

SENATE BILL 739

P2, K4

7lr2211
CF HB 949

By: **Senators Zirkin, Brochin, Conway, DeGrange, Feldman, Jennings, Kagan, Madaleno, Peters, Serafini, Young, and Zucker**

Introduced and read first time: February 3, 2017

Assigned to: Budget and Taxation and Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement and Pensions – State Sanctions – Discriminatory Boycott of Israel**

3 FOR the purpose of altering certain provisions of the State procurement law relating to the
4 debarment of certain persons engaged in investment activities in Iran to include
5 persons participating in a boycott of the State of Israel; altering certain provisions of
6 law requiring the Board of Trustees for the State Retirement and Pension System to
7 take divestment action with regard to investments in a company doing business in
8 Iran or Sudan to include a company participating in a boycott of Israel; defining
9 certain terms; making conforming changes; and generally relating to State sanctions
10 under the State procurement and pension system laws.

11 BY repealing and reenacting, with amendments,
12 Article – State Finance and Procurement
13 Section 17–701 and 17–703 through 17–707
14 Annotated Code of Maryland
15 (2015 Replacement Volume and 2016 Supplement)

16 BY repealing and reenacting, without amendments,
17 Article – State Finance and Procurement
18 Section 17–702
19 Annotated Code of Maryland
20 (2015 Replacement Volume and 2016 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article – State Personnel and Pensions
23 Section 21–123.1
24 Annotated Code of Maryland
25 (2015 Replacement Volume and 2016 Supplement)

26 Preamble

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, The State prohibits procurement with an entity that engages in
2 investment activities in Iran; and

3 WHEREAS, The State prohibits investment by the State Retirement and Pension
4 System in an entity that does business in Iran or Sudan; and

5 WHEREAS, The General Assembly declares that it is the policy of the State to
6 reaffirm our Declaration of Cooperation with the State of Israel that has resulted in the
7 successful exchange of commerce, culture, technology, tourism, trade, economic
8 development, scholarly inquiry, and academic cooperation for well over two decades; and

9 WHEREAS, The General Assembly finds that boycotts directed at Israel directly
10 undermine the policies of the State as identified in the Declaration of Cooperation with
11 Israel, a democratic nation that shares the ideals and values of our great State; and

12 WHEREAS, The movement known as Boycott, Divestment and Sanctions is intended
13 to delegitimize the democratic State of Israel; and

14 WHEREAS, Israel is the most prominent target of boycott activity, which began with
15 but has not been limited to the Arab League Boycott adopted in 1945, even before Israel's
16 declaration of independence as the reestablished national state of the Jewish people; and

17 WHEREAS, Companies that refuse to deal with trade partners of the United States,
18 such as Israel or entities that do business with or in such countries, make discriminatory
19 decisions on the basis of national origin that impair those companies' commercial
20 soundness; and

21 WHEREAS, It is the public policy of the United States, as enshrined in several
22 federal acts, to oppose boycotts against Israel, and Congress has concluded as a matter of
23 national trade policy that cooperation with Israel materially benefits American companies
24 and improves American competitiveness; and

25 WHEREAS, Israel in particular is known for its dynamic and innovative approach
26 in many business sectors and, therefore, a company's decision to discriminate against
27 Israel, Israeli entities, or entities that do business with or in Israel, is an unsound business
28 practice making the company an unduly risky contracting partner or vehicle for
29 investment; and

30 WHEREAS, Maryland seeks to act to implement Congress's announced policy of
31 "examining a company's promotion or compliance with unsanctioned boycotts, divestment
32 from, or sanctions against Israel as part of its consideration in awarding grants and
33 contracts and supports the divestment of state assets from companies that support or
34 promote actions to boycott, divest from, or sanction Israel"; now, therefore,

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

Article – State Finance and Procurement

17–701.

(a) In this subtitle the following words have the meanings indicated.

(B) “ACTIVITIES SUBJECT TO DEBARMENT” MEANS:

(1) INVESTMENT ACTIVITIES IN IRAN; OR

(2) PARTICIPATING IN A BOYCOTT OF ISRAEL.

