

Senate Bill 171

By: Senators Adelman of the 42nd, Shafer of the 48th, Johnson of the 1st, Rogers of the 21st, Reed of the 35th 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 an exception; to provide for definitions; to provide for the initial and
4 continuing identification of companies that do business with Sudan; to provide for the
5 divestment of ownership interests held by public retirement and pension funds in such
6 companies; to prohibit investments in such companies; to provide for exceptions; to provide
7 for termination of such prohibitions and divestments; to provide for certain notices; to
8 provide for certain reports; to provide for enforcement; to provide for related matters; to
9 provide conditions for an effective date and automatic repeal; to repeal conflicting laws; and
10 for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Due to the exigent circumstances regarding the ongoing, daily suffering of the people in
14 Sudan and the atrocities being committed there, the General Assembly finds it necessary to
15 act quickly in addressing the issues contained in this legislation. Therefore, this bill shall not
16 be subject to the provisions of subsection (d) of Code Section 47-20-34.

17 style="text-align:center">**SECTION 2.**

18 The General Assembly finds that:

19 (1) On July 23, 2004, the United States Congress declared that "the atrocities unfolding
20 in Darfur, Sudan, are genocide";

21 (2) On September 9, 2004, Secretary of State Colin L. Powell told the United States Senate
22 Foreign Relations Committee that "genocide has occurred and may still be occurring in
23 Darfur" and "the Government of Sudan and the Janjaweed bear responsibility";

24 (3) On September 21, 2004, addressing the United Nations General Assembly, President
25 George W. Bush affirmed the Secretary of State's finding and stated, "[A]t this hour, the

26 world is witnessing terrible suffering and horrible crimes in the Darfur region of Sudan,
27 crimes my government has concluded are genocide";

28 (4) On December 7, 2004, the United States Congress noted that the genocidal policy in
29 Darfur has led to reports of "systematic rape of thousands of women and girls, the
30 abduction of women and children, and the destruction of hundreds of ethnically African
31 villages, including the poisoning of their wells and the plunder of their crops and cattle
32 upon which the people of such villages sustain themselves";

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

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

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

48 (8) The Darfur crisis represents the first time the United States government has labeled
49 ongoing atrocities as genocide;

50 (9) The federal government has imposed sanctions against the government of Sudan since
51 1997 which are monitored through the United States Treasury Department's Office of
52 Foreign Assets Control (OFAC);

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

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

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

68 (13) In response to the financial risk posed by investments in companies doing business
 69 with a state that sponsors terrorists, the Securities and Exchange Commission established
 70 its Office of Global Security Risk to provide for enhanced disclosure of material
 71 information regarding such companies;

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

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

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

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

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

90 **SECTION 3.**

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

94 "47-20-83.2.

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

96 (1) 'Active business operations' means all business operations that are not inactive
 97 business operations.

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

102 (3) 'Company' means any sole proprietorship, organization, association, corporation,
103 partnership, joint venture, limited partnership, limited liability partnership, limited
104 liability company, or other entity or business association, including all wholly owned
105 subsidiaries, majority owned subsidiaries, parent companies, or affiliates of such entities
106 or business associations, that exists for the purpose of making profit.

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

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

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

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

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

128 (9) 'Marginalized populations of Sudan' include, but are not limited to, the portion of the
129 population in the Darfur region that has been genocidally victimized; the portion of the
130 population of southern Sudan victimized by Sudan's north-south civil war; the Beja,
131 Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other
132 similarly underserved groups in Sudan's Abyei, southern Blue Nile, and Nuba Mountain
133 regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of
134 northern Sudan.

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

139 (11) 'Mineral-extraction activities' include the exploring, extracting, processing,
140 transporting, or wholesale selling or trading of elemental minerals or associated metal
141 alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron
142 ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including
143 providing supplies or services in support of such activities.

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

150 (13) 'Power-production activities' means any business operations that involve a project
151 commissioned by the National Electricity Corporation (NEC) of Sudan or other similar
152 entity of the government of Sudan whose purpose is to facilitate power generation and
153 delivery, including, but not limited to, establishing power-generating plants or
154 hydroelectric dams, selling or installing components for the project, providing service
155 contracts related to the installation or maintenance of the project, as well as facilitating
156 such activities, including providing supplies or services in support of such activities.

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

159 (15) 'Scrutinized active business operations' means active business operations that have
160 resulted in a company becoming a scrutinized company.

161 (16) 'Scrutinized company' means any company that meets any of the following criteria:
162 (A) The company has business operations that involve contracts with or provision of
163 supplies or services to the government of Sudan, companies in which the government
164 of Sudan has any direct or indirect equity share, consortiums or projects commissioned
165 by the government of Sudan, or companies involved in consortiums or projects
166 commissioned by the government of Sudan and:

167 (i) More than 10 percent of the company's revenues or assets linked to Sudan involve
168 oil related activities or mineral-extraction activities; less than 75 percent of the
169 company's revenues or assets linked to Sudan involve contracts with or provision of
170 oil related or mineral-extracting products or services to the regional government of

171 southern Sudan or a project or consortium created exclusively by that regional
172 government; and the company has failed to take substantial action; or
173 (ii) More than 10 percent of the company's revenues or assets linked to Sudan involve
174 power-production activities; less than 75 percent of the company's power-production
175 activities include projects whose intent is to provide power or electricity to the
176 marginalized populations of Sudan; and the company has failed to take substantial
177 action;

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

179 (C) The company supplies military equipment within Sudan, unless it clearly shows
180 that such military equipment cannot be used to facilitate offensive military actions in
181 Sudan, or the company implements rigorous and verifiable safeguards to prevent use
182 of that military equipment by forces actively participating in armed conflict. Examples
183 of safeguards include postsale tracking of such military equipment by the company,
184 certification from a reputable and objective third party that such military equipment is
185 not being used by a party participating in armed conflict in Sudan, or sale of such
186 military equipment is solely to the regional government of southern Sudan or any
187 internationally recognized peacekeeping force or humanitarian organization.

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

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

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

207 (b) On or before October 1, 2009, each public fund shall make its best efforts to identify
208 all scrutinized companies in which that public fund has direct holdings or indirect holdings
209 or could possibly have such holdings in the future. Such efforts include:

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

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

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

218 (c) By the first meeting of each board responsible for the management of a public fund
219 after October 1, 2009, the board shall assemble all scrutinized companies into a Scrutinized
220 Companies List.

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

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

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

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

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

240 (4) If, within 90 days after a public fund's first engagement with a company pursuant to
241 this subsection, that company ceases scrutinized active business operations, such
242 company shall be removed from the Scrutinized Companies List, and the provisions of
243 this Code section shall cease to apply to that company unless that company resumes

244 scrutinized active business operations. If, within 90 days after such public fund's first
245 engagement, such company converts its scrutinized active business operations to inactive
246 business operations, such company shall be subject to all provisions relating to inactive
247 business operations.

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

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

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

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

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

268 (h) A company that the United States government affirmatively declares to be excluded
269 from its present or any future federal sanctions regime relating to Sudan shall not be subject
270 to divestment or the investment prohibition pursuant to subsections (f) and (g) of this Code
271 section.

272 (i) Subsections (f) and (g) of this Code section shall not apply to indirect holdings in
273 actively managed investment funds. However, each public fund shall submit letters to the
274 managers of such investment funds containing companies that have scrutinized active
275 business operations requesting that they consider removing such companies from the fund
276 or create a similar actively managed fund having indirect holdings devoid of such
277 companies. If the manager creates a similar fund, such public fund shall replace all
278 applicable investments with investments in the similar fund in an expedited time frame
279 consistent with prudent investing standards. For the purposes of this subsection, a private
280 equity fund shall be deemed to be an actively managed investment fund.

281 (j) Notwithstanding any other provision of this Code section, each public fund, when
282 discharging its responsibility for operation of a defined contribution plan, shall engage the
283 manager of the investment offerings in such plans requesting that they consider removing
284 scrutinized companies from the investment offerings or create an alternative investment
285 offering devoid of scrutinized companies. If the manager creates an alternative investment
286 offering and the offering is deemed by such public fund to be consistent with prudent
287 investor standards, such public fund shall consider including such investment offering in
288 the plan.

289 (k) Each public fund shall file a report with the President of the Senate and the Speaker of
290 the House of Representatives that includes its Scrutinized Companies List within 30 days
291 after such list is created. This report shall be made available to the public. At each
292 meeting of the board responsible for the management of a public fund thereafter, the board
293 shall file a report, which shall be made available to the public and to the President of the
294 Senate and the Speaker of the House of Representatives, and shall send a copy of that
295 report to the United States Presidential Special Envoy to Sudan or an appropriate designee
296 or successor, which includes:

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

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

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

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

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

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

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

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

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

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

323 (n) Notwithstanding any other provision of this Code section to the contrary, a public fund
 324 may cease divesting from certain scrutinized companies or reinvest in certain scrutinized
 325 companies from which it divested pursuant to this Code section if clear and convincing
 326 evidence shows that the value of all assets under management by such public fund becomes
 327 equal to or less than 99.5 percent, or 50 basis points, of the hypothetical value of all assets
 328 under management by such public fund, assuming no divestment for any company had
 329 occurred under this Code section. Cessation of divestment, reinvestment, or any
 330 subsequent ongoing investment authorized by this subsection shall be strictly limited to the
 331 minimum steps necessary to avoid the contingency set forth in this subsection. For any
 332 cessation of divestment, reinvestment, or subsequent ongoing investment authorized by this
 333 Code section, each public fund shall provide a written report to the President of the Senate
 334 and the Speaker of the House of Representatives in advance of initial reinvestment, updated
 335 semiannually thereafter as applicable, setting forth the reasons and justification, supported
 336 by clear and convincing evidence, for its decisions to cease divestment, reinvest, or remain
 337 invested in companies having scrutinized active business operations. This subsection shall
 338 not apply to reinvestment in companies on the grounds that they have ceased to have
 339 scrutinized active business operations.

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

343 **SECTION 4.**

344 This Act shall become effective on July 1, 2009, only if it is determined to have been
 345 concurrently funded as provided in Chapter 20 of Title 47 of the Official Code of Georgia
 346 Annotated, the "Public Retirement Systems Standards Law"; otherwise, this Act shall not
 347 become effective and shall be automatically repealed in its entirety on July 1, 2009, as
 348 required by subsection (a) of Code Section 47-20-50.

349 **SECTION 5.**

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