

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.



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

11 BY repealing and reenacting, with amendments,
12 Article – State Finance and Procurement
13 Section 6–222(a) and (d)
14 Annotated Code of Maryland
15 (2015 Replacement Volume and 2019 Supplement)

16 BY adding to
17 Article – State Finance and Procurement
18 Section 6–222(g) and 13–219.1
19 Annotated Code of Maryland
20 (2015 Replacement Volume and 2019 Supplement)

21 BY adding to
22 Article – State Government
23 Section 9–3301 to be under the new subtitle “Subtitle 33. Commission on Genocide
24 Prevention”
25 Annotated Code of Maryland
26 (2014 Replacement Volume and 2019 Supplement)

27 BY repealing and reenacting, with amendments,
28 Article – State Personnel and Pensions
29 Section 21–116
30 Annotated Code of Maryland
31 (2015 Replacement Volume and 2019 Supplement)

32 Preamble

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

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

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

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

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

6 **Article – State Finance and Procurement**

7 6–222.

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

10 **(2) “CRIMES AGAINST HUMANITY” HAS THE MEANING STATED IN §**
11 **9–3301 OF THE STATE GOVERNMENT ARTICLE.**

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

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

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

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

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

22 [(i)] **1.** the World Bank;

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

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

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

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

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

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

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

6 (2) the net income earned;

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

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

10 (5) IN ACCORDANCE WITH SUBSECTION (G) OF THIS SECTION, THE
11 USE OF SHAREHOLDER ADVOCACY WITH COMPANIES IN WHICH THE STATE INVESTS
12 TO PERSUADE THOSE COMPANIES TO ADOPT AND IMPLEMENT A POLICY OF
13 REFUSING TO DO BUSINESS WITH GOVERNMENTS ENGAGING IN GENOCIDE OR
14 CRIMES AGAINST HUMANITY.

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

19 **13-219.1.**

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

22 (2) "CRIMES AGAINST HUMANITY" HAS THE MEANING STATED IN §
23 9-3301 OF THE STATE GOVERNMENT ARTICLE.

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

26 (B) THIS SECTION APPLIES ONLY TO:

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

29 (2) EACH CONTRACT FOR PROCUREMENT BY THE STATE WITH A
30 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:**

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

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

5 Article – State Government

6 SUBTITLE 33. COMMISSION ON GENOCIDE PREVENTION.

7 9–3301.

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

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

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

15 (I) MURDER;

16 (II) EXTERMINATION;

17 (III) ENSLAVEMENT;

18 (IV) DEPORTATION OR FORCIBLE TRANSFER OF POPULATION;

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

22 (VI) TORTURE;

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

26 (VIII) PERSECUTION AGAINST ANY IDENTIFIABLE GROUP OR
27 COLLECTIVITY ON POLITICAL, RACIAL, NATIONAL, ETHNIC, CULTURAL, RELIGIOUS,
28 GENDER, OR OTHER GROUNDS THAT ARE UNIVERSALLY RECOGNIZED AS
29 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 INFLICTING 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.

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

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

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

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

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

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

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

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

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

34 (ii) The assessment shall:

35 1. identify recent studies or actions by other U.S. state public
36 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.