

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH30103-LB-135 (2/16)

Short Title: Sudan (Darfur) Divestment Act.

(Public)

Sponsors: Representative Luebke.

Referred to:

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR HOW THE STATE TREASURER SHALL ADDRESS
CERTAIN STATE INVESTMENTS RELATING TO SUDAN.

The General Assembly of North Carolina enacts:

SECTION 1. Legislative findings.

- (1) On July 23, 2004, the United States Congress declared that "the atrocities unfolding in Darfur, Sudan, are genocide."
- (2) On September 9, 2004, Secretary of State Colin L. Powell told the U.S. 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."
- (3) 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."
- (4) On December 7, 2004, the U.S. Congress noted that the genocidal policy in Darfur has led to reports of "systematic rape of thousands of women and girls, the abduction of women and children, and the destruction of hundreds of ethnically African villages, including the poisoning of their wells and the plunder of their crops and cattle upon which the people of such villages sustain themselves."
- (5) Also on December 7, 2004, Congress found that "the Government of Sudan has restricted access by humanitarian and human rights workers to the Darfur area through intimidation by military and security forces, and through bureaucratic and administrative obstruction, in an attempt to inflict the most devastating harm on those individuals displaced

- 1 from their villages and homes without any means of sustenance or
2 shelter."
- 3 (6) On September 25, 2006, Congress reaffirmed that "the genocide
4 unfolding in the Darfur region of Sudan is characterized by acts of
5 terrorism and atrocities directed against civilians, including mass
6 murder, rape, and sexual violence committed by the Janjaweed and
7 associated militias with the complicity and support of the National
8 Congress Party-led faction of the Government of Sudan."
- 9 (7) On September 26, 2006, the U.S. House of Representatives stated that
10 "an estimated 300,000 to 400,000 people have been killed by the
11 Government of Sudan and its Janjaweed allies since the [Darfur] crisis
12 began in 2003, more than 2,000,000 people have been displaced from
13 their homes, and more than 250,000 people from Darfur remain in
14 refugee camps in Chad."
- 15 (8) The Darfur crisis represents the first time the United States
16 Government has labeled ongoing atrocities genocide.
- 17 (9) The Federal Government has imposed sanctions against the
18 Government of Sudan since 1997. These sanctions are monitored
19 through the U.S. Treasury Department's Office of Foreign Assets
20 Control (OFAC).
- 21 (10) According to a former chair of the U.S. Securities and Exchange
22 Commission, "the fact that a foreign company is doing material
23 business with a country, government, or entity on OFAC's sanctions
24 list is, in the SEC staff's view, substantially likely to be significant to a
25 reasonable investor's decision about whether to invest in that
26 company."
- 27 (11) Since 1993, the U.S. Secretary of State has determined that Sudan is a
28 country the government of which has repeatedly provided support for
29 acts of international terrorism, thereby restricting United States
30 assistance, defense exports and sales, and financial and other
31 transactions with the Government of Sudan.
- 32 (12) A 2006 U.S. House of Representatives report states that "a company's
33 association with sponsors of terrorism and human rights abuses, no
34 matter how large or small, can have a materially adverse result on a
35 public company's operations, financial condition, earnings, and stock
36 prices, all of which can negatively affect the value of an investment."
- 37 (13) In response to the financial risk posed by investments in companies
38 doing business with a terrorist-sponsoring state, the Securities and
39 Exchange Commission established its Office of Global Security Risk
40 to provide for enhanced disclosure of material information regarding
41 such companies.
- 42 (14) The current Sudan divestment movement encompasses nearly 100
43 universities, cities, states, and private pension plans.

- 1 (15) Companies facing such widespread divestment present further material
2 risk to remaining investors.
- 3 (16) It is a fundamental responsibility of the State of North Carolina to
4 decide where, how, and by whom financial resources in its control
5 should be invested, taking into account numerous pertinent factors.
- 6 (17) It is the prerogative and desire of the State of North Carolina in respect
7 to investment resources in its control and to the extent reasonable, with
8 due consideration for, among other things, return on investment, on
9 behalf of itself and its investment beneficiaries, not to participate in an
10 ownership or capital-providing capacity with entities that provide
11 significant practical support for genocide, including certain non-United
12 States companies presently doing business in Sudan.
- 13 (18) It is the judgment of the General Assembly that this act should remain
14 in effect only insofar as it continues to be consistent with, and does not
15 unduly interfere with, the foreign policy of the United States as
16 determined by the Federal Government.
- 17 (19) It is the judgment of this General Assembly that mandatory divestment
18 of public funds from certain companies is a measure that should be
19 employed sparingly and judiciously. A Congressional and Presidential
20 declaration of genocide satisfies this high threshold.

