Alaska State Legislature

Senator Hollis French

SB 37 - Divest Investments in Sudan

Sponsor Statement

Government supported genocide has killed hundreds of thousands of people and displaced approximately 2.5 million residents from the Darfur region of Sudan. This legislation will enact a targeted divestment program that prevents the state of Alaska from investing Permanent Fund and retirement plan dollars in companies that directly finance genocide in Darfur. SB 37 gives Alaska the opportunity to join the states, businesses and educational institutions that refuse to fund such atrocities.

Targeted divestment is a proven tactic to reduce the viability of genocide in Darfur. Twenty seven other states have divested from businesses that operate in the region. The cost to these states has been negligible. Institutions have found no noticeable decrease in returns when divestment only targets companies that have explicit financial links to the conflict. Holdings in these companies amount to seven investments valued at less than 0.1% of all Permanent Fund assets, showing that the implementation of this legislation will not require a major shift in investment strategy.

Results from the divestment movement have been promising. Sudan, unlike many foreign governments that sponsor genocide, has responded favorably when threatened with economic sanctions. Partly as a result of the divestment movement, the Sudanese government purchased a six-page, $1 million advertisement in the New York Times that sought out foreign direct investment. As more companies pull out of the region or encourage the government of Sudan to halt violent acts, the end of genocide is highly probable.

Ignoring genocide has left several scars on recent American history. With the cost of action so small, Alaska has no excuse to sit on the sidelines. I urge you to support this important and meaningful piece of legislation.

SB 37 Short Sectional Summary:

Section 1 of the bill **(Page 1 lines 6-14)** applies Section 2 of this bill to the obligations of the Alaska Retirement Management Board

Section 2 of the legislation (**starting on Page 2 line 1**) outlines how the board will identify, notify and, if necessary, divest funds from scrutinized companies.

Subsection (a) **(Page 2 line 3)** describes how the board shall identify scrutinized businesses. It includes numerous routes to create a list, and the definition of 'scrutinized business' will be discussed in more detail later in the bill.

Subsection (b) **(Page 2 line 18)** provides some examples of companies that aren't to be included on this scrutinized company list. As examples, businesses that have a plan to cease offending business operations in the country, or that have taken actions to support people affected by the genocide, will not be added to the scrutinized business list.

Subsection (c) **(Page 3 line 7)** requires that the board notify these scrutinized companies.

Subsection (d) **(Page 3 line 22)** provides for divestment from scrutinized companies that have active business operations in the state that do not divest within 90 days of notification from the board, as defined in subsection (c).

Subsection (e) **(page 3 line 30)** deals with companies that have inactive business operations in Sudan. 'Inactive business operations' are defined in section (h), page 5 line 4, as continued holding or the renewal of rights to property in Sudan that isn't currently generating revenue.

Subsection (f) **(page 4 line 9)** establishes reporting requirements to the legislature and other agencies.

Subsection (g) **(page 4 line 13)** says that this legislation prevails when it conflicts with the outlined investment policy in statute for the permanent fund.

Subsection (h) **(page 4 line 17)** provides definitions. The longest one **(page 5 line 27 through page 6 line 23)** defines 'scrutinized companies,' and ensures that this legislation won't include a broad list of businesses. Scrutinized companies only include businesses that have direct contractual agreements with the government of Sudan, that include oil and power production, supplying military equipment, or that are actively involved with supporting genocide actions. An 'out' exists for companies or projects that support or provide assistance to marginalized populations in the country. This definition of 'scrutinized company' is very limited, and in general practice includes only a few dozen companies.

Section 3 of the bill **(Page 6 line 24)** terminates the divestment program once certain benchmarks are met, such as the end of violence.

26-LS0240\A

SENATE BILL NO. 37

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY SENATORS FRENCH, Ellis

Introduced: 1/21/09
Referred: Senate Special Committee on World Trade, Technology, and Innovations, State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to certain investments of the Alaska permanent fund, the state's retirement systems, the State of Alaska Supplemental Annuity Plan, and the deferred compensation program for state employees in companies that do business in Sudan, and restricting those investments."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** AS 37.10 is amended by adding a new section to read:

Sec. 37.10.212. Investments in companies involved in business in Sudan. (a) The board shall comply with requirements of AS 37.13.125. For purposes of this subsection, unless the context requires otherwise, references to the "board" in AS 37.13.125 are construed to mean the "Alaska Retirement Management Board."

(b) To the extent that this section conflicts with AS 37.10.270(a) or other provisions, the provisions of this section prevail. The board may cooperate with the Board of Trustees of the Alaska Permanent Fund Corporation in carrying out the requirements of AS 37.13.125.

