

CHAPTER 427

(House Bill 879)

AN ACT concerning

Divestiture from Iran and Sudan – Frederick County Retirement and Pension System

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

BY adding to

The Public Local Laws of Frederick County

Section 2-7-201

Article 11 – Public Local Laws of Maryland

(2004 Edition and September 2008 Supplement, as amended)

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, 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 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, 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, Frederick County is deeply concerned about investments in publicly traded companies that have invested in Iran's petroleum–energy sector; 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, The Board of County Commissioners for Frederick County 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 the Laws of Maryland read as follows:

Article 11 - Frederick County

2-7-201.

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

(2) "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.

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

(4) "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.

(5) "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) "ELIGIBLE ACCOUNTS" MEANS ACTIVELY MANAGED SEPARATE ACCOUNTS CONTAINING FUNDS OF THE SEVERAL SYSTEMS.

(7) "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 OF A COMPANY.

(8) "IRAN" MEANS THE ISLAMIC REPUBLIC OF IRAN.

(9) (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 COUNTY COMMISSIONERS MAY ENACT AN ORDINANCE AUTHORIZING THE DIVESTMENT ACTION CONCERNING FUNDS IN ELIGIBLE ACCOUNTS THAT ARE INVESTED IN COMPANIES DOING BUSINESS IN IRAN OR SUDAN.

(C) (1) THE BOARD OF COUNTY COMMISSIONERS, ITS OFFICIALS, AGENTS, EMPLOYEES, OR ANY FIDUCIARY 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 SECTION OR ANY ORDINANCE ENACTED UNDER THE AUTHORITY GRANTED IN THIS SECTION.

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

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

SECTION 2. 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 which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

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

Approved by the Governor, May 7, 2009.