21 **SECTION 2.** Definitions.

22 As used in this act, the following definitions apply:

- 23 (1) "Active Business Operations" means all Business Operations that are
24 not Inactive Business Operations.
- 25 (2) "Business Operations" means engaging in commerce in any form in
26 Sudan, including by acquiring, developing, maintaining, owning,
27 selling, possessing, leasing, or operating equipment, facilities,
28 personnel, products, services, personal property, real property, or any
29 other apparatus of business or commerce.
- 30 (3) "Company" means any sole proprietorship, organization, association,
31 corporation, partnership, joint venture, limited partnership, limited
32 liability partnership, limited liability company, or other entity or
33 business association, including all wholly-owned subsidiaries,
34 majority-owned subsidiaries, parent companies, or affiliates of such
35 entities or business associations, that exists for profit-making purposes.
- 36 (4) "Complicit" means taking actions during any preceding 20-month
37 period which have directly supported or promoted the genocidal
38 campaign in Darfur, including, but not limited to, preventing Darfur's
39 victimized population from communicating with each other,
40 encouraging Sudanese citizens to speak out against an internationally
41 approved security force for Darfur, actively working to deny, cover up,
42 or alter the record on human rights abuses in Darfur, or other similar
43 actions.

- 1 (5) "Direct Holdings" in a Company means all securities of that Company
2 held directly by the Public Fund or in an account or fund in which the
3 Public Fund owns all shares or interests.
- 4 (6) "Government of Sudan" means the government in Khartoum, Sudan,
5 which is led by the National Congress Party (formerly known as the
6 National Islamic Front) or any successor government formed on or
7 after October 13, 2006 (including the coalition National Unity
8 Government agreed upon in the Comprehensive Peace Agreement for
9 Sudan), and does not include the regional government of southern
10 Sudan.
- 11 (7) "Inactive Business Operations" means the mere continued holding or
12 renewal of rights to property previously operated for the purpose of
13 generating revenues but not presently deployed for such purpose.
- 14 (8) "Indirect Holdings" in a Company means all securities of that
15 Company held in an account or fund, such as a mutual fund, managed
16 by one or more persons not employed by the Public Fund, in which the
17 Public Fund owns shares or interests together with other investors not
18 subject to the provisions of this act.
- 19 (9) "Marginalized Populations of Sudan" include, but are not limited to,
20 the portion of the population in the Darfur region that has been
21 genocidally victimized; the portion of the population of southern
22 Sudan victimized by Sudan's North-South civil war; the Beja,
23 Rashidiya, and other similarly underserved groups of eastern Sudan;
24 the Nubian and other similarly underserved groups in Sudan's Abyei,
25 Southern Blue Nile, and Nuba Mountain regions; and the Amri,
26 Hamadab, Manasir, and other similarly underserved groups of northern
27 Sudan.
- 28 (10) "Military Equipment" means weapons, arms, military supplies, and
29 equipment that readily may be used for military purposes, including,
30 but not limited to, radar systems or military-grade transport vehicles;
31 or supplies or services sold or provided directly or indirectly to any
32 force actively participating in armed conflict in Sudan.
- 33 (11) "Mineral Extraction Activities" include exploring, extracting,
34 processing, transporting, or wholesale selling or trading of elemental
35 minerals or associated metal alloys or oxides (ore), including gold,
36 copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten,
37 uranium, and zinc, as well as facilitating such activities, including by
38 providing supplies or services in support of such activities.
- 39 (12) "Oil-Related Activities" include, but are not limited to, owning rights
40 to oil blocks; exporting, extracting, producing, refining, processing,
41 exploring for, transporting, selling, or trading of oil; constructing,
42 maintaining, or operating a pipeline, refinery, or other oil-field
43 infrastructure; and facilitating such activities, including by providing
44 supplies or services in support of such activities, provided that the

1 mere retail sale of gasoline and related consumer products shall not be
2 considered Oil-Related Activities.

3 (13) "Power Production Activities" means any Business Operation that
4 involves a project commissioned by the National Electricity
5 Corporation (NEC) of Sudan or other similar Government of Sudan
6 entity whose purpose is to facilitate power generation and delivery,
7 including, but not limited to, establishing power-generating plants or
8 hydroelectric dams, selling or installing components for the project,
9 providing service contracts related to the installation or maintenance of
10 the project, as well as facilitating such activities, including by
11 providing supplies or services in support of such activities.