* **Sec. 2.** AS 37.13 is amended by adding a new section to read:

Sec. 37.13.125. Investments in companies involved in business in Sudan. (a) The board shall make its best efforts to identify all scrutinized companies in which the fund has direct or indirect holdings or might have holdings in the future that have active business operations in Sudan. The board shall prepare and update on a quarterly basis a scrutinized companies list. A company that stops active business operations in Sudan shall be removed from the list, and a company that becomes engaged in or resumes active business operations in Sudan shall be added to the list. The scrutinized companies list shall be created and updated based on evolving information, including information obtained by

(1) reviewing publicly available information regarding companies with active business operations compiled by nonprofit organizations, research firms, international organizations, and government entities;

(2) contacting fund asset managers regarding the identity of companies with active business operations;

(3) contacting other institutional investors that have divested from companies that have active business operations.

(b) A company may not be included on the scrutinized companies list if

(1) its primary purpose in Sudan is to provide humanitarian goods or services, services of a purely clerical or reporting nature, or food, clothing, or consumer goods that do not include oil-related activities, mineral extraction activities, or power production activities and if the company has not taken actions within the immediately preceding 20-month period that support or promote the genocidal campaign in Darfur, including actions that prevent Darfur's victimized persons from communicating with each other, that encourage Sudanese citizens to speak out against an internationally approved security force for Darfur, or that alter the record on human rights abuses in Darfur;

(2) it has adopted, publicized, and implemented a formal plan to stop active business operations within one year and to refrain thereafter from resuming active business operations;

(3) it has undertaken significant humanitarian efforts in conjunction

with an international organization, the government of Sudan, the regional government of southern Sudan, or a nonprofit entity that has been evaluated and certified by an independent entity to be substantial and of benefit to one or more marginalized populations of Sudan; or

(4) it has materially improved conditions for the genocidally victimized population in Darfur through negotiation with the government of Sudan.

(c) The board shall, on an ongoing basis, identify the companies on the scrutinized companies list in which the fund has direct or indirect holdings. For each identified company, the board shall determine whether the company is engaged in active business operations or is now engaged only in inactive business operations. The board shall send a written notice informing each company engaged only in inactive business operations of the requirements of this section and shall encourage the company to refrain from initiating active business operations. After sending the notice, the board shall remove the company from the scrutinized companies list. The board shall send a written notice to each company engaged in active business operations that the company is subject to divestment by the fund. The notice must offer the company the opportunity to clarify its activities in Sudan and encourage the company to stop its active business operations or convert the active business operations to inactive business operations to avoid divestment by the fund. If, within 90 days after the notice has been sent, the company stops its active business operations, the company shall be removed from the scrutinized companies list.

(d) If, 90 days after notice is sent by the board, a company continues to have active business operations in Sudan, all publicly traded securities of the company held directly by the fund and managed by an employee of the fund shall be immediately sold, redeemed, or otherwise divested. At least 50 percent of the assets of the company held directly by the fund but not managed by an employee of the fund shall be divested within nine months after the company's most recent placement on the scrutinized companies list, and the balance of those assets shall be divested during the next six months.

(e) Indirect holdings of the fund in assets of a company on the scrutinized companies list that has active business operations need not be divested if the assets are part of a separate, actively managed commingled fund in which other investors also own shares or interests. However, the board shall submit a letter to the manager of the actively managed fund requesting that consideration be given to removing the company from the fund or creating a similar actively managed fund with assets that do not include companies with active business operations in Sudan. If the manager creates that other fund, the board shall replace investments in the original fund with investments in the other fund in an expedited manner that is consistent with the prudent investment standard.

(f) By February 1 of each year, the board shall file a report with the legislature, the attorney general, and the United States Presidential Special Envoy for Sudan summarizing its activities under this section. The report must include the most recently updated list of scrutinized companies.

(g) To the extent that this section conflicts with AS 37.13.120 or other provisions, the provisions of this section prevail. The board may cooperate with the Alaska Retirement Management Board in carrying out the requirements of this section.

(h) In this section,

(1) "active business operations" means engaging in commerce in any form in Sudan, including acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, products, services, property, or other apparatus of business or commerce, but does not include inactive business operations;

(2) "company" means any sole proprietorship, organization, association, partnership, corporation, joint venture, limited partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates or business associations that exist for profit-making purposes;

(3) "government of Sudan" means the government in Khartoum, Sudan, lead by the National Congress Party or any successor government, including the coalition Government of National Unity agreed on in the Comprehensive Peace Agreement for Sudan, but does not include the regional government of southern

Sudan;

(4) "inactive business operations" means the mere continued holding or renewal of rights to property in Sudan previously used for the purpose of generating revenue but not presently used for that purpose;

(5) "marginalized populations" includes the portion of the populations in the Darfur region that has been genocidally victimized and in southern Sudan that has been victimized by Sudan's north-south civil war, the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan, the Nubian and other similarly underserved groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan;

