

CHAPTER 40

(House Bill 1336)

AN ACT concerning

2007 Darfur Protection Act – Divestiture from the Republic of Sudan

FOR the purpose of requiring the Board of Trustees of the State Retirement and Pension System to review certain investment holdings; requiring the Board of Trustees to encourage certain companies to take certain actions; requiring the Board of Trustees to provide written notice to certain companies; authorizing the Board of Trustees to take divestment action with regard to certain investments; prohibiting the Board of Trustees from acquiring certain securities; requiring the Board of Trustees to take certain issues into account prior to taking certain actions; requiring the Board of Trustees to publish certain reports containing certain information on or before a certain date; defining certain terms; providing for the termination of this Act under certain circumstances; and generally relating to the divestment of investments from the Republic of Sudan.

BY adding to

Article – State Personnel and Pensions

Section 21–123.1

Annotated Code of Maryland

(2004 Replacement Volume and 2006 Supplement)

Preamble

WHEREAS, On September 9, 2004, Secretary of State Colin L. Powell told the United States Senate Foreign Relations Committee that “genocide has occurred and may still be occurring in Darfur” and “the Government of Sudan and the Janjaweed bear responsibility”; and

WHEREAS, On September 21, 2004, addressing the United Nations General Assembly, President George W. Bush affirmed the Secretary of State’s finding and stated, “at this hour, the world is witnessing terrible suffering and horrible crimes in the Darfur region of Sudan, crimes my government has concluded are genocide”; and

WHEREAS, On September 25, 2006, the United States Congress reaffirmed that “the genocide unfolding in the Darfur region of Sudan is characterized by acts of

terrorism and atrocities directed against civilians, including mass murder, rape, and sexual violence committed by the Janjaweed and associated militias with the complicity and support of the National Congress Party–led faction of the Government of Sudan”; and

WHEREAS, On September 26, 2006, the United States Congress stated that “an estimated 300,000 to 400,000 people have been killed by the Government of Sudan and its Janjaweed allies since the Darfur crisis began in 2003, more than 2,000,000 people have been displaced from their homes, and more than 250,000 people from Darfur remain in refugee camps in Chad”; and

WHEREAS, The Darfur crisis represents the first time the United States Government has labeled ongoing atrocities a genocide; and

WHEREAS, The federal 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 (OFAC); and

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 OFAC’s sanctions list 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, In response to the financial risk posed by investments in companies doing business with a terrorist–sponsoring state, the SEC established its Office of Global Security Risk to provide for enhanced disclosure of material information regarding such companies; 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, Companies supporting such ties with terrorism and genocide present further material risk to remaining investors of these companies; and

WHEREAS, It is a fundamental responsibility of the State to decide where, how, and by whom financial resources in its control should be invested, taking into account numerous pertinent factors; and

WHEREAS, It is the prerogative and desire of the State, in respect to investment resources in its control and to the extent reasonable, with due

consideration for, among other things, return on investment, on behalf of itself and its investment beneficiaries, not to participate in an ownership or capital-providing capacity with entities that provide significant practical support for genocide, including certain international companies presently doing business in Sudan; and

WHEREAS, It is the judgment of the General Assembly 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; and

WHEREAS, It is the judgment of the General Assembly that divestment of public funds from certain companies is a measure that should be employed sparingly and judiciously – a United States Congressional and Presidential declaration of genocide satisfying this high threshold; now, therefore,

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

Article – State Personnel and Pensions

21-123.1.

(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 ITS WHOLLY OWNED SUBSIDIARY;

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

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

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

(5) **“DOING BUSINESS IN SUDAN” MEANS MAINTAINING EQUIPMENT, FACILITIES, PERSONNEL, OR OTHER APPARATUS OF BUSINESS OR COMMERCE IN SUDAN, INCLUDING OWNERSHIP OF REAL OR PERSONAL PROPERTY IN SUDAN, OR ENGAGING IN ANY BUSINESS ACTIVITY WITH THE GOVERNMENT 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 BY A COMPANY.**

(8) (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 TRUSTEES SHALL REVIEW THE INVESTMENT HOLDINGS IN ELIGIBLE ACCOUNTS FOR THE PURPOSE OF DETERMINING THE EXTENT TO WHICH FUNDS IN ELIGIBLE ACCOUNTS ARE INVESTED IN COMPANIES DOING BUSINESS IN SUDAN.**

(C) **CONSISTENT WITH THE FIDUCIARY DUTIES OF THE BOARD OF TRUSTEES UNDER SUBTITLE 2 OF THIS TITLE, AND THE PROVISIONS OF SUBSECTION (D) OF THIS SECTION, THE BOARD OF TRUSTEES:**