12 (14) "Public Fund" means any funds held by the State Treasurer to the
13 credit of:

- 14 a. The Teachers' and State Employees' Retirement System.
- 15 b. The Consolidated Judicial Retirement System.
- 16 c. The Firemen's and Rescue Workers' Pension Fund.
- 17 d. The Local Governmental Employees' Retirement System.
- 18 e. The Legislative Retirement System.
- 19 f. The Legislative Retirement Fund.
- 20 g. The North Carolina National Guard Pension Fund.

21 (15) "Scrutinized Company" means any Company that meets the criteria in
22 sub-subdivisions a., b., or c. below:

- 23 a. The Company has Business Operations that involve contracts
24 with and/or provision of supplies or services to:
 - 25 1. The Government of Sudan,
 - 26 2. Companies in which the Government of Sudan has any
27 direct or indirect equity share,
 - 28 3. Government of Sudan-commissioned consortiums or
29 projects, or
 - 30 4. Companies involved in Government of
31 Sudan-commissioned consortiums or projects;
32 and either (i) More than ten percent (10%) of the
33 Company's revenues or assets linked to Sudan involve
34 Oil-Related Activities or Mineral Extraction Activities;
35 less than seventy-five percent (75%) of the Company's
36 revenues or assets linked to Sudan involve contracts with
37 and/or provision of Oil-Related or Mineral Extracting
38 products or services to the regional government of
39 southern Sudan or a project or consortium created
40 exclusively by that regional government; and the
41 Company has failed to take Substantial Action; or (ii)
42 More than ten percent (10%) of the Company's revenues
43 or assets linked to Sudan involve Power Production
44 Activities; less than seventy-five percent (75%) of the

1 Company's Power Production Activities include projects
2 whose intent is to provide power or electricity to the
3 Marginalized Populations of Sudan; and the Company
4 has failed to take Substantial Action.

- 5 b. The Company is Complicit in the Darfur genocide.
6 c. The Company supplies Military Equipment within Sudan,
7 unless it clearly shows that the Military Equipment cannot be
8 used to facilitate offensive military actions in Sudan or the
9 Company implements rigorous and verifiable safeguards to
10 prevent use of that equipment by forces actively participating in
11 armed conflict, for example, through post-sale tracking of such
12 equipment by the Company, certification from a reputable and
13 objective third party that such equipment is not being used by a
14 party participating in armed conflict in Sudan, or sale of such
15 equipment solely to the regional government of southern Sudan
16 or any internationally recognized peacekeeping force or
17 humanitarian organization.

18 Notwithstanding anything herein to the contrary, a Social
19 Development Company which is not Complicit in the Darfur genocide
20 shall not be considered a Scrutinized Company.

- 21 (16) "Social Development Company" means a Company whose primary
22 purpose in Sudan is to provide humanitarian goods or services,
23 including medicine or medical equipment, agricultural supplies or
24 infrastructure, educational opportunities, journalism-related activities,
25 information or information materials, spiritual-related activities,
26 services of a purely clerical or reporting nature, food, clothing, or
27 general consumer goods that are unrelated to Oil-Related Activities,
28 Mineral Extraction Activities, or Power Production Activities.

- 29 (17) "Substantial Action" means adopting, publicizing, and implementing a
30 formal plan to cease Scrutinized Business Operations within one year
31 and to refrain from any such new Business Operations; undertaking
32 significant humanitarian efforts on behalf of one or more Marginalized
33 Populations of Sudan; or through engagement with the Government of
34 Sudan, materially improving conditions for the genocidally victimized
35 population in Darfur.

36 **SECTION 3.** Identification of companies.

37 (a) Within 90 days of this act becoming effective, the Public Fund shall
38 make its best efforts to identify all Scrutinized Companies in which the Public Fund has
39 Direct or Indirect Holdings or could possibly have such holdings in the future. Such
40 efforts shall include, as appropriate:

- 41 (1) Reviewing and relying, as appropriate in the Public Fund's judgment,
42 on publicly available information regarding Companies with Business
43 Operations in Sudan, including information provided by nonprofit

1 organizations, research firms, international organizations, and
2 government entities;
3 (2) Contacting asset managers contracted by the Public Fund that invest in
4 Companies with Business Operations in Sudan; or
5 (3) Contacting other institutional investors that have divested from and/or
6 engaged with Companies that have Business Operations in Sudan.
7 (b) By the first meeting of the Public Fund following the 90-day period
8 described in subsection (a), the Public Fund shall assemble all Scrutinized Companies
9 identified into a "Scrutinized Companies List."