~~[(b)]~~ **(C)** “Energy sector of Iran” means activities to develop petroleum or natural gas resources or nuclear power in Iran.

~~[(c)]~~ **(D)** “Financial institution” has the meaning stated in Section 14 of the Iran Sanctions Act of 1996 (Public Law 104–172).

~~[(d)]~~ **(E)** “Iran” includes the government of Iran and any agency or instrumentality of Iran.

(F) (1) “PARTICIPATING IN A BOYCOTT OF ISRAEL” MEANS REFUSAL TO TRANSACT, TERMINATION OF BUSINESS ACTIVITIES, OR OTHER ACTIONS CARRIED OUT IN A DISCRIMINATORY MANNER THAT ARE INTENDED TO LIMIT COMMERCIAL RELATIONS:

(I) WITH THE STATE OF ISRAEL;

(II) WITH PERSONS DOING BUSINESS IN OR WITH THE STATE OF ISRAEL; OR

(III) IN ISRAELI–CONTROLLED TERRITORIES.

(2) “PARTICIPATING IN A BOYCOTT OF ISRAEL” DOES NOT INCLUDE FOREIGN BOYCOTTS PREEMPTED BY FEDERAL LAW UNDER 50 APP. U.S.C. § 2407(C).

~~[(e)]~~ **(G)** “Person” includes:

(1) a natural person, corporation, company, limited liability company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group;

(2) a governmental entity or instrumentality of a government, including a multilateral development institution, as defined by the federal International Financial Institutions Act, 22 U.S.C. 262r(c)(3); or

(3) any parent, successor, subunit, direct or indirect subsidiary of, or any entity under common ownership or control with, an entity described in item (1) or (2) of this subsection.

[(f)] (H) “Public body” means:

(1) the State;

(2) a county, municipal corporation, or other political subdivision;

(3) a public instrumentality; or

(4) any governmental unit authorized to award a contract.

17–702.

(a) For purposes of this subtitle, a person engages in investment activities in Iran if:

(1) the person provides goods or services of \$20,000,000 or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran; or

(2) the person is a financial institution that extends \$20,000,000 or more in credit to another person for 45 days or more if the person to whom the credit is extended:

(i) will use the credit to provide goods or services in the energy sector of Iran as described in item (1) of this section; and

(ii) is, at the time of the extension of credit, identified on a list created under § 17–704 of this subtitle as a person engaging in investment activities in Iran.

(b) If the Board determines that the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 has been amended or any other federal act or law has been enacted or amended that authorizes or requires the reduction of the dollar amounts provided for in this section or otherwise alters the parameters of investment activities in Iran for the purpose of imposing sanctions, the Board shall adopt regulations to reduce the dollar amounts or alter the parameters.

17–703.

A person that, at the time of bid or proposal for a new contract or renewal of an existing contract, is identified on a list created by the Board under § 17–704 of this subtitle as a person engaging in [investment activities in Iran] **ACTIVITIES SUBJECT TO DEBARMENT** is ineligible to, and may not bid on, submit a proposal for, or enter into or renew a contract with a public body for goods or services.

17–704.

(a) (1) On or before December 31, [2012] **2017**, the Board shall use credible information available to the public to create a list of persons that the Board determines to be engaged in [investment activities in Iran as described in § 17–702 of this subtitle] **ACTIVITIES SUBJECT TO DEBARMENT UNDER THIS SUBTITLE**.

(2) The Board shall update the list at least every 180 days.

(3) **(I) [Before] SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, BEFORE** the Board includes a person on the list, the Board shall provide the person with 90 days' written notice that:

[(i)] 1. the Board intends to include the person on the list; and

[(ii)] 2. inclusion on the list would make the person ineligible to bid on, submit a proposal for, or enter into or renew a contract with a public body for goods or services.

