

SENATE BILL 1044

P1, P2, P4

0lr3755
CF HB 1592

By: **Senator Hester**

Introduced and read first time: February 19, 2020

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

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

4 FOR the purpose of requiring the State Treasurer to ensure that any shares held by the
5 State are voted in favor of shareholder resolutions that ask companies to adopt
6 policies of refusing to do business with governments engaging in genocide or crimes
7 against humanity; requiring the State Treasurer to report annually to the General
8 Assembly on the use of certain shareholder advocacy activities; requiring, when
9 issuing an invitation for bids or a request for proposals, certain units of State
10 government to require a certain bidder or offeror to disclose any company policy
11 regarding a refusal to do business with governments that are engaged in genocide or
12 crimes against humanity; requiring, beginning on a certain date, certain contracts
13 for procurement to include a certain clause requiring the contractor to have a written
14 and formally adopted policy of refusing to do business with governments that are
15 engaged in genocide or crimes against humanity; authorizing the State to declare a
16 certain contract void under certain circumstances; providing that, if a certain
17 contract is declared void, the contractor is entitled to the reasonable value of certain
18 work performed and materials provided; authorizing the State to compel a certain
19 contractor to perform under a certain contract if the contractor willfully fails to
20 comply with the requirements of a certain clause; limiting the liability of the State
21 under certain contracts and requiring the State to deduct certain money paid from
22 certain money that is due under certain contracts; authorizing any person to inform
23 the Board of Public Works about a certain violation; requiring the Board to cause an
24 investigation of a certain charge and authorizing the Board to invoke certain
25 remedies under certain circumstances; establishing the Commission on Genocide
26 Prevention; providing for the composition, chair, and staffing of the Commission;
27 prohibiting a member of the Commission from receiving certain compensation, but
28 authorizing the reimbursement of certain expenses; requiring the Commission to
29 research governments that are committing or are at risk of committing genocide or
30 crimes against humanity, identify contractors that are in violation of a certain
31 procurement requirement, and hold certain hearings on the implementation of

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



certain provisions of this Act; requiring the Commission to report its findings and recommendations to the Governor and the General Assembly on or before a certain date each year; requiring the Board of Trustees for the State Retirement and Pension System to require its Investment Committee to ensure that any shares held by the State are voted in favor of shareholder resolutions that ask the companies to adopt policies of refusing to do business with governments engaged in genocide or crimes against humanity; requiring the Investment Committee to report annually to the Board of Trustees and the State Treasurer on the use of certain shareholder advocacy activities; defining certain terms; and generally relating to the prevention of genocide and crimes against humanity.

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 6–222(a) and (d)
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

BY adding to
Article – State Finance and Procurement
Section 6–222(g) and 13–219.1
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

BY adding to
Article – State Government
Section 9–3301 to be under the new subtitle “Subtitle 33. Commission on Genocide Prevention”
Annotated Code of Maryland
(2014 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – State Personnel and Pensions
Section 21–116
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

Preamble

WHEREAS, The residents of the State hold as their values universal respect for human rights and fundamental freedoms; and

WHEREAS, The State routinely purchases from and invests in corporations with global operations and supply chains; and

WHEREAS, The residents of the State recognize the important role local communities can take to promote the practice of ethical procurement and ethical investment in accordance with their values; and

WHEREAS, It is the responsibility and duty of the State to do all it can to prevent genocide and crimes against humanity through its procurement and investment practices; now, therefore,

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

Article – State Finance and Procurement

6–222.

(a) (1) In this section[, “supranational issuer”] **THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(2) “CRIMES AGAINST HUMANITY” HAS THE MEANING STATED IN § 9–3301 OF THE STATE GOVERNMENT ARTICLE.

(3) “GENOCIDE” HAS THE MEANING STATED IN § 9–3301 OF THE STATE GOVERNMENT ARTICLE.

(4) (I) “SUPRANATIONAL ISSUER” means an international development institution that:

[(i)] 1. provides financing, advisory services, or other financial services to the institution’s member countries to achieve the overall goal of improving living standards through sustainable economic growth; and

[(ii)] 2. is rated in the highest credit rating category by a nationally recognized statistical rating organization.

[(2)] (II) “Supranational issuer” includes:

[(i)] 1. the World Bank;

[(ii)] 2. the International Finance Corporation;

[(iii)] 3. the Inter–American Development Bank;

[(iv)] 4. the African Development Bank; and

[(v)] 5. the Asian Development Bank.