10 (c) The Public Fund shall update the Scrutinized Companies List on a
11 quarterly basis based on evolving information from, among other sources, those listed in
12 subsection (a) of this section.

13 **SECTION 4. Required actions.**

14 (a) General. The Public Fund shall adhere to the procedure for Companies
15 on the Scrutinized Companies List as provided in this section:

16 (b) Engagement.

17 (1) The Public Fund shall immediately determine the Companies on the
18 Scrutinized Companies List in which the Public Fund owns Direct or
19 Indirect Holdings.

20 (2) For each Company identified in subdivision (1) of this section with
21 only Inactive Business Operations, the Public Fund shall send a
22 written notice informing the Company of this act and encouraging it to
23 continue to refrain from initiating Active Business Operations in
24 Sudan until it is able to avoid Scrutinized Business Operations. The
25 Public Fund shall continue such correspondence on a semiannual
26 basis.

27 (3) For each Company newly identified in subdivision (1) of this section
28 with Active Business Operations, the Public Fund shall send a written
29 notice informing the Company of its Scrutinized Company status and
30 that it may become subject to divestment by the Public Fund. The
31 notice shall offer the Company the opportunity to clarify its
32 Sudan-related activities and shall encourage the Company, within 90
33 days, to either cease its Scrutinized Business Operations or convert
34 such operations to Inactive Business Operations in order to avoid
35 qualifying for divestment by the Public Fund.

36 (4) If, within 90 days following the Public Fund's first engagement with a
37 Company pursuant to subdivision (3) of this section that Company
38 ceases Scrutinized Business Operations, the Company shall be
39 removed from the Scrutinized Companies List and the provisions of
40 this Section shall cease to apply to it unless it resumes Scrutinized
41 Business Operations. If, within 90 days following the Public Fund's
42 first engagement, the Company converts its Scrutinized Active
43 Business Operations to Inactive Business Operations, the Company
44 shall be subject to all provisions relating thereto.

- 1 (c) Divestment.
- 2 (1) If, after 90 days following the Public Fund's first engagement with a
- 3 Company pursuant to subdivision (b)(3) of this section, the Company
- 4 continues to have Scrutinized Active Business Operations, and only
- 5 while such Company continues to have Scrutinized Active Business
- 6 Operations, the Public Fund shall sell, redeem, divest, or withdraw all
- 7 publicly traded securities of the Company, except as provided below,
- 8 according to the following schedule:
- 9 a. At least 50% of such assets shall be removed from the Public
- 10 Fund's assets under management by nine months after the
- 11 Company's most recent appearance on the Scrutinized
- 12 Companies List.
- 13 b. 100% of such assets shall be removed from the Public Fund's
- 14 assets under management within 15 months after the Company's
- 15 most recent appearance on the Scrutinized Companies List.
- 16 (2) If a Company that ceased Scrutinized Active Business Operations
- 17 following engagement pursuant to subdivision (b)(3) of this section
- 18 resumes such operations, subdivision (1) of this subsection shall
- 19 immediately apply, and the Public Fund shall send a written notice to
- 20 the Company. The Company shall also be immediately reintroduced
- 21 onto the Scrutinized Companies List.
- 22 (d) Prohibition. At no time shall the Public Fund acquire securities of
- 23 Companies on the Scrutinized Companies List that have Active Business Operations,
- 24 except as provided below.
- 25 (e) Exemption. No Company which the United States Government
- 26 affirmatively declares to be excluded from its present or any future federal sanctions
- 27 regime relating to Sudan shall be subject to divestment or investment prohibition
- 28 pursuant to subsections (c) and (d) of this section.
- 29 (f) Excluded Securities. Notwithstanding anything herein to the contrary,
- 30 subsections (c) and (d) of this section shall not apply to Indirect Holdings in actively
- 31 managed investment funds. The Public Fund shall, however, submit letters to the
- 32 managers of such investment funds containing Companies with Scrutinized Active
- 33 Business Operations requesting that they consider removing such Companies from the
- 34 fund or create a similar actively managed fund with Indirect Holdings devoid of such
- 35 Companies. If the manager creates a similar fund, the Public Fund shall replace all
- 36 applicable investments with investments in the similar fund in an expedited time frame
- 37 consistent with prudent investing standards. For the purposes of this section, "private
- 38 equity" funds shall be deemed to be actively managed investment funds.