(II) THE NOTIFICATION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IS NOT REQUIRED IF THE PERSON ON THE LIST WAS NOTIFIED BY THE BOARD, ON OR BEFORE DECEMBER 31, 2017, THAT:

1. THE BOARD DETERMINED THE PERSON WAS ENGAGED IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN § 17–702 OF THIS SUBTITLE; AND

2. AS A RESULT OF THE BOARD'S DETERMINATION UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH, THE PERSON BECAME INELIGIBLE FOR A CONTRACT OR CONTRACT RENEWAL WITH A PUBLIC BODY FOR GOODS OR SERVICES.

(4) The notice required under paragraph (3) of this subsection shall specify that if the person ceases engagement in [investment activities in Iran as described in § 17–702 of this subtitle] **ACTIVITIES SUBJECT TO DEBARMENT**, the person may become eligible for a future contract or contract renewal with a public body for goods or services on removal from the list.

(b) (1) The Board shall provide a person with an opportunity to comment in writing to the Board that the person is not engaged in [investment activities in Iran] **ACTIVITIES SUBJECT TO DEBARMENT.**

(2) If the person demonstrates to the Board that the person is not engaged in [investment activities in Iran as described in § 17–702 of this subtitle] **ACTIVITIES SUBJECT TO DEBARMENT**, the Board may not include the person on the list.

(c) The Board shall remove a person from the list if the person demonstrates to the Board that the person no longer is engaged in [investment activities in Iran as described in § 17–702 of this subtitle] **ACTIVITIES SUBJECT TO DEBARMENT.**

(d) The Board shall make every reasonable effort to avoid erroneously including a person on the list.

(e) The Board shall publish the list on the Internet.

17–705.

(a) [On or after January 1, 2013, a] **A** public body shall require a person that submits a bid or proposal to the public body for a contract for goods or services, or otherwise proposes to enter into or renew a contract for goods or services with the public body, to:

(1) **(I) ON OR BEFORE DECEMBER 31, 2017**, certify at the time the bid is submitted or the contract is renewed that the person:

[(i)] 1. is not identified on the list created by the Board as a person engaging in investment activities in Iran as described in § 17–702 of this subtitle; and

[(ii)] 2. is not engaging in investment activities in Iran as described in § 17–702 of this subtitle; [or] **AND**

(II) ON OR AFTER JANUARY 1, 2018, CERTIFY AT THE TIME THE BID IS SUBMITTED OR THE CONTRACT IS RENEWED THAT THE PERSON:

1. IS NOT IDENTIFIED ON THE LIST CREATED BY THE BOARD AS A PERSON ENGAGING IN ACTIVITIES SUBJECT TO DEBARMENT; AND

2. IS NOT ENGAGING IN ACTIVITIES SUBJECT TO DEBARMENT; OR

(2) if the person is unable to make the certification under item (1) of this subsection, provide the public body, under penalty of perjury, a detailed description of the person's [investment activities in Iran] **ACTIVITIES SUBJECT TO DEBARMENT.**

(b) A public body shall submit any information provided to the public body under subsection (a)(2) of this section to the Board.

17–706.

(a) (1) If a public body, using credible information available to the public, determines that a person has submitted a false certification under § 17–705(a)(1) of this subtitle, the public body shall provide written notice to the person and an opportunity for the person to demonstrate in writing that the person is not engaged in [investment activities in Iran] **ACTIVITIES SUBJECT TO DEBARMENT**.

(2) If the person fails to demonstrate to the public body within 90 days after the public body provides notice under paragraph (1) of this subsection that the person is not engaged in [investment activities in Iran] **ACTIVITIES SUBJECT TO DEBARMENT**, the public body shall report to the Board and the Attorney General:

(i) the name of the person determined to have submitted a false certification; and

(ii) the information on which the public body made its decision.

(b) (1) The Attorney General may institute an action against a person determined to have submitted a false certification under § 17–705(a)(1) of this subtitle.

(2) An action brought under this section shall be brought within 3 years from the date the certification is made.