(d) Subject to § 2–1257 of the State Government Article, the Treasurer shall report by January 3 of each year to the General Assembly on investment activities for

unexpended or surplus money over which the Treasurer has custody which have been conducted during the previous fiscal year. At a minimum, the report shall specify for General Fund investments and all other investments:

(1) the inventory of investments with maturity dates and the book and market value as of June 30;

(2) the net income earned;

(3) the percentage share of each category of investment in the portfolio;
[and]

(4) any sale of investments prior to the maturity date; AND

(5) IN ACCORDANCE WITH SUBSECTION (G) OF THIS SECTION, 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.

(G) THE STATE TREASURER SHALL ENSURE THAT ANY SHARES HELD BY THE STATE ARE VOTED IN FAVOR OF SHAREHOLDER RESOLUTIONS THAT ASK THE COMPANY TO ADOPT A POLICY OF REFUSING TO DO BUSINESS WITH GOVERNMENTS ENGAGING IN GENOCIDE OR CRIMES AGAINST HUMANITY.

13-219.1.

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

(2) "CRIMES AGAINST HUMANITY" HAS THE MEANING STATED IN § 9-3301 OF THE STATE GOVERNMENT ARTICLE.

(3) "GENOCIDE" HAS THE MEANING STATED IN § 9-3301 OF THE STATE GOVERNMENT ARTICLE.

(B) THIS SECTION APPLIES ONLY TO:

(1) EACH BIDDER AND OFFEROR THAT HAS ANNUAL REVENUES OF AT LEAST \$100,000,000; AND

(2) EACH CONTRACT FOR PROCUREMENT BY THE STATE WITH A CONTRACTOR THAT HAS ANNUAL REVENUES OF AT LEAST \$100,000,000.

1 (C) WHEN A UNIT ISSUES AN INVITATION FOR BIDS OR A REQUEST FOR
2 PROPOSALS, THE UNIT SHALL REQUIRE EACH BIDDER OR OFFEROR TO DISCLOSE
3 ANY COMPANY POLICY OF THE BIDDER OR OFFEROR REGARDING ANY REFUSAL TO
4 DO BUSINESS WITH GOVERNMENTS THAT ARE ENGAGED IN GENOCIDE OR CRIMES
5 AGAINST HUMANITY.

6 (D) BEGINNING JANUARY 1, 2022, EACH CONTRACT FOR PROCUREMENT
7 SHALL INCLUDE A GENOCIDE AND CRIMES AGAINST HUMANITY CLAUSE AS
8 PROVIDED IN THIS SECTION.

9 (E) THE GENOCIDE AND CRIMES AGAINST HUMANITY CLAUSE SHALL
10 REQUIRE THE CONTRACTOR TO HAVE A WRITTEN AND FORMALLY ADOPTED
11 COMPANY POLICY OF REFUSING TO DO BUSINESS WITH GOVERNMENTS THAT ARE
12 ENGAGED IN GENOCIDE OR CRIMES AGAINST HUMANITY.

13 (F) (1) IF THE GENOCIDE AND CRIMES AGAINST HUMANITY CLAUSE IS
14 OMITTED FROM A CONTRACT FOR PROCUREMENT THAT IS SUBJECT TO THIS
15 SECTION, THE STATE MAY DECLARE THE CONTRACT TO BE VOID.

16 (2) IF A CONTRACT IS DECLARED TO BE VOID UNDER PARAGRAPH (1)
17 OF THIS SUBSECTION, THE CONTRACTOR IS ENTITLED TO THE REASONABLE VALUE
18 OF WORK THAT HAS BEEN PERFORMED AND MATERIALS THAT HAVE BEEN
19 PROVIDED.

20 (G) IF A CONTRACTOR WILLFULLY FAILS TO COMPLY WITH THE
21 REQUIREMENTS OF THE GENOCIDE AND CRIMES AGAINST HUMANITY CLAUSE AND
22 THE CONTRACT IS PARTLY EXECUTORY, THE STATE MAY COMPEL THE CONTRACTOR
23 TO CONTINUE TO PERFORM UNDER THE CONTRACT, BUT THE STATE:

24 (1) IS LIABLE FOR NOT MORE THAN THE REASONABLE VALUE OF
25 WORK PERFORMED AND MATERIALS PROVIDED AFTER THE DATE ON WHICH THE
26 BREACH OF CONTRACT WAS OR SHOULD HAVE BEEN DISCOVERED; AND

27 (2) SHALL DEDUCT ANY MONEY THAT HAS BEEN PAID UNDER THE
28 CONTRACT FROM THE MONEY THAT BECOMES DUE UNDER ITEM (1) OF THIS
29 SUBSECTION.