39 **SECTION 5. Reporting.**

- 40 (a) The Public Fund shall file a publicly available report to the General
- 41 Assembly that includes the Scrutinized Companies List within 30 days after the list is
- 42 created.
- 43 (b) Annually thereafter, the Public Fund shall file a publicly available
- 44 report to the General Assembly and send a copy of that report to the United States

1 Presidential Special Envoy to Sudan (or an appropriate designee or successor) that
2 includes:

- 3 (1) A summary of correspondence with Companies engaged by the Public
4 Fund under Sections 4(b)(2) and (b)(3) of this act.
- 5 (2) All investments sold, redeemed, divested, or withdrawn in compliance
6 with Section 4(c) of this act.
- 7 (3) All prohibited investments under Section 4(d) of this act; and
- 8 (4) Any progress made under Section 4(f) of this act.

9 **SECTION 6.** Expiration of this act. This act expires upon the occurrence of
10 any of the following:

- 11 (1) The Congress or President of the United States declaring that the
12 Darfur genocide has been halted for at least 12 months.
- 13 (2) The United States revoking all sanctions imposed against the
14 Government of Sudan.
- 15 (3) The Congress or President of the United States declaring that the
16 Government of Sudan has honored its commitments to cease attacks
17 on civilians, demobilize and demilitarize the Janjaweed and associated
18 militias, grant free and unfettered access for deliveries of humanitarian
19 assistance, and allow for the safe and voluntary return of refugees and
20 internally displaced persons.
- 21 (4) The Congress or President of the United States, through legislation or
22 executive order, declaring that mandatory divestment of the type
23 provided for in this act interferes with the conduct of United States
24 foreign policy.

25 **SECTION 7.** Other legal obligations. With respect to actions taken in
26 compliance with this act, including all good faith determinations regarding Companies
27 as required by this act, the Public Fund shall be exempt from any conflicting statutory or
28 common law obligations, including any such obligations in respect to choice of asset
29 managers, investment funds, or investments for the Public Fund's securities portfolios.

30 **SECTION 8.** Reinvestment in certain companies with Scrutinized Active
31 Business Operations. Notwithstanding anything in this act, the Public Fund is permitted
32 to cease divesting from certain Scrutinized Companies pursuant to Section 4(c) of this
33 act and/or reinvest in certain Scrutinized Companies from which it divested pursuant to
34 Section 4(c) of this act if clear and convincing evidence shows that the value for all
35 assets under management by the Public Fund becomes equal to or less than 99.50% (50
36 basis points) of the hypothetical value of all assets under management by the Public
37 Fund assuming no divestment for any company had occurred under Section 4(c) of this
38 act. Cessation of divestment, reinvestment, and/or any subsequent ongoing investment
39 authorized by this section shall be strictly limited to the minimum steps necessary to
40 avoid the contingency set forth in the preceding sentence. For any cessation of
41 divestment, reinvestment, and/or subsequent ongoing investment authorized by this
42 section, the Public Fund shall provide a written report to the General Assembly in
43 advance of initial reinvestment, updated semiannually thereafter as applicable, setting
44 forth the reasons and justification, supported by clear and convincing evidence, for its

1 decisions to cease divestment, reinvest, and/or remain invested in Companies with
2 Scrutinized Active Business Operations. This section has no application to reinvestment
3 in Companies on the ground that they have ceased to have Scrutinized Active Business
4 Operations.

5 **SECTION 9.** Enforcement. The Attorney General is charged with enforcing
6 the provisions of this act and, through any lawful designee, may bring such actions in
7 court as are necessary to do so.

8 **SECTION 10.** Severability. If any one or more provision, section,
9 subsection, sentence, clause, phrase, or word of this legislation or the application thereof
10 to any person or circumstance is found to be invalid, illegal, unenforceable, or
11 unconstitutional, the same is hereby declared to be severable and the balance of this
12 legislation shall remain effective and functional notwithstanding such invalidity,
13 illegality, unenforceability, or unconstitutionality. The General Assembly declares that
14 it would have passed this legislation, and each provision, section, subsection, sentence,
15 clause, phrase or word thereof, irrespective of the fact that any one or more provision,
16 section, subsection, sentence, clause, phrase, or word be declared invalid, illegal,
17 unenforceable, or unconstitutional, including, but not limited to, each of the
18 engagement, divestment, and prohibition provisions of this legislation.

19 **SECTION 11.** This act becomes effective July 1, 2007.