

Senate Bill 370

By: Senators Shafer of the 48th, Hill of the 32nd, Reed of the 35th, Williams of the 19th, Adelman of the 42nd and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 7 of Chapter 20 of Title 47 of the Official Code of Georgia Annotated, the
2 "Public Retirement Systems Investment Authority Law," so as to provide for legislative
3 findings; to provide for definitions; to provide for the initial and continuing identification of
4 companies that do business with Sudan; to provide for the divestment of ownership interests
5 held by public retirement and pension funds in such companies; to prohibit investments in
6 such companies; to provide for exceptions; to provide for termination of such prohibitions
7 and divestments; to provide for certain notices; to provide for certain reports; to provide for
8 enforcement; to provide for related matters; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 The General Assembly finds that:

- 13 (1) On July 23, 2004, the United States Congress declared that "the atrocities unfolding
14 in Darfur, Sudan, are genocide";
- 15 (2) On September 9, 2004, Secretary of State Colin L. Powell told the United States Senate
16 Foreign Relations Committee that "genocide has occurred and may still be occurring in
17 Darfur" and "the Government of Sudan and the Janjaweed bear responsibility";
- 18 (3) On September 21, 2004, addressing the United Nations General Assembly, President
19 George W. Bush affirmed the Secretary of State's finding and stated, "[A]t this hour, the
20 world is witnessing terrible suffering and horrible crimes in the Darfur region of Sudan,
21 crimes my government has concluded are genocide";
- 22 (4) On December 7, 2004, the United States Congress noted that the genocidal policy in
23 Darfur has led to reports of "systematic rape of thousands of women and girls, the
24 abduction of women and children, and the destruction of hundreds of ethnically African
25 villages, including the poisoning of their wells and the plunder of their crops and cattle
26 upon which the people of such villages sustain themselves";

1 (5) Also, on December 7, 2004, Congress found that "the Government of Sudan has
2 restricted access by humanitarian and human rights workers to the Darfur area through
3 intimidation by military and security forces, and through bureaucratic and administrative
4 obstruction, in an attempt to inflict the most devastating harm on those individuals
5 displaced from their villages and homes without any means of sustenance or shelter";

6 (6) On September 25, 2006, Congress reaffirmed that "the genocide unfolding in the
7 Darfur region of Sudan is characterized by acts of terrorism and atrocities directed against
8 civilians, including mass murder, rape, and sexual violence committed by the Janjaweed
9 and associated militias with the complicity and support of the National Congress Party-led
10 faction of the Government of Sudan";

11 (7) On September 26, 2006, the United States House of Representatives stated that "an
12 estimated 300,000 to 400,000 people have been killed by the Government of Sudan and its
13 Janjaweed allies since the [Darfur] crisis began in 2003, more than 2,000,000 people have
14 been displaced from their homes, and more than 250,000 people from Darfur remain in
15 refugee camps in Chad";

16 (8) The Darfur crisis represents the first time the United States Government has labeled
17 ongoing atrocities as genocide;

18 (9) The federal government has imposed sanctions against the government of Sudan since
19 1997 which are monitored through the United States Treasury Department's Office of
20 Foreign Assets Control (OFAC);

21 (10) According to a former chair of the United States Securities and Exchange
22 Commission, "the fact that a foreign company is doing material business with a country,
23 government, or entity on OFAC's sanctions list is, in the SEC staff's view, substantially
24 likely to be significant to a reasonable investor's decision about whether to invest in that
25 company";

26 (11) Since 1993, the United States Secretary of State has determined that Sudan is a
27 country whose government has repeatedly provided support for acts of international
28 terrorism, and, as a result, the United States has restricted assistance, defense exports,
29 defense sales, financial transactions, and various other transactions with the government
30 of Sudan;

31 (12) A 2006 report by United States House of Representatives states that "a company's
32 association with sponsors of terrorism and human rights abuses, no matter how large or
33 small, can have a materially adverse result on a public company's operations, financial
34 condition, earnings, and stock prices, all of which can negatively affect the value of an
35 investment";

36 (13) In response to the financial risk posed by investments in companies doing business
37 with a state that sponsors terrorists, the Securities and Exchange Commission established