(1) SHALL ENCOURAGE COMPANIES IN WHICH ELIGIBLE ACCOUNTS ARE INVESTED AND THAT ARE DOING BUSINESS IN SUDAN TO ACT RESPONSIBLY AND AVOID ACTIONS THAT PROMOTE OR OTHERWISE ENABLE HUMAN RIGHTS VIOLATIONS IN SUDAN;

(2) MAY TAKE DIVESTMENT ACTION IN ELIGIBLE ACCOUNTS WITH REGARD TO INVESTMENTS:

(I) IN ANY COMPANY DOING BUSINESS IN SUDAN; OR

(II) IN ANY SECURITY OR INSTRUMENT ISSUED BY SUDAN;

AND

(3) MAY NOT MAKE ANY NEW INVESTMENTS FROM NET NEW FUNDS IN AN ELIGIBLE ACCOUNT IN ANY COMPANY THAT IS DOING BUSINESS IN SUDAN.

(D) IN DETERMINING WHETHER TO TAKE DIVESTMENT ACTION UNDER SUBSECTION (C) OF THIS SECTION WITH REGARD TO THE INVESTMENT OF FUNDS IN ELIGIBLE ACCOUNTS IN A COMPANY DOING BUSINESS IN SUDAN, THE BOARD OF TRUSTEES SHALL CONSIDER THE FOLLOWING:

(1) REVENUES PAID BY A COMPANY DIRECTLY TO THE GOVERNMENT OF SUDAN;

(2) WHETHER A COMPANY SUPPLIES INFRASTRUCTURE OR RESOURCES USED BY THE GOVERNMENT OF SUDAN TO IMPLEMENT ITS POLICIES OF GENOCIDE IN DARFUR OR OTHER REGIONS OF SUDAN;

(3) WHETHER A COMPANY KNOWINGLY OBSTRUCTS LAWFUL INQUIRIES INTO ITS OPERATIONS AND INVESTMENTS IN SUDAN;

(4) WHETHER A COMPANY ATTEMPTS TO CIRCUMVENT ANY APPLICABLE SANCTIONS OF THE UNITED STATES;

(5) THE EXTENT OF ANY HUMANITARIAN ACTIVITIES UNDERTAKEN BY A COMPANY IN SUDAN;

(6) WHETHER A COMPANY IS ENGAGED SOLELY IN THE PROVISION OF GOODS AND SERVICES INTENDED TO RELIEVE HUMAN SUFFERING, OR TO PROMOTE WELFARE, HEALTH, EDUCATION, OR RELIGIOUS OR SPIRITUAL ACTIVITIES;

(7) WHETHER A COMPANY IS AUTHORIZED BY THE FEDERAL GOVERNMENT OF THE UNITED STATES TO DO BUSINESS IN SUDAN;

(8) EVIDENCE THAT A COMPANY HAS ENGAGED THE GOVERNMENT OF SUDAN TO CEASE ITS ABUSES IN DARFUR OR OTHER REGIONS IN SUDAN;

(9) WHETHER A COMPANY IS ENGAGED SOLELY IN JOURNALISTIC ACTIVITIES; AND

(10) ANY OTHER FACTOR THAT THE BOARD OF TRUSTEES DEEMS PRUDENT.

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

(F) ON OR BEFORE OCTOBER 1 OF EACH YEAR, AND EVERY 3 MONTHS THEREAFTER, THE BOARD OF TRUSTEES SHALL SUBMIT A REPORT IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE TO THE SENATE BUDGET AND TAXATION COMMITTEE, THE HOUSE APPROPRIATIONS COMMITTEE, AND THE JOINT COMMITTEE ON PENSIONS THAT PROVIDES:

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

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

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

(4) OTHER DEVELOPMENTS RELEVANT TO INVESTMENT IN COMPANIES DOING BUSINESS IN SUDAN.

SECTION 2. AND BE IT FURTHER ENACTED, That if the President of the United States rescinds or repeals Executive Order 13067, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect. Within 5 working days of the President of the United States rescinding or repealing Executive Order 13067, the Board of Trustees for the State Retirement and Pension System shall notify the Department of Legislative Services in writing of the rescission or repeal at 90 State Circle, Annapolis, Maryland 21401.

SECTION 3. AND BE IT FURTHER ENACTED, That, subject to the provisions of Section 2 of this Act, this Act shall take effect July 1, 2007.

Approved by the Governor, April 10, 2007.