Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 879 (Frederick County Delegation)
Appropriations Budget and Taxation

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

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This bill authorizes the Board of County Commissioners for Frederick County to enact an ordinance authorizing the divestment of pension funds that are currently invested in companies doing business in Iran or Sudan.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: None. The bill affects only Frederick County.

Local Effect: None. The bill is authorizing legislation only. If the Board of County Commissioners for Frederick County enacts a divestment ordinance, the county's pension fund may incur costs associated with that ordinance.

Small Business Effect: None.

Analysis

Bill Summary: Doing business in Iran means that a company has, since August 1996, invested at least $20 million in Iran's petroleum or natural gas industries. It also applies to any company that invests a combination of investments of at least $10 million each that together total $20 million in any one-year period.

Doing business in Sudan means engaging in commerce by maintaining or leasing equipment, facilities, personnel, or other business apparatus in Sudan's oil or mineral extraction, power production, or military equipment production industries.

If authorized by the county commissioners, divestment may apply only to actively managed separate accounts. The county commissioners, their officials, agents, employees, or any fiduciary must act in good faith to implement a divestment ordinance, and may not be held liable for any actions taken in good faith to implement a divestment ordinance. The county commissioners must act in compliance with all relevant judicial decisions and the federal Sudan Accountability and Divestment Act of 2007 and are not required to take any actions unless they determine in good faith that the actions are consistent with the board's fiduciary responsibility.

The bill's provisions are severable if any are held invalid in court.

Current Law: Chapter 342 of 2008 requires the Board of Trustees of the State Retirement and Pension System to notify any company whose shares are held in an actively traded separate account in its portfolio that is doing business in either Iran or Sudan that the board will divest all holdings in the company unless the company releases a plan to cease its business with Iran or Sudan within one year. Chapter 342 exempts from the divestment requirement any company that is excluded from U.S. government sanctions against Iran or Sudan and whose divestment cannot be executed for fair market value or greater. It requires the board to act in good faith and in a manner consistent with its fiduciary responsibilities in carrying out the bill's divestment requirement. The board is inured against liability associated with actions made in good faith to comply with the bill. The statute's provisions are severable if any are held invalid in court.

Chapter 342 defines doing business in Iran as having invested, in any given 12-month period since August 1996, more than $20 million in Iran's petroleum or natural gas industries. Doing business in Sudan is defined as maintaining or leasing equipment, facilities, personnel, or other apparatus in oil-related, mineral extraction, power production, or military production activities in Sudan.

Chapter 342 establishes a timeline for carrying out divestment from Iran and Sudan. Within 30 days of completing a review of its holdings to identify eligible businesses doing business in either Iran or Sudan, the board must provide written notice to those companies that they will be subject to divestment unless they respond within 90 days and:

- can demonstrate that they do not do business in either country; or
- state that, within 60 days, they will produce a plan to end doing business in Iran or Sudan within one year.

The board must divest from any notified company that does not abide by these conditions, and from any notified company that does not cease doing business in Iran or Sudan within one year.

Chapter 342 specifies the changes in federal policy toward Iran and Sudan that would render its provisions inapplicable and provides for its repeal under those circumstances.

Background: The federal Sudan Accountability and Divestment Act of 2007 permits, but does not require, state and local governments to divest from companies doing business in Sudan.

Frederick County withdrew from the State Retirement and Pension System in 1993 and created the Frederick County Employees Retirement Plan in the same year. As of July 1, 2008, the plan has 2,206 active members, 370 retirees, and assets of approximately $200 million.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Frederick County, Maryland State Retirement Agency, Department of Legislative Services

Fiscal Note History: First Reader - March 15, 2009
ncs/rhh

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