1 its Office of Global Security Risk to provide for enhanced disclosure of material
2 information regarding such companies;

3 (14) The current Sudan divestment movement encompasses nearly 100 universities,
4 municipalities, states, and private pension plans;

5 (15) Companies facing such widespread divestment present further material risk to
6 remaining investors;

7 (16) It is a fundamental responsibility of the State of Georgia to decide where, how, and
8 by whom financial resources in its control should be invested, taking into account
9 numerous pertinent factors, and, with respect to investment resources in its control and to
10 the extent reasonable, with due consideration for return on investment on behalf of the state
11 and its investment beneficiaries, not to participate in an ownership or capital providing
12 capacity with entities that provide significant practical support for genocide, including
13 certain non-United States companies presently doing business in Sudan;

14 (17) It is the judgment of the General Assembly that the provisions of this Act should
15 remain in effect only insofar as it continues to be consistent with, and does not unduly
16 interfere with, the foreign policy of the United States, as determined by the federal
17 government; and

18 (18) It is the judgment of the General Assembly that mandatory divestment of public funds
19 from certain companies is a measure that should be employed sparingly and judiciously,
20 but a congressional and Presidential declaration of genocide satisfies this high threshold.

21 **SECTION 2.**

22 Article 7 of Chapter 20 of Title 47 of the Official Code of Georgia Annotated, the "Public
23 Retirement Systems Investment Authority Law," is amended by adding a new Code
24 section to read as follows:

25 "47-20-83.1.

26 (a) As used in this Code section, the term:

27 (1) 'Active business operations' means all business operations that are not inactive
28 business operations.

29 (2) 'Business operations' means engaging in commerce in any form in Sudan, including,
30 but not limited to, acquiring, developing, maintaining, owning, selling, possessing,
31 leasing, or operating equipment, facilities, personnel, products, services, personal
32 property, real property, or any other apparatus of business or commerce.

33 (3) 'Company' means any sole proprietorship, organization, association, corporation,
34 partnership, joint venture, limited partnership, limited liability partnership, limited
35 liability company, or other entity or business association, including all wholly owned

1 subsidiaries, majority owned subsidiaries, parent companies, or affiliates of such entities
2 or business associations, that exists for the purpose of making profit.

3 (4) 'Complicit' means taking actions during any preceding 20 month period which have
4 directly supported or promoted the genocidal campaign in Darfur, including, but not
5 limited to, preventing Darfur's victimized population from communicating with each
6 other, encouraging Sudanese citizens to speak out against an internationally approved
7 security force for Darfur, actively working to deny, cover up, or alter the record on
8 human rights abuses in Darfur, or other similar actions.

9 (5) 'Direct holdings' in a company means all securities of that company that are held
10 directly by the public fund or in an account or fund in which the public fund owns all
11 shares or interests.

12 (6) 'Government of Sudan' means the government in Khartoum, Sudan, that is led by the
13 National Congress Party, formerly known as the National Islamic Front, or any successor
14 government formed on or after October 13, 2006, including the coalition National Unity
15 Government agreed upon in the Comprehensive Peace Agreement for Sudan, and does
16 not include the regional government of southern Sudan.

17 (7) 'Inactive business operations' means the mere continued holding or renewal of rights
18 to property previously operated for the purpose of generating revenues but not presently
19 deployed for such purpose.

20 (8) 'Indirect holdings' in a company means all securities of that company that are held
21 in an account or fund, such as a mutual fund, managed by one or more persons not
22 employed by the public fund, in which the public fund owns shares or interests together
23 with other investors not subject to the provisions of this Code section.

24 (9) 'Marginalized populations of Sudan' include, but are not limited to, the portion of the
25 population in the Darfur region that has been genocidally victimized; the portion of the
26 population of southern Sudan victimized by Sudan's north-south civil war; the Beja,
27 Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other
28 similarly underserved groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain
29 regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of
30 northern Sudan.

31 (10) 'Military equipment' means weapons, arms, military supplies, and equipment that
32 may readily be used for military purposes, including, but not limited to, radar systems,
33 military-grade transport vehicles, or supplies or services sold or provided directly or
34 indirectly to any force actively participating in armed conflict in Sudan.