(6) "mineral extraction activities" means exploring for, extracting, processing, transporting, or wholesale selling or trading of minerals, and includes the provision of supplies, services, or other forms of support for those activities;

(7) "oil-related activities" means exploring for oil, owning rights to oil, exporting, extracting, producing, refining, processing, transporting, selling, or trading oil, or constructing, maintaining, or operating an oil pipeline, refinery, or other oil infrastructure, and includes the provision of supplies, services, or other forms of support for those activities, but does not include the retail sale of gasoline and oil-based consumer products;

(8) "power production activities" means any business operation that involves a project commissioned by the National Electricity Corporation of Sudan or other similar government of Sudan entity that engages in power generation and delivers, sells, installs, or maintains components for power generation and delivery projects, and includes the provision of supplies, services or other forms of support for those activities;

(9) "scrutinized company" means a company

(A) with business operations that involve contracts with, provision of supplies to, or provision of services to the government of Sudan, a company in which the government of Sudan has a direct or indirect equity interest, or a company that is involved in a consortium or project commissioned by the government of Sudan if

(i) more than 10 percent of the company's revenue or assets linked to Sudan involve oil-related activities or mineral extraction activities and less than 75 percent of the company's revenue or assets linked to Sudan involve contracts with or provision of oil-related or mineral extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government; or

(ii) more than 10 percent of the company's revenue or assets linked to Sudan involve power production activities and less than 75 percent of the company's power production activities include projects to provide power or electricity to the marginalized populations of Sudan;

(B) that is complicit in the Darfur genocide by supporting or promoting the genocidal campaign, including taking action to prevent Darfur's victimized persons from communicating with each other, to encourage Sudanese citizens to speak out against an internationally approved security force for Darfur, or to alter the record on human rights abuses in Darfur; or

(C) that supplies military equipment to Sudan, unless the company can clearly demonstrate that the equipment is not being used by a party participating in armed conflict in Sudan, or is supplied solely to the regional government of southern Sudan or an internationally recognized peacekeeping force or humanitarian organization.

* **Sec. 3.** AS 37.10.212 and AS 37.13.125 are repealed on the day after the Alaska Retirement Management Board and the Board of Trustees of the Alaska Permanent Fund Corporation jointly inform the revisor of statutes that

(1) the United States Congress or the President of the United States has declared that the Darfur genocide

(A) has been halted; and

(B) has not resumed for at least 12 months;

(2) the United States has revoked all sanctions it imposed against the

government of Sudan;

(3) the United States Congress or the President of the United States has declared that the government of Sudan has honored its commitments

(A) to stop attacks on civilians;

(B) to demobilize and demilitarize the Janjaweed and associated militias;

(C) to grant free and unfettered access for deliveries of humanitarian assistance; and

(D) to allow for the safe and voluntary return of refugees and internally displaced persons; or

(4) the United States Congress or the President of the United States, through legislation or executive order, declares that mandatory divestment of the types provided for in AS 37.13.125 interferes with the conduct of United States foreign policy.

* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION. Within 90 days after the effective date of AS 37.10.212, added by sec. 1 of this Act, and of AS 37.13.125, added by sec. 2 of this Act, the Alaska Retirement Management Board and the Board of Trustees of the Alaska Permanent Fund Corporation shall prepare the initial list of scrutinized companies required to be identified by those sections.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **SB 37**
() Publish Date:

Identifier (file name): SB37-DOR-TRS-03-30-09
Title: Sudan Divestiture
Sponsor: Senator French
Requester: Senate World Trade, Technology and Innovation

Dept. Affected: Revenue
RDU: Treasury
Component: ARMB/ARMB Custody/Treasury
Component Number: 2813/2812/121

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	***	***	***	***	***	***	***
CAPITAL EXPENDITURES	***	***	***	***	***	***	***
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	***	***	***	***	***	***	***

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: *(Attach a separate page if necessary)*

This bill requires the fiduciaries of state investment funds to divest of certain investments in publicly traded companies that conduct business operations or have direct investments in business operations in Sudan. While Treasury believes that active and passive separate account managers will not charge additionally for divestment, Treasury does not believe that mangers of passive commingled funds will be able to comply with the divestment policy and that Sudan-free replacement funds will need to be identified. Currently, there are 25 funds (primarily participant directed funds) that would need to be replaced. Costs for conducting a search for a single fund is approximately $25,000, although multiple fund searches would result in reduced costs. Other costs to be considered would include the opportunity cost of staff time to implement new contracts and any cost impact resulting from introducing additional plan options to participants. The effect this bill will have on investment performance is unknown.

