

# HOUSE BILL 879

L2

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By: **Frederick County Delegation**

Introduced and read first time: February 12, 2009

Assigned to: Appropriations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Divestiture from Iran and Sudan – Frederick County Retirement and**  
3 **Pension System**

4 FOR the purpose of authorizing the Board of County Commissioners for Frederick  
5 County to enact certain ordinances that would allow the Frederick County  
6 Retirement Committee to take certain divestment action with regard to certain  
7 investments; providing certain immunities from liability for certain persons;  
8 requiring the Board of County Commissioners to act in good faith in taking  
9 certain actions in a certain manner; defining certain terms; making the  
10 provisions of this Act severable; and generally relating to the Board of County  
11 Commissioners for Frederick County authorizing the Frederick County  
12 Retirement and Pension System to divest from Iran or Sudan.

13 BY adding to

14 The Public Local Laws of Frederick County

15 Section 2–7–201

16 Article 11 – Public Local Laws of Maryland

17 (2004 Edition and September 2008 Supplement, as amended)

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

25 WHEREAS, A 2006 report by the United States House of Representatives states  
26 that “a company’s association with sponsors of terrorism and human rights abuses, no  
27 matter how large or small, can have a materially adverse result on a public company’s

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 operations, financial condition, earnings, and stock prices, all of which can negatively  
2 affect the value of an investment”; and

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

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

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

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

16 WHEREAS, All entities that have invested more than \$20,000,000 in Iran’s  
17 energy sector in any given year since August 5, 1996, are subject to sanctions under  
18 United States law pursuant to the Iran Sanctions Act of 1996, which was renewed in  
19 2001 and 2006; and

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

23 WHEREAS, The United States government has imposed sanctions against the  
24 government of Sudan since 1997 that are monitored through the United States  
25 Treasury Department’s Office of Foreign Assets Control; and

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

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

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

36 WHEREAS, Frederick County is deeply concerned about investments in  
37 publicly traded companies that have invested in Iran’s petroleum–energy sector; and

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

4 WHEREAS, The Board of County Commissioners for Frederick County finds  
5 that this Act should remain in effect only insofar as it continues to be consistent with  
6 and does not unduly interfere with the foreign policy of the United States as  
7 determined by the federal government; now, therefore,

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

10 **Article 11 - Frederick County**

11 **2-7-201.**

12 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
13 MEANINGS INDICATED.

14 (2) "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 (3) "DIVESTMENT ACTION" MEANS SELLING, REDEEMING,  
19 TRANSFERRING, EXCHANGING, OTHERWISE DISPOSING OF, AND REFRAINING  
20 FROM FURTHER INVESTMENT IN CERTAIN INVESTMENTS.

21 (4) "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 OR NATURAL GAS RESOURCES OF IRAN.

28 (5) "DOING BUSINESS IN SUDAN" MEANS ENGAGING IN  
29 COMMERCE IN SUDAN BY MAINTAINING OR LEASING EQUIPMENT, FACILITIES,  
30 PERSONNEL, OR OTHER APPARATUS OF BUSINESS OR COMMERCE IN  
31 OIL-RELATED ACTIVITIES, MINERAL EXTRACTION ACTIVITIES, POWER  
32 PRODUCTION ACTIVITIES, OR PRODUCTION OF MILITARY EQUIPMENT OF  
33 SUDAN.

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

3           **(7) “INVESTMENT” MEANS THE COMMITMENT OF FUNDS OR**  
4 **OTHER ASSETS TO A COMPANY, INCLUDING:**

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

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

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

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

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

18           **(B) THE BOARD OF COUNTY COMMISSIONERS MAY ENACT AN**  
19 **ORDINANCE AUTHORIZING THE DIVESTMENT ACTION CONCERNING FUNDS IN**  
20 **ELIGIBLE ACCOUNTS THAT ARE INVESTED IN COMPANIES DOING BUSINESS IN**  
21 **IRAN OR SUDAN.**

22           **(C) (1) THE BOARD OF COUNTY COMMISSIONERS, ITS OFFICIALS,**  
23 **AGENTS, EMPLOYEES, OR ANY FIDUCIARY MAY NOT BE HELD LIABLE FOR ANY**  
24 **ACTIONS TAKEN OR DECISIONS MADE IN GOOD FAITH FOR THE PURPOSE OF**  
25 **COMPLYING WITH OR EXECUTING THE REQUIREMENTS OF ANY DIVESTMENT**  
26 **PROVISIONS UNDER THIS SECTION OR ANY ORDINANCE ENACTED UNDER THE**  
27 **AUTHORITY GRANTED IN THIS SECTION.**

28                   **(2) THE BOARD OF COUNTY COMMISSIONERS, ITS OFFICIALS,**  
29 **AGENTS, EMPLOYEES, OR ANY FIDUCIARY SHALL ACT IN GOOD FAITH TO CARRY**  
30 **OUT DIVESTMENT ACTION AS AUTHORIZED BY THIS SECTION OR ANY**  
31 **ORDINANCE ENACTED IN COMPLIANCE WITH ALL APPLICABLE LOCAL, STATE,**  
32 **AND FEDERAL LAW, INCLUDING RELEVANT JUDICIAL DECISIONS AND THE**  
33 **FEDERAL SUDAN ACCOUNTABILITY AND DIVESTMENT ACT OF 2007.**

1           **(3) NOTHING IN THIS SECTION SHALL REQUIRE THE BOARD OF**  
2 **COUNTY COMMISSIONERS TO TAKE ACTION AS DESCRIBED IN THIS SECTION**  
3 **UNLESS THE BOARD OF COUNTY COMMISSIONERS DETERMINES IN GOOD FAITH**  
4 **THAT THE ACTION IS CONSISTENT WITH ITS FIDUCIARY RESPONSIBILITIES.**

5           SECTION 2. 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 which 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 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
12 July 1, 2009.