35 (11) 'Mineral-extraction activities' include the exploring, extracting, processing,
36 transporting, or wholesale selling or trading of elemental minerals or associated metal
37 alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron

1 ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including
2 providing supplies or services in support of such activities.

3 (12) 'Oil related activities' include, but are not limited to, owning rights to oil blocks;
4 exporting, extracting, producing, refining, processing, exploring for, transporting, selling,
5 or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil
6 field infrastructure; and facilitating such activities, including providing supplies or
7 services in support of such activities, except that the mere retail sale of gasoline and
8 related consumer products shall not be considered an oil related activity.

9 (13) 'Power-production activities' means any business operation that involves a project
10 commissioned by the National Electricity Corporation (NEC) of Sudan or other similar
11 entity of the government of Sudan whose purpose is to facilitate power generation and
12 delivery, including, but not limited to, establishing power-generating plants or
13 hydroelectric dams, selling or installing components for the project, providing service
14 contracts related to the installation or maintenance of the project, as well as facilitating
15 such activities, including providing supplies or services in support of such activities.

16 (14) 'Public fund' means the investment fund of any public retirement system or pension
17 system as defined in Code Section 47-20-81.

18 (15) 'Scrutinized company' means any company that meets any of the following criteria:

19 (A) The company has business operations that involve contracts with or provision of
20 supplies or services to the government of Sudan, companies in which the government
21 of Sudan has any direct or indirect equity share, consortiums or projects commissioned
22 by the government of Sudan, or companies involved in consortiums or projects
23 commissioned by the government of Sudan and:

24 (i) More than 10 percent of the company's revenues or assets linked to Sudan involve
25 oil related activities or mineral-extraction activities; less than 75 percent of the
26 company's revenues or assets linked to Sudan involve contracts with or provision of
27 oil related or mineral-extracting products or services to the regional government of
28 southern Sudan or a project or consortium created exclusively by that regional
29 government; and the company has failed to take substantial action; or

30 (ii) More than 10 percent of the company's revenues or assets linked to Sudan
31 involve power-production activities; less than 75 percent of the company's
32 power-production activities include projects whose intent is to provide power or
33 electricity to the marginalized populations of Sudan; and the company has failed to
34 take substantial action;

35 (B) The company is complicit in the Darfur genocide; or

36 (C) The company supplies military equipment within Sudan, unless it clearly shows
37 that such military equipment cannot be used to facilitate offensive military actions in

1 Sudan, or the company implements rigorous and verifiable safeguards to prevent use
2 of that military equipment by forces actively participating in armed conflict. Examples
3 of safeguards include postsale tracking of such military equipment by the company,
4 certification from a reputable and objective third party that such military equipment is
5 not being used by a party participating in armed conflict in Sudan, or sale of such
6 military equipment solely to the regional government of southern Sudan or any
7 internationally recognized peacekeeping force or humanitarian organization.

8 Notwithstanding anything in this Code section to the contrary, a social-development
9 company which is not complicit in the Darfur genocide shall not be considered a
10 scrutinized company.

11 (16) 'Social-development company' means a company whose primary purpose in Sudan
12 is to provide humanitarian goods or services, including medicine or medical equipment;
13 agricultural supplies or infrastructure; educational opportunities; journalism related
14 activities; information or information materials; spiritual related activities; services of a
15 purely clerical or reporting nature; food, clothing, or general consumer goods that are
16 unrelated to oil related activities; mineral-extraction activities; or power-production
17 activities.

18 (17) 'Substantial action' means adopting, publicizing, and implementing a formal plan
19 to cease scrutinized active business operations within one year and to refrain from any
20 such new business operations; undertaking humanitarian efforts in conjunction with an
21 international organization, the government of Sudan, the regional government of southern
22 Sudan, or a nonprofit entity evaluated and certified by an independent third party to be
23 substantially in a relationship to the company's Sudan business operations and of benefit
24 to one or more marginalized populations of Sudan; or, through engagement with the
25 government of Sudan, materially improving conditions for the genocidally victimized
26 population in Darfur.