Prepared by: Pamela Green, Comptroller — Phone 465-2300
Division: Treasury Division — Date/Time 1/23/09 12:00 AM
Approved by: Jerry Burnett, Deputy Commissioner, Department of Revenue — Date 3/30/2009

(Revised 9/10/2008 OMB)

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: **SB 37**
() Publish Date:

Identifier (file name): SB37-REV-APFC-03-30-09
Title: DIVEST INVESTMENTS IN SUDAN
Sponsor: Senator French
Requester: Senate World Trade, Tech, Innovations

Dept. Affected: Revenue
RDU: AK Permanent Fund Corporation
Component: AK Permanent Fund Corporation
Component Number: 109

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual	20.0		20.0	20.0	20.0	20.0	20.0
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous	30.0		30.0	30.0	30.0	30.0	30.0
TOTAL OPERATING	**50.0**	**0.0**	**50.0**	**50.0**	**50.0**	**50.0**	**50.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
1105 APFC Receipts	50.0		50.0	50.0	50.0	50.0	50.0
TOTAL	**50.0**	**0.0**	**50.0**	**50.0**	**50.0**	**50.0**	**50.0**

Estimate of any current year (FY2009) cost: 30.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

This bill would require that APFC divest any securities of publicly traded companies that are directly held in actively or passively managed separate (non-commingled) funds. This bill would also require that APFC send letters to managers of actively traded commingled funds requesting that they consider divesting the listed securities. APFC is directed to develop a divestment list: administrative cost of purchasing lists of publicly traded companies doing business in Sudan from external sources each year as part of research process totals $30.0. Active separate account managers have stated that they will not charge customization fees. Stated customization charge in addition to regular management fees for passive accounts (as of Jan 2009) of $20.0.

Prepared by: Michael J. Burns
Division: Alaska Permanent Fund Corporation
Phone: 907-796-1520
Date/Time: March
Approved by:
Date:

(Revised 9/10/2008 OMB)

SUDAN DIVESTMENT

TASK FORCE

A project of the Genocide Intervention Network

EFFICACY OF TARGETED DIVESTMENT AT A GLANCE

The government of Sudan has been historically responsive to economic pressure.

US sanctions declared in 1997 caused the Sudanese government to drop its support for terror and cooperate with the US on counter-terrorism. The emerging Sudan divestment movement has already caught the attention of the Sudanese government, which has spent considerable time and energy attacking the campaign, even going so far as to purchase a six page ad for more than $1 million in the New York Times to counteract the divestment movement. Unlike isolated countries that tend to shrug off sanctions, the Sudanese government is desperately trying to attract foreign investment. Threats to these efforts are taken very seriously by Sudan.

Divestment makes genocide costly.

Under current political and diplomatic pressure the Sudanese government incurs virtually no cost for continuing its genocide in Darfur, beyond further damage to its image in the West. Divestment, however, forces the Sudanese government to pay a price for its refusal to restore peace and security to Darfur.

Widespread divestment causes share price depreciation.

While the effect of divestment on offending companies' share prices thus far remains unclear, the divestment movement is spreading with enormous speed, both in the US and internationally. It is only a matter of time before enough assets have been divested to actually make a substantial impact on share prices. There is precedent for share price depreciation vis-à-vis a previous Sudan divestment campaign—Talisman Energy's share price was estimated to have dropped roughly a third on account of the divestment campaign against it.

Foreign direct investment enables the Sudanese government to carry out genocide in Darfur.

Recent increases in foreign direct investment in Sudan, particularly in the oil industry, have disproportionately benefited Sudan's military and elite. Since oil was first extracted in 1999, Sudan's military budget has more than doubled. It is estimated that 70-80% of oil revenue is now funneled into Sudan's military.

The Sudanese government is paying attention to the divestment movement.

The Sudanese embassy authored a press release and an op-ed condemning divestment, and the Sudanese ambassador actually spoke by phone with activists in an attempt to discourage divestment. The Sudanese government even took out a six-page ad in the New York Times this past March extolling Sudan as a peaceful country worthy of foreign direct investment.

Companies in Sudan are already responding to shareholder pressure.

CHC Helicopter Corporation, the world's largest provider of helicopter services to the global offshore oil and gas industry and previously a highly scrutinized company in Sudan, recently ceased all business operations in Sudan for the indefinite future after substantial levels of inquiry from a range of concerned investors. Another firm operating in Sudan and an S&P 500 company, Schlumberger, which provides oil-field services to the major oil consortiums in Sudan, has committed to reinforcing its existing outreach programs by implementing substantial humanitarian programs to reach marginalized populations in the country.

Also this year, Rolls Royce PLC, which sells oil-engineering equipment, announced its decision to leave Sudan citing "increasing international humanitarian concerns about the situation in Darfur." Additionally, Swiss power giant ABB announced its decision to suspend all non-humanitarian operations in Sudan--a decision in which divestment played a partial role. Shortly thereafter, one of Germany's largest companies, Siemens, pledged to pull out of the country, also citing the pressure created by