30 (H) (1) ANY PERSON, INCLUDING AN EMPLOYEE OR A PROSPECTIVE
31 EMPLOYEE, WHO HAS INFORMATION ABOUT A VIOLATION OF THIS SECTION OR A
32 GENOCIDE AND CRIMES AGAINST HUMANITY CLAUSE MAY INFORM THE BOARD.

33 (2) THE BOARD:

(I) SHALL CAUSE AN IMMEDIATE INVESTIGATION OF THE CHARGE; AND

(II) IF IT CONCLUDES THAT THE CHARGE IS TRUE, MAY INVOKE ANY REMEDY AVAILABLE BY LAW.

Article – State Government

SUBTITLE 33. COMMISSION ON GENOCIDE PREVENTION.

9–3301.

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

(2) “COMMISSION” MEANS THE COMMISSION ON GENOCIDE PREVENTION.

(3) “CRIMES AGAINST HUMANITY” MEANS ANY OF THE FOLLOWING ACTS WHEN COMMITTED AS PART OF A WIDESPREAD OR SYSTEMATIC ATTACK DIRECTED AGAINST ANY CIVILIAN POPULATION, WITH KNOWLEDGE OF THE ATTACK:

(I) MURDER;

(II) EXTERMINATION;

(III) ENSLAVEMENT;

(IV) DEPORTATION OR FORCIBLE TRANSFER OF POPULATION;

(V) IMPRISONMENT OR OTHER SEVERE DEPRIVATION OF PHYSICAL LIBERTY IN VIOLATION OF FUNDAMENTAL RULES OF INTERNATIONAL LAW;

(VI) TORTURE;

(VII) RAPE, SEXUAL SLAVERY, ENFORCED PROSTITUTION, FORCED PREGNANCY, ENFORCED STERILIZATION, OR ANY OTHER FORM OF SEXUAL VIOLENCE OF COMPARABLE GRAVITY;

(VIII) PERSECUTION AGAINST ANY IDENTIFIABLE GROUP OR COLLECTIVITY ON POLITICAL, RACIAL, NATIONAL, ETHNIC, CULTURAL, RELIGIOUS, GENDER, OR OTHER GROUNDS THAT ARE UNIVERSALLY RECOGNIZED AS IMPERMISSIBLE UNDER INTERNATIONAL LAW;

1 (IX) ENFORCED DISAPPEARANCE OF PERSONS;

2 (X) THE CRIME OF APARTHEID; OR

3 (XI) OTHER INHUMANE ACTS OF A SIMILAR CHARACTER
4 INTENTIONALLY CAUSING GREAT SUFFERING, OR SERIOUS INJURY TO BODY OR TO
5 MENTAL OR PHYSICAL HEALTH.

6 (4) "GENOCIDE" MEANS ANY OF THE FOLLOWING ACTS COMMITTED
7 WITH INTENT TO DESTROY, IN WHOLE OR IN PART, A NATIONAL, ETHNIC, RACIAL, OR
8 RELIGIOUS GROUP:

9 (I) KILLING MEMBERS OF THE GROUP;

10 (II) CAUSING SERIOUS BODILY OR MENTAL HARM TO MEMBERS
11 OF THE GROUP;

12 (III) DELIBERATELY INFLECTING ON THE GROUP CONDITIONS OF
13 LIFE CALCULATED TO BRING ABOUT ITS PHYSICAL DESTRUCTION IN WHOLE OR IN
14 PART;

15 (IV) IMPOSING MEASURES INTENDED TO PREVENT BIRTHS
16 WITHIN THE GROUP; OR

17 (V) FORCIBLY TRANSFERRING CHILDREN OF THE GROUP TO
18 ANOTHER GROUP.

19 (B) THERE IS A COMMISSION ON GENOCIDE PREVENTION.