27 (b) On or before October 1, 2008, each public fund shall make its best efforts to identify
28 all scrutinized companies in which that public fund has direct or indirect holdings or could
29 possibly have such holdings in the future. Such efforts include:

30 (1) Reviewing and relying, as appropriate in the public fund's judgment, on publicly
31 available information regarding companies having business operations in Sudan,
32 including information provided by nonprofit organizations, research firms, international
33 organizations, and government entities;

34 (2) Contacting asset managers contracted by the public fund that invest in companies
35 having business operations in Sudan; and

36 (3) Contacting other institutional investors that have divested from or engaged with
37 companies that have business operations in Sudan.

1 (c) By the first meeting of each board responsible for the management of a public fund
2 after October 1, 2008, the board shall assemble all scrutinized companies into a Scrutinized
3 Companies List.

4 (d) The board of each public fund shall update quarterly its Scrutinized Companies List
5 based on evolving information from, among other sources, those listed in subsection (b)
6 of this Code section.

7 (e) Each public fund shall adhere to the following procedure for companies on its
8 Scrutinized Companies List:

9 (1) Each public fund shall immediately determine the companies on its Scrutinized
10 Companies List in which such public fund owns direct or indirect holdings;

11 (2) For each company on such list that has only inactive business operations, the public
12 fund shall send a written notice informing such company of this Code section and
13 encouraging it to continue to refrain from initiating active business operations in Sudan
14 until it is able to avoid scrutinized active business operations; the public fund shall
15 continue such correspondence semiannually;

16 (3) For each company newly identified under this Code section that has active business
17 operations, the public fund shall send a written notice informing such company of its
18 scrutinized company status and that it may become subject to divestment by the public
19 fund. The notice must inform such company of the opportunity to clarify its Sudan
20 related activities and encourage such company, within 90 days, to cease its scrutinized
21 active business operations or convert such operations to inactive business operations in
22 order to avoid qualifying for divestment by the public fund; and

23 (4) If, within 90 days after a public fund's first engagement with a company pursuant to
24 this subsection, that company ceases scrutinized active business operations, such
25 company shall be removed from the Scrutinized Companies List, and the provisions of
26 this Code section shall cease to apply to that company unless that company resumes
27 scrutinized active business operations. If, within 90 days after such public fund's first
28 engagement, such company converts its scrutinized active business operations to inactive
29 business operations, such company shall be subject to all provisions relating to inactive
30 business operations.

31 (f)(1) If, after 90 days following a public fund's first engagement with a company
32 pursuant to subsection (e) of this Code section, such company continues to have
33 scrutinized active business operations, and only while such company continues to have
34 scrutinized active business operations, such public fund shall sell, redeem, divest, or
35 withdraw all publicly traded securities of such company, except as provided in subsection
36 (h) of this Code section, according to the following schedule:

1 (A) At least 50 percent of such assets shall be removed from the public fund's assets
2 under management by nine months after the company's most recent appearance on the
3 Scrutinized Companies List; and

4 (B) One hundred percent of such assets shall be removed from the public fund's assets
5 under management within 15 months after the company's most recent appearance on
6 the Scrutinized Companies List.

7 (2) If a company that ceased scrutinized active business operations following
8 engagement pursuant to subsection (e) of this Code section resumes such active business
9 operations, this subsection shall immediately apply, and the public fund shall send a
10 written notice to such company. The company shall also be immediately reintroduced
11 onto the Scrutinized Companies List.

12 (g) A public fund shall not acquire securities of companies on the Scrutinized Companies
13 List that have active business operations, except as provided in subsection (h) of this Code
14 section.

15 (h) A company that the United States Government affirmatively declares to be excluded
16 from its present or any future federal sanctions regime relating to Sudan is not subject to
17 divestment or the investment prohibition pursuant to subsections (f) and (g) of this Code
18 section.

19 (i) Subsections (f) and (g) of this Code section shall not apply to indirect holdings in
20 actively managed investment funds. However, each public fund shall submit letters to the
21 managers of such investment funds containing companies that have scrutinized active
22 business operations requesting that they consider removing such companies from the fund
23 or create a similar actively managed fund having indirect holdings devoid of such
24 companies. If the manager creates a similar fund, such public fund shall replace all
25 applicable investments with investments in the similar fund in an expedited time frame
26 consistent with prudent investing standards. For the purposes of this subsection, a private
27 equity fund is deemed to be an actively managed investment fund.