(c) If, in an action brought under this section, a court determines that a person submitted a false certification:

(1) the person shall pay all reasonable costs and fees incurred in the civil action, including:

(i) any costs incurred by the public body for the investigation that led to the finding of the false certification; and

(ii) all reasonable costs and fees incurred by the Attorney General in bringing the action;

(2) the court may impose a civil penalty equal to the greater of \$1,000,000 or twice the amount of the contract for which the false certification was submitted;

(3) the public body may terminate the contract for which the false certification was submitted; and

(4) the person is ineligible to bid on a contract with a public body for a period of 3 years from the date of the court order.

(d) (1) Except as provided in paragraph (2) of this subsection, an unsuccessful bidder or any other person may not protest the award of a contract or contract renewal on the basis of a false certification.

(2) Paragraph (1) of this subsection does not prohibit a public body from filing a protest objecting to the award of a contract or contract renewal on the basis of a false certification.

(e) This subtitle does not create or authorize a private right of action.

17–707.

This subtitle preempts any law, ordinance, rule, or regulation of any local governing body involving procurement contracts for goods or services with a person engaged in [investment activities in Iran] **ACTIVITIES SUBJECT TO DEBARMENT.**

Article – State Personnel and Pensions

21–123.1.

(a) (1) In this subtitle the following words have the meanings indicated.

(2) (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, or other commingled or passively managed funds.

(3) “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.

(4) “Divestment action” means selling, redeeming, transferring, exchanging, otherwise disposing of, and refraining from further investment in certain investments.

(5) “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.

(6) “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.

(7) “Eligible accounts” means actively managed separate accounts containing funds of the several systems.

(8) “ENGAGING IN ACTIVITIES SUBJECT TO DIVESTMENT ACTION” MEANS:

(I) DOING BUSINESS IN IRAN;

(II) DOING BUSINESS IN SUDAN; OR

(III) PARTICIPATING IN A BOYCOTT OF ISRAEL.

[(8)] (9) “Government of Iran” means the government of Iran, its instrumentalities, and companies owned or controlled by the government of Iran.

[(9)] (10) “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.

[(10)] (11) “Iran” means the Islamic Republic of Iran.

(12) (I) “PARTICIPATING IN A BOYCOTT OF ISRAEL” MEANS REFUSAL TO TRANSACT, TERMINATION OF BUSINESS ACTIVITIES, OR OTHER ACTIONS CARRIED OUT IN A DISCRIMINATORY MANNER THAT ARE INTENDED TO LIMIT COMMERCIAL RELATIONS:

1. WITH THE STATE OF ISRAEL;

2. WITH PERSONS DOING BUSINESS IN OR WITH THE STATE OF ISRAEL; OR

3. IN ISRAELI-CONTROLLED TERRITORIES.

(II) “PARTICIPATING IN A BOYCOTT OF ISRAEL” DOES NOT INCLUDE FOREIGN BOYCOTTS PREEMPTED BY FEDERAL LAW.

1 **[(11)] (13)** (i) “Sudan” means the government in Khartoum, Sudan, that
2 is led by the National Congress Party (formerly known as the National Islamic Front) or
3 any successor government formed on or after October 13, 2006, including the Coalition
4 National Unity Government agreed on in the Comprehensive Peace Agreement for Sudan.

5 (ii) “Sudan” does not mean the regional government of southern
6 Sudan.

7 (b) The Board of Trustees shall review the investment holdings in eligible
8 accounts for the purpose of determining the extent to which funds in eligible accounts are
9 invested in companies [doing business in Iran or Sudan] **ENGAGING IN ACTIVITIES**
10 **SUBJECT TO DIVESTMENT ACTION.**

11 (c) (1) Except as otherwise provided in this section, and consistent with the
12 fiduciary duties of the Board of Trustees under Subtitle 2 of this title and all other
13 applicable law, the Board of Trustees shall, within 30 days of its review under subsection
14 (b) of this section, provide written notice and opportunity to comment to a company in which
15 eligible accounts are invested and that has been identified as [doing business in Iran or
16 Sudan] **ENGAGING IN ACTIVITIES SUBJECT TO DIVESTMENT ACTION.**

17 (2) Any notice provided by the Board of Trustees under paragraph (1) of
18 this subsection shall state that the company shall be subject to divestment action by the
19 Board of Trustees unless the company provides written comments within 90 days to the
20 Board of Trustees:

21 (i) demonstrating that the company is not [doing business in Iran
22 or Sudan] **ENGAGING IN ACTIVITIES SUBJECT TO DIVESTMENT ACTION;** or

23 (ii) stating that, within 60 days of providing written comments to the
24 Board of Trustees under this paragraph, the company will produce a plan to end [doing
25 business in Iran or Sudan], within 1 year, **ENGAGING IN ACTIVITIES SUBJECT TO**
26 **DIVESTMENT ACTION.**

27 (3) If the company demonstrates to the satisfaction of the Board of Trustees
28 that it is not [doing business in Iran or Sudan] **ENGAGING IN ACTIVITIES SUBJECT TO**
29 **DIVESTMENT ACTION**, the Board of Trustees may not take any divestment action against
30 the company.

31 (4) (i) If within 60 days of providing written comments to the Board of
32 Trustees under paragraph (2) of this subsection, the company produces a plan to cease
33 [doing business in Iran or Sudan] **ENGAGING IN ACTIVITIES SUBJECT TO DIVESTMENT**
34 **ACTION** within 1 year, the Board of Trustees may not take any divestment action against
35 the company.

(ii) If the Board of Trustees does not take any divestment action under subparagraph (i) of this paragraph, the Board of Trustees shall monitor the progress of the company's plan to cease [doing business in Iran or Sudan] **ENGAGING IN ACTIVITIES SUBJECT TO DIVESTMENT ACTION** over the 12 months immediately following receipt of the plan.

(iii) If the company ceases [doing business in Iran or Sudan] **ENGAGING IN ACTIVITIES SUBJECT TO DIVESTMENT ACTION** within 1 year, the Board of Trustees may not take any divestment action against the company.

(iv) If the company does not cease [doing business in Iran or Sudan] **ENGAGING IN ACTIVITIES SUBJECT TO DIVESTMENT ACTION** within 1 year, the Board of Trustees shall take divestment action against the company as provided in subsection (d) of this section.

(d) Except as provided in subsections (c) and (e) of this section, the Board of Trustees:

(1) shall take divestment action in eligible accounts with regard to current investments:

(i) in any company [doing business in Iran or Sudan] **ENGAGING IN ACTIVITIES SUBJECT TO DIVESTMENT ACTION**; or

(ii) in any security or instrument issued by Iran, [or] Sudan, **OR ANY COUNTRY PARTICIPATING IN A BOYCOTT OF ISRAEL**; and

(2) may not make any new investments from net new funds in an eligible account in any company that is [doing business in Iran or Sudan] **ENGAGING IN ACTIVITIES SUBJECT TO DIVESTMENT ACTION** as determined in accordance with the procedures set forth in subsection (c) of this section.

(e) Notwithstanding the provisions of this section, the Board of Trustees may exclude from the provisions of subsections (c) and (d) of this section, a company:

(1) that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Iran or Sudan; and

(2) whose divestment cannot be executed for fair market value or greater.

(f) If the Board of Trustees takes divestment action under subsection (d) 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.

(g) On or before October 1 of each year, and every 6 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 Iran or Sudan] **ENGAGING IN ACTIVITIES SUBJECT TO DIVESTMENT ACTION** which the Board of Trustees has determined to be ineligible for investments of net new funds under subsection (d)(2) of this section; and

(4) other developments relevant to investment in companies [doing business in Iran or Sudan] **ENGAGING IN ACTIVITIES SUBJECT TO DIVESTMENT ACTION**.

(h) The Board of Trustees, or any other fiduciary of the several systems, 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 subtitle.

(i) The Board of Trustees shall act in good faith to carry out divestment action as required by this section in compliance with all applicable State and federal law, including relevant judicial decisions and the federal Sudan Accountability and Divestment Act of 2007.

(j) Nothing in this section shall require the Board of Trustees to take action as described in this section unless the Board of Trustees determines, in good faith, that the action is consistent with the fiduciary responsibilities of the Board of Trustees as described in Subtitle 2 of this title.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2017.