

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 533 (Delegate Acevero)
Health and Government Operations

**State Government – Prevention of Genocide and Crimes Against Humanity and
the Commission on Genocide Prevention**

The bill requires, beginning January 1, 2023, each State contract (that meets a specified threshold) to include a specified genocide and crimes against humanity clause, and imposes related conditions on participants in State procurement. It further requires the Board of Trustees of the State Retirement and Pension System (SRPS) and the Office of the State Treasurer (STO) to ensure that any shares they hold are voted in favor of shareholder resolutions that ask the company to adopt a policy of refusing to do business with governments engaged in genocide or crimes against humanity, as defined by the bill. The bill establishes a Commission on Genocide Prevention with specified responsibilities.

Fiscal Summary

State Effect: STO, SRPS, and State procurement agencies can implement the bill with existing resources, as discussed below. No effect on revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Definitions

“Crimes against humanity” means any specified act of violence (including murder, enslavement, deportation, torture, *etc.*) when committed as part of a widespread or

systematic attack directed against any civilian population, with knowledge of the attack. “Genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group:

- killing members of the group;
- causing serious bodily or mental harm to members of the group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- imposing measures intended to prevent births within the group; or
- forcibly transferring children of the group to another group.

Procurement Requirements

Any bidder or offeror on a State contract that has annual revenues of at least \$100.0 million must disclose any company policy regarding any refusal to do business with governments that are engaged in genocide or crimes against humanity.

The genocide and crimes against humanity clause similarly applies to State contracts with contractors that have annual revenues of at least \$100.0 million. The clause must require the contractor to have a written and formally adopted company policy of refusing to do business with governments that are engaged in genocide or crimes against humanity. If the clause is omitted from a contract, the State may declare the contract to be void. The bill includes procedures for compensating contractors whose contracts are voided under these circumstances.

Any person, including an employee or prospective employee, who has information about a violation of the bill’s procurement provisions or of a genocide and crimes against humanity clause may inform the Board of Public Works (BPW). BPW must initiate an immediate investigation and, if it concludes that the charge is true, may invoke any remedy available by law.

Treasurer and Pension Board Shareholder Advocacy

STO must include in its annual report to the General Assembly information regarding the use of shareholder advocacy with companies in which the State invests to persuade those companies to adopt and implement a policy of refusing to do business with governments engaging in genocide or crimes against humanity. Similarly, the Investment Committee of the SRPS board must report each year to the full board and STO regarding the use of shareholder advocacy for the same purpose.

Commission on Genocide Prevention

The commission must:

- research governments that are committing or are at risk of committing genocide or crimes against humanity;
- identify any contractor under a State procurement contract that violates the bill's procurement provisions;
- hold periodic hearings on the implementation of the bill's shareholder provisions; and
- report its findings and recommendations to the Governor and General Assembly by December 31 of each year.

The Governor designates the chair of the commission, and STO provides staff for the commission.

Current Law: There are no provisions in current law related to the general prevention of genocide or crimes against humanity.

Fiduciary Duties

Members of the SRPS board, as fiduciaries, must discharge their duties solely in the interest of participants and:

- for the exclusive purpose of providing benefits to members and for reasonable expenses of operating the system;
- with the care, skill, prudence, and diligence under the circumstance then prevailing, that a prudent person acting in like capacity and familiar with such matters would use;
- by diversifying the investments to minimize the risk of large losses; and
- in accordance with the laws, documents, and instruments governing the system.

Investments in Iran and Sudan

Chapters 446 and 447 of 2012 prohibited any person engaged in investment activities in Iran from participating in procurement with any public body in the State and made those persons subject to debarment under State procurement law.

Chapter 342 of 2008 requires the SRPS Board of Trustees 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. These

same provisions, as described below, apply to any person that participates in a boycott of Israel under the bill.

Chapter 342 exempts from the divestment requirement any company 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 divestment requirement.

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.

State Fiscal Effect: The bill requires bidders, offerors, and contractors with revenues of at least \$100.0 million to disclose specified information and/or certify that they have specified written policies, as described above. The bill requires BPW to investigate any reported violations of these requirements but otherwise assigns no enforcement responsibilities to procurement staff in the State. BPW advises that it can carry out any required investigations with existing resources.

Affected companies can comply with these requirements by providing the necessary written materials and certifications in conjunction with their bids or proposals, with little additional effort required by procurement staff. Given the limited number of bidders or offerors who meet the bill's income threshold, these provisions are also expected to apply in a limited number of instances. Similarly, violations of these provisions are expected to be rare and, thus, have no material effect on State procurement contracts or their costs.

The State Retirement Agency notes that the mandate to vote future proxy votes in a specified manner may violate the duty of fiduciaries to act in the best interest of participants and other fiduciary standards. To the extent that such votes cause the system to alter its asset allocation, such moves could result in a loss of assets to the system. Any such losses are speculative and unlikely to have a meaningful effect on system liabilities and contribution rates and, therefore, are not reflected in this analysis.

Additional Information

Prior Introductions: HB 1592 of 2020 was assigned to the House Rules and Executive Nominations Committee, but no further action was taken. Its cross file, SB 1044, was assigned to the Senate Rules Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Maryland State Treasurer's Office; Department of General Services; Board of Public Works; State Retirement Agency; Department of Legislative Services

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