28 (j) Notwithstanding any other provision of this Code section, each public fund, when
29 discharging its responsibility for operation of a defined contribution plan, shall engage the
30 manager of the investment offerings in such plans requesting that they consider removing
31 scrutinized companies from the investment offerings or create an alternative investment
32 offering devoid of scrutinized companies. If the manager creates an alternative investment
33 offering and the offering is deemed by such public fund to be consistent with prudent
34 investor standards, such public fund shall consider including such investment offering in
35 the plan.

36 (k) Each public fund shall file a report with the President of the Senate and the Speaker of
37 the House of Representatives that includes its Scrutinized Companies List within 30 days

1 after such list is created. This report shall be made available to the public. At each
2 meeting of the board responsible for the management of a public fund thereafter, the board
3 shall file a report, which shall be made available to the public and to the President of the
4 Senate and the Speaker of the House of Representatives, and shall send a copy of that
5 report to the United States Presidential Special Envoy to Sudan or an appropriate designee
6 or successor, which includes:

7 (1) A summary of correspondence with companies engaged by the public fund under this
8 Code section;

9 (2) All investments sold, redeemed, divested, or withdrawn in compliance with this Code
10 section;

11 (3) All prohibited investments under this Code section; and

12 (4) Any progress made under subsection (i) of this Code section.

13 (l) If any of the following occur, each public fund shall no longer scrutinize companies
14 according to this Code section and shall no longer assemble the Scrutinized Companies
15 List, shall cease engagement and divestment of such companies, and may reinvest in such
16 companies:

17 (1) The Congress or President of the United States declares that the Darfur genocide has
18 been halted for at least 12 months;

19 (2) The United States revokes all sanctions imposed against the government of Sudan;

20 (3) The Congress or President of the United States declares that the government of Sudan
21 has honored its commitments to cease attacks on civilians, demobilize and demilitarize
22 the Janjaweed and associated militias, grant free and unfettered access for deliveries of
23 humanitarian assistance, and allow for the safe and voluntary return of refugees and
24 internally displaced persons; or

25 (4) The Congress or President of the United States through legislation or executive order
26 declares that mandatory divestment of the type provided for in this Code section
27 interferes with the conduct of United States foreign policy.

28 (m) With respect to actions taken in compliance with this Code section, including, but not
29 limited to, all good faith determinations regarding companies as required by this Code
30 section, a public fund shall be exempt from any conflicting statutory or common law
31 obligations, including, but not limited to, any such obligations with respect to choice of
32 asset managers, investment funds, or investments of such public fund's securities
33 portfolios.

34 (n) Notwithstanding any other provision of this Code section to the contrary, a public fund
35 may cease divesting from certain scrutinized companies or reinvest in certain scrutinized
36 companies from which it divested pursuant to this Code section if clear and convincing
37 evidence shows that the value of all assets under management by such public fund becomes

1 equal to or less than 99.5 percent, or 50 basis points, of the hypothetical value of all assets
2 under management by such public fund, assuming no divestment for any company had
3 occurred under this Code section. Cessation of divestment, reinvestment, or any
4 subsequent ongoing investment authorized by this subsection shall be strictly limited to the
5 minimum steps necessary to avoid the contingency set forth in this subsection. For any
6 cessation of divestment, reinvestment, or subsequent ongoing investment authorized by this
7 Code section, each public fund shall provide a written report to the President of the Senate
8 and the Speaker of the House of Representatives in advance of initial reinvestment, updated
9 semiannually thereafter as applicable, setting forth the reasons and justification, supported
10 by clear and convincing evidence, for its decisions to cease divestment, reinvest, or remain
11 invested in companies having scrutinized active business operations. This subsection shall
12 not apply to reinvestment in companies on the grounds that they have ceased to have
13 scrutinized active business operations.

14 (o) The Attorney General shall enforce the provisions of this Code section and, either
15 personally or through any lawful designee, may bring such actions in court as are necessary
16 to do so."

17 **SECTION 3.**

18 All laws and parts of laws in conflict with this Act are repealed.