20 (C) THE COMMISSION CONSISTS OF THE FOLLOWING MEMBERS:

21 (1) THE GOVERNOR, OR THE GOVERNOR'S DESIGNEE;

22 (2) ONE MEMBER OF THE SENATE OF MARYLAND, APPOINTED BY THE
23 PRESIDENT OF THE SENATE;

24 (3) ONE MEMBER OF THE HOUSE OF DELEGATES, APPOINTED BY THE
25 SPEAKER OF THE HOUSE;

26 (4) THE ATTORNEY GENERAL, OR THE ATTORNEY GENERAL'S
27 DESIGNEE;

1 **(5) THE STATE TREASURER, OR THE STATE TREASURER'S DESIGNEE;**
2 **AND**

3 **(6) TWO MEMBERS APPOINTED BY THE GOVERNOR.**

4 **(D) THE GOVERNOR SHALL DESIGNATE THE CHAIR OF THE COMMISSION.**

5 **(E) THE OFFICE OF THE STATE TREASURER SHALL PROVIDE STAFF FOR**
6 **THE COMMISSION.**

7 **(F) A MEMBER OF THE COMMISSION:**

8 **(1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE**
9 **COMMISSION; BUT**

10 **(2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE**
11 **STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.**

12 **(G) THE COMMISSION SHALL:**

13 **(1) RESEARCH GOVERNMENTS THAT ARE COMMITTING OR ARE AT**
14 **RISK OF COMMITTING GENOCIDE OR CRIMES AGAINST HUMANITY;**

15 **(2) IDENTIFY ANY CONTRACTOR UNDER A STATE PROCUREMENT**
16 **CONTRACT THAT IS IN VIOLATION OF § 13-219.1 OF THE STATE FINANCE AND**
17 **PROCUREMENT ARTICLE; AND**

18 **(3) HOLD PERIODIC HEARINGS ON THE IMPLEMENTATION OF §§**
19 **6-222(G) AND 13-219.1 OF THE STATE FINANCE AND PROCUREMENT ARTICLE AND**
20 **§ 21-116(F) OF THE STATE PERSONNEL AND PENSIONS ARTICLE.**

21 **(H) ON OR BEFORE DECEMBER 31, 2020, AND EACH DECEMBER 31**
22 **THEREAFTER, THE COMMISSION SHALL REPORT ITS FINDINGS TO THE GOVERNOR**
23 **AND, IN ACCORDANCE WITH § 2-1257 OF THIS ARTICLE, THE GENERAL ASSEMBLY.**

24 **Article – State Personnel and Pensions**

25 21-116.

26 (a) By resolution, the Board of Trustees shall specify the powers of the Investment
27 Committee.

28 (b) The Investment Committee shall advise the Board of Trustees and make
29 recommendations on:

1 (1) the investment programs;

2 (2) compliance of the investment programs with the policies of the Board
3 of Trustees; and

4 (3) bonding for employees of the State Retirement Agency in the form and
5 amount required by law.

6 (c) (1) Subject to subsections (d) [and], (e), **AND (F)** of this section, the Board
7 of Trustees shall adopt an investment policy manual that details:

8 (i) the functions of the Investment Division of the State Retirement
9 Agency;

10 (ii) the goals and objectives of the several investment programs; and

11 (iii) the policies that govern the selection and retention of
12 investments.

13 (2) The Investment Committee shall:

14 (i) prepare and maintain the investment policy manual; and

15 (ii) submit the investment policy manual, and any subsequent
16 amendments to the manual, to the Board of Trustees for approval.

17 (d) (1) (i) Consistent with minority business purchasing standards
18 applicable to units of State government under the State Finance and Procurement Article
19 and consistent with the fiduciary duties of the Board of Trustees, the Board of Trustees
20 shall direct the Investment Committee to attempt to use to the greatest extent feasible
21 minority business enterprises to provide brokerage and investment management services
22 to the Board.

23 (ii) For purposes of this subsection, brokerage and investment
24 management services shall include services relating to all allocated asset classes.

25 (2) (i) To assist it in achieving the goal described under paragraph (1)
26 of this subsection, the Investment Committee shall undertake measures to remove any
27 barriers that limit full participation by minority business enterprises in brokerage and
28 investment management services opportunities afforded under this title.

29 (ii) The measures undertaken by the Investment Committee shall
30 include the use of a wide variety of media, including the State Retirement Agency's website,
31 to provide notice to a broad and varied range of potential providers about the brokerage
32 and investment management services opportunities afforded by the State Retirement
33 Agency.

(3) In consultation with the Governor's Office of Small, Minority, and Women Business Affairs and the Investment Committee, the Board of Trustees shall develop guidelines to assist the Investment Committee in identifying and evaluating qualified minority business enterprises in order to help the State Retirement Agency achieve the objective for greater use of minority business enterprises for brokerage and investment management services.

(4) On or before September 1 each year, the Investment Committee shall submit a report to the Board of Trustees, the Governor's Office of Small, Minority, and Women Business Affairs and, subject to § 2-1257 of the State Government Article, the General Assembly on:

(i) the identity of the minority business enterprise brokerage and investment management services firms used by the Investment Committee in the immediately preceding fiscal year;

(ii) the percentage and dollar value of the assets that are under the control of the Investment Committee that are under the investment control of minority business enterprise brokerage and investment management services firms for each allocated asset class; and

(iii) the measures the Investment Committee undertook in the immediately preceding fiscal year in accordance with paragraph (2)(ii) of this subsection.

(e) (1) Consistent with its fiduciary duties, the Board of Trustees shall include policies in the investment policy manual adopted under subsection (c) of this section regarding the management of risk, including climate risks, in the investment of system assets, and shall address:

(i) investment principles, guidelines, and policies that govern the selection and retention of the investments of the several systems, including proxy voting and engagement guidelines; and

(ii) a policy that proxy votes and sample due diligence questionnaires for prospective managers be published on the State Retirement Agency's website.

(2) (i) Consistent with its fiduciary duties, on or before January 31, 2019, and every year thereafter, the Board of Trustees shall submit a report on the risk assessment of the several systems, including climate risk, in accordance with § 2-1257 of the State Government Article, to the General Assembly.

(ii) The assessment shall:

1. identify recent studies or actions by other U.S. state public pension funds, financial institutions, or risk experts, including those related to disclosure,

1 risk assessment, investment principles, or other related issues or activities;

2 2. based on the information obtained in item 1 of this
3 subparagraph, recommend best practices and consider whether these best practices can be
4 incorporated into the investment policy manual;

5 3. examine the potential magnitude of the long-term risks
6 and opportunities of multiple scenarios and related regulatory developments across
7 industry sectors, asset classes, and the total portfolio of the several systems; and

8 4. include any other information the Board of Trustees or
9 Investment Committee deems necessary.

10 (iii) The State Retirement Agency shall post a report regarding the
11 risk assessment on its website.

12 (3) To the extent practicable, the State Retirement Agency shall request
13 all information necessary from managers, brokers, or other entities to carry out the policies
14 of the Board of Trustees with respect to an assessment conducted in accordance with this
15 subsection.

16 (4) The Board of Trustees, or any other fiduciary of the several systems as
17 defined in § 21-201(b) of this title, may not be held liable for any actions taken or decisions
18 made in good faith for the purpose of complying with or executing this subsection.

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

23 **(F) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE**
24 **MEANINGS INDICATED.**

25 **(II) “CRIMES AGAINST HUMANITY” HAS THE MEANING STATED**
26 **IN § 9-3301 OF THE STATE GOVERNMENT ARTICLE.**

27 **(III) “GENOCIDE” HAS THE MEANING STATED IN § 9-3301 OF THE**
28 **STATE GOVERNMENT ARTICLE.**

29 **(2) THE BOARD OF TRUSTEES SHALL DIRECT THE INVESTMENT**
30 **COMMITTEE TO:**

31 **(I) ENSURE THAT ANY SHARES HELD BY THE STATE ARE VOTED**
32 **IN FAVOR OF SHAREHOLDER RESOLUTIONS THAT ASK THE COMPANY TO ADOPT A**
33 **POLICY OF REFUSING TO DO BUSINESS WITH GOVERNMENTS ENGAGED IN GENOCIDE**
34 **OR CRIMES AGAINST HUMANITY; AND**

1 **(II) REPORT EACH YEAR TO THE BOARD OF TRUSTEES AND THE**
2 **STATE TREASURER REGARDING THE USE OF SHAREHOLDER ADVOCACY WITH**
3 **COMPANIES IN WHICH THE STATE INVESTS TO PERSUADE THOSE COMPANIES TO**
4 **ADOPT AND IMPLEMENT A POLICY OF REFUSING TO DO BUSINESS WITH**
5 **GOVERNMENTS ENGAGING IN GENOCIDE OR CRIMES AGAINST HUMANITY.**

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2020.