

# SENATE BILL 214

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CF HB 371

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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~~ Stone, Kasemeyer, Edwards, Jones, Munson, Zirkin, and Raskin**

Introduced and read first time: January 18, 2008  
Assigned to: Budget and Taxation

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 26, 2008

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## 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.

20 BY repealing

21 Article – State Personnel and Pensions

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### 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 United States law pursuant to the Iran Sanctions Act of 1996, which was renewed in  
2 2001 and 2006; and

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

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

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

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

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

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

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

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

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

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

36 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
37 read as follows:

1 Article – State Personnel and Pensions

2 ~~21-123.2.~~ 21-123.1.

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

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

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

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

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

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

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

32 ~~(6)~~ (7) “ELIGIBLE ACCOUNTS” MEANS ACTIVELY MANAGED  
33 SEPARATE ACCOUNTS CONTAINING FUNDS OF THE SEVERAL SYSTEMS.

1           ~~(7)~~ **(8)**           **“GOVERNMENT OF IRAN” MEANS THE GOVERNMENT OF**  
2 **IRAN, ITS INSTRUMENTALITIES, AND COMPANIES OWNED OR CONTROLLED BY**  
3 **THE GOVERNMENT OF IRAN.**

4           ~~(8)~~ **(9)**           **“INVESTMENT” MEANS THE COMMITMENT OF FUNDS OR**  
5 **OTHER ASSETS TO A COMPANY, INCLUDING:**

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

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

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

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

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

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

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

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

33                           **(2) ANY NOTICE PROVIDED BY THE BOARD OF TRUSTEES UNDER**  
34 **PARAGRAPH (1) OF THIS SUBSECTION SHALL STATE THAT THE COMPANY SHALL**  
35 **BE SUBJECT TO DIVESTMENT ACTION BY THE BOARD OF TRUSTEES UNLESS THE**

1 COMPANY PROVIDES WRITTEN COMMENTS WITHIN 90 DAYS TO THE BOARD OF  
2 TRUSTEES:

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

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

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

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

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

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

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

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

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

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

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

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

7           ~~(3)~~ **(2)**       MAY NOT MAKE ANY NEW INVESTMENTS FROM NET NEW  
8 FUNDS IN AN ELIGIBLE ACCOUNT IN ANY COMPANY THAT IS DOING BUSINESS IN  
9 IRAN OR SUDAN AS DETERMINED IN ACCORDANCE WITH THE PROCEDURES SET  
10 FORTH IN SUBSECTION (C) OF THIS SECTION.

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

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

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

20                   ~~(3)~~ **(2)**       WHOSE DIVESTMENT CANNOT BE EXECUTED FOR FAIR  
21 MARKET VALUE OR GREATER.

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

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

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

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

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

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

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

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

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

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

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

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

29           ~~(1)~~ (i) with regard to Iran divestment, the Congress or President of the  
30 United States affirmatively and unambiguously declares, by means including, but not  
31 limited to, legislation, executive order, or written certification from the President to  
32 Congress that Iran is no longer seeking a nuclear weapons capability and no longer  
33 supports international terrorism; or

34           ~~(2)~~ (ii) the Congress or President of the United States affirmatively and  
35 unambiguously declares, by means including, but not limited to, legislation, executive  
36 order, or written certification from the President to Congress, that mandatory



1 ~~divestment of the type~~ from Iran as provided for in this Act interferes with the conduct  
2 of United States foreign policy.

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

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

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

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

13 2. ceased attacks on civilians;

14 3. demobilized and demilitarized the Janjaweed and  
15 associated militias;

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

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

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

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

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

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

34 SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That if any provision of this  
35 Act or the application thereof to any person or circumstance is held invalid for any

1 reason in a court of competent jurisdiction, the invalidity does not affect other  
2 provisions or any other application of this Act that can be given effect without the  
3 invalid provision or application, and for this purpose the provisions of this Act are  
4 declared severable.

5 SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That, subject to the  
6 provisions of Section ~~2~~ 3 of this Act, this Act shall take effect ~~July 1, 2008~~ January 1,  
7 2009.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.