and Senators Miller, Brinkley, Brochin, Colburn, Currie, DeGrange, Frosh, Garagiola, Gladden, King, Kramer, Lenett, Madaleno, McFadden, Peters, Robey, Stoltzfus, and Stone**

Introduced and read first time: January 18, 2008

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Divestiture from Iran**

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 the Board of
6 Trustees to take divestment action with regard to certain investments;
7 providing certain exceptions to required divestment actions; prohibiting the
8 Board of Trustees from making certain new investments; requiring the Board of
9 Trustees to submit certain reports containing certain information on or before a
10 certain date; defining certain terms; providing for the abrogation of this Act
11 under certain circumstances; making the provisions of this Act severable; and
12 generally relating to sanctions against Iran.

13 BY adding to
14 Article – State Personnel and Pensions
15 Section 21–123.2
16 Annotated Code of Maryland
17 (2004 Replacement Volume and 2007 Supplement)

18 Preamble

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

22 WHEREAS, All entities that have invested more than \$20,000,000 in Iran’s
23 energy sector in any given year since August 5, 1996, are subject to sanctions under
24 United States law pursuant to the Iran Sanctions Act of 1996, which was renewed in
25 2001 and 2006; and

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

29 WHEREAS, The State is deeply concerned about investments in publicly
30 traded companies that have invested in Iran’s petroleum–energy sector as a financial
31 risk to the shareholders; and

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

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

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

3 **Article – State Personnel and Pensions**

4 **21-123.2.**

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

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

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

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

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

21 (5) “DOING BUSINESS IN IRAN” MEANS THE COMPANY HAS, WITH
22 ACTUAL KNOWLEDGE, ON OR AFTER AUGUST 5, 1996, MADE AN INVESTMENT OF
23 \$20,000,000 OR MORE, OR ANY COMBINATION OF INVESTMENTS OF AT LEAST
24 \$10,000,000 EACH, WHICH IN THE AGGREGATE EQUALS OR EXCEEDS
25 \$20,000,000 IN ANY 12-MONTH PERIOD, AND WHICH DIRECTLY OR
26 SIGNIFICANTLY CONTRIBUTES TO THE ENHANCEMENT OF IRAN’S ABILITY TO
27 DEVELOP THE PETROLEUM RESOURCES OF IRAN.

28 (6) “ELIGIBLE ACCOUNTS” MEANS ACTIVELY MANAGED
29 SEPARATE ACCOUNTS CONTAINING FUNDS OF THE SEVERAL SYSTEMS.

30 (7) “GOVERNMENT OF IRAN” MEANS THE GOVERNMENT OF IRAN,
31 ITS INSTRUMENTALITIES, AND COMPANIES OWNED OR CONTROLLED BY THE
32 GOVERNMENT OF IRAN.

1 **(8) "INVESTMENT" MEANS THE COMMITMENT OF FUNDS OR**
2 **OTHER ASSETS TO A COMPANY, INCLUDING:**

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

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

7 **(9) "IRAN" MEANS THE ISLAMIC REPUBLIC OF IRAN.**

8 **(10) "IRAN'S PETROLEUM ENERGY SECTOR" MEANS PETROLEUM**
9 **AND NATURAL GAS.**

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

14 **(C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, AND**
15 **CONSISTENT WITH THE FIDUCIARY DUTIES OF THE BOARD OF TRUSTEES**
16 **UNDER SUBTITLE 2 OF THIS TITLE, THE BOARD OF TRUSTEES:**

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

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

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

25 **(II) IN ANY SECURITY OR INSTRUMENT ISSUED BY IRAN;**
26 **AND**

27 **(3) MAY NOT MAKE ANY NEW INVESTMENTS FROM NET NEW**
28 **FUNDS IN AN ELIGIBLE ACCOUNT IN ANY COMPANY THAT IS DOING BUSINESS IN**
29 **IRAN.**

30 **(D) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THE**
31 **BOARD OF TRUSTEES MAY EXCLUDE FROM THE PROVISIONS OF SUBSECTION**
32 **(C) OF THIS SECTION, A COMPANY:**

1 **(1) THAT THE UNITED STATES GOVERNMENT AFFIRMATIVELY**
2 **DECLARES TO BE EXCLUDED FROM ITS FEDERAL SANCTIONS REGIME RELATING**
3 **TO IRAN;**

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

7 **(3) WHOSE DIVESTMENT CANNOT BE EXECUTED FOR FAIR**
8 **MARKET VALUE OR GREATER.**

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

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

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

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

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

25 **(4) OTHER DEVELOPMENTS RELEVANT TO INVESTMENT IN**
26 **COMPANIES DOING BUSINESS IN IRAN.**

27 **(G) THE BOARD OF TRUSTEES MAY NOT BE HELD LIABLE FOR ANY**
28 **ACTIONS TAKEN OR DECISIONS MADE IN GOOD FAITH FOR THE PURPOSE OF**
29 **COMPLYING WITH OR EXECUTING THE REQUIREMENTS OF THIS SUBTITLE.**

30 SECTION 2. AND BE IT FURTHER ENACTED, That:

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

1 (1) the Congress or President of the United States affirmatively and
2 unambiguously declares, by means including, but not limited to, legislation, executive
3 order, or written certification from the President to Congress that Iran is no longer
4 seeking a nuclear weapons capability and no longer supports international terrorism;
5 or

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

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

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

21 SECTION 4. AND BE IT FURTHER ENACTED, That, subject to the provisions
22 of Section 2 of this Act, this Act shall take effect July 1, 2008.