

Senate Bill 170

By: Senators Adelman of the 42nd, Shafer of the 48th, Johnson of the 1st, Rogers of the 21st, Reed of the 35th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To amend Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia
 2 Annotated, relating to general authority, duties, and procedure for state purchasing, so as to
 3 provide legislative findings; to provide definitions; to prohibit certain companies that have
 4 certain business operations in Sudan to bid on or submit a proposal for a state contract; to
 5 provide for exceptions; to provide for certain certifications; to provide penalties for false
 6 certifications; to provide for periodic reviews; to provide for related matters; to provide for
 7 severability; to provide an effective date; to repeal conflicting laws; and for other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 The General Assembly finds that:

11 (1) Since 1993, the United States Secretary of State has determined Sudan is a country
 12 whose government has repeatedly provided support for acts of international terrorism,
 13 thereby restricting United States assistance, defense exports and sales, and financial and
 14 other transactions with the Government of Sudan.

15 (2) On September 21, 2004, in addressing the United Nations General Assembly,
 16 President George W. Bush affirmed the Secretary of State's finding and stated, "At this
 17 hour, the world is witnessing terrible suffering and horrible crimes in the Darfur region
 18 of Sudan, crimes my government has concluded are genocide."

19 (3) The federal government has imposed sanctions against the Government of Sudan
 20 since 1997. These sanctions are monitored through the United States Treasury
 21 Department's Office of Foreign Assets Control (OFAC).

22 (4) On December 31, 2007, President George W. Bush signed the Sudan Accountability
 23 and Divestment Act (Public Law 110-174). The legislation was passed by the Senate and
 24 the House of Representatives unanimously. That act authorizes state and local
 25 governments to adopt policies to divest from and prohibit contracts with problematic
 26 companies operating in Sudan's oil, power, mineral, and military sectors. That act also
 27 prohibits the federal government from contracting with these companies.

28 **SECTION 2.**

29 Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated,
30 relating to general authority, duties, and procedure for state purchasing, is amended by
31 adding a new Code section to read as follows:

32 "50-5-84.

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

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

38 (2) 'Company' means any sole proprietorship, organization, association, corporation,
39 partnership, joint venture, limited partnership, limited liability partnership, limited
40 liability company, or other entity or business association, including all wholly owned
41 subsidiaries, majority owned subsidiaries, parent companies, or affiliates of such entities
42 or business associations, that exists for the purpose of making profit.

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

48 (4) 'Marginalized populations of Sudan' include, but are not limited to, the portion of the
49 population in the Darfur region that has been genocidally victimized; the portion of the
50 population of southern Sudan victimized by Sudan's north-south civil war; the Beja,
51 Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other
52 similarly underserved groups in Sudan's Abyei, southern Blue Nile, and Nuba Mountain
53 regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of
54 northern Sudan.

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

59 (6) 'Mineral-extraction activities' include the exploring, extracting, processing,
60 transporting, or wholesale selling or trading of elemental minerals or associated metal
61 alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron
62 ore, silver, tungsten, uranium, and zinc.

63 (7)(A) 'Oil related activities' include:

64 (i) Exporting, extracting, producing, refining, processing, exploring for, transporting,
65 selling, or trading oil; and

66 (ii) Constructing, maintaining, or operating a pipeline, refinery, or other oil field
67 infrastructure.

68 (B) A company shall not be considered to be involved in oil related activities if:

69 (i) The company is involved in the retail sale of gasoline or related consumer
70 products in Sudan but is not involved in any other activity described in
71 subparagraph (A) of this paragraph; or

72 (ii) The company is involved in leasing or owns rights to an oil block in Sudan but
73 is not involved in any other activity described in subparagraph (A) of this paragraph.

74 (8) 'Power-production activities' means any business operations that involve a project
75 commissioned by the National Electricity Corporation of Sudan or other similar entity of
76 the government of Sudan whose purpose is to facilitate power generation and delivery,
77 including establishing power-generating plants or hydroelectric dams, selling or installing
78 components for the project, or providing service contracts related to the installation or
79 maintenance of the project.

80 (9) 'Scrutinized company' means a company that is conducting business operations in
81 Sudan that is involved in power production activities, mineral extraction activities,
82 oil-related activities, or the production of military equipment, but excludes a company
83 that can demonstrate any of the following:

84 (A) Its business operations are conducted under contract directly and exclusively with
85 the regional government of southern Sudan;

86 (B) Its business operations are conducted under a license from the Office of Foreign
87 Assets Control or are expressly exempted under federal law from the requirement to be
88 conducted under such a license;

89 (C) Its business operations consist of providing goods or services to marginalized
90 populations of Sudan;

91 (D) Its business operations exclusively consist of providing goods or services to an
92 internationally recognized peacekeeping force or humanitarian organization;

93 (E) Its business operations consist of providing goods or services that are used only to
94 promote health or education;

95 (F) Its business operations with the Government of Sudan will be voluntarily
96 suspended for the entire duration of the contract for goods or services for which they
97 have bid on, or submitted a proposal for, a contract with a state agency; or

98 (G) It has adopted, publicized, and is implementing a formal plan to cease business
99 operations within one year and to refrain from conducting any new business operations.

100 (b)(1) A scrutinized company shall be ineligible to, and shall not, bid on or submit a
101 proposal for a contract with a state agency for goods or services.

102 (2) Notwithstanding paragraph (1) of this subsection, the Department of Administrative
103 Services may permit a scrutinized company, on a case-by-case basis, to bid on or submit
104 a proposal for a contract with a state agency for goods or services if it is in the best
105 interests of the state to permit the scrutinized company to bid on or submit a proposal for
106 one or more contracts with a state agency for goods or services.

107 (3) In making this determination, the Department of Administrative Services may utilize
108 the following resources:

109 (A) Verification by an independent third party or nonprofit organization that a
110 company is either:

111 (i) Undertaking significant humanitarian efforts in conjunction with an international
112 organization, the Government of Sudan, the regional government of southern Sudan,
113 or a nonprofit organization to benefit one or more marginalized populations of Sudan.
114 The party or organization providing the verification or an independent third party
115 shall evaluate and certify that the significant humanitarian efforts are substantial in
116 relation to the company's Sudan business operations; or

117 (ii) Through engagement with the Government of Sudan, materially improving
118 conditions for the genocidally victimized population in Darfur; and

119 (B) A National Interest Waiver issued by the President of the United States excluding
120 a company from the federal contract prohibitions provisions of the Sudan
121 Accountability and Divestment Act (Public Law 110-174).

122 (c)(1) A state agency shall require a company that submits a bid or proposal with respect
123 to a contract for goods or services, that currently or within the previous three years has
124 had business activities or other operations outside of the United States, to certify that the
125 company is not a scrutinized company.

126 (2) A state agency shall not require a company that submits a bid or proposal with
127 respect to a contract for goods or services, and that currently or within the previous three
128 years has had business activities or other operations outside of the United States, to
129 certify that the company is not a scrutinized company, if the company has obtained
130 permission to bid on or submit a proposal for a contract with a state agency for goods or
131 services pursuant to paragraph (2) of subsection (b) of this Code section.

132 (d)(1) Not later than August 1, 2009, the Department of Administrative Services shall
133 file a written notice to the United States Attorney General detailing the requirements
134 contained in this Code section, as required by the federal Sudan Accountability and
135 Divestment Act of 2007 (P. L. No. 110-174).

136 (2) Annually thereafter, the Department of Administrative Services shall file a publicly
 137 available report to the General Assembly and the United States Attorney General
 138 outlining the actions taken under this Code section.

139 (3) The Department of Administrative Services shall report to the Attorney General of
 140 Georgia the names of companies determined to have submitted false certifications under
 141 subsection (c) of this Code section, together with information as to the false certification,
 142 and the Attorney General shall determine whether to bring a civil action against the
 143 companies. The companies shall pay all costs or fees incurred in a civil action, including
 144 those for investigations that led to the discovery of a false certification.

145 (e) If the Department of Administrative Services determines that a company has submitted
 146 a false certification under subsection (c) of this Code section, the company shall be subject
 147 to:

148 (1) The company shall be liable for a civil penalty in an amount that is equal to the
 149 greater of \$250,000.00 or twice the amount of the contract for which a bid or proposal
 150 was submitted;

151 (2) The state agency or the Department of Administrative Services may terminate the
 152 contract with the company; and

153 (3) The company shall be ineligible to, and shall not, bid on a state contract for a period
 154 of not less than three years from the date the state agency determines that the company
 155 submitted the false certification.

156 The Department of Administrative Services shall report to the Attorney General the name
 157 of the company that the Department of Administrative Services determined had submitted
 158 a false certification under subsection (c) of this Code section, together with its information
 159 as to the false certification, and the Attorney General shall determine whether to bring a
 160 civil action against such company. If such company is found to have submitted a false
 161 certification, such company shall be ordered to pay all costs and fees incurred by the state
 162 in the civil action, including all costs incurred by the state agency and the Department of
 163 Administrative Services for investigations that led to the finding of the false certification
 164 and all costs and fees incurred by the Attorney General.

165 (f) The General Assembly shall periodically review this Code section and determine if any
 166 of the following events have occurred which should be construed and deemed to be a basis
 167 for repealing this Code section:

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

170 (2) The United States revokes all sanctions imposed against the Government of Sudan;

171 (3) The President of the United States has certified to Congress that the Government of
 172 Sudan has honored its commitments to do all of the following:

- 173 (A) Abide by United Nations Security Council Resolution 1769 (2007);
 174 (B) Cease attacks on civilians;
 175 (C) Demobilize and demilitarize the Janjaweed and associated militias;
 176 (D) Grant free and unfettered access for delivery of humanitarian assistance; and
 177 (E) Allow for the safe and voluntary return of refugees and internally displaced
 178 persons;
 179 (4) The Congress or President of the United States, through legislation or executive
 180 order, declares the contract prohibition of the type provided for in this Code section
 181 interferes with the conduct of United States foreign policy; or
 182 (5) Such other circumstances as the General Assembly determines to warrant the
 183 discontinuance of the provisions of this Code section."

184 **SECTION 3.**

- 185 (a) If any one or more provisions, sections, subsections, sentences, clauses, phrases, or
 186 words of this Act or the application thereof to any person or circumstance is found to be
 187 invalid, illegal, unenforceable, or unconstitutional, the same is hereby declared to be
 188 severable, and the balance of this Act shall remain effective and functional notwithstanding
 189 such invalidity, illegality, unenforceability, or unconstitutionality.
 190 (b) The General Assembly hereby declares that it would have passed this Act and each
 191 provision, section, subsection, sentence, clause, phrase, or word thereof irrespective of the
 192 fact that any one or more provisions, sections, subsections, sentences, clauses, phrases, or
 193 words were declared invalid, illegal, unenforceable, or unconstitutional, including, but not
 194 limited to, each of the engagement, divestment, and prohibition provisions of this Act.

195 **SECTION 4.**

- 196 This Act shall become effective upon its approval by the Governor or upon its becoming law
 197 without such approval.

198 **SECTION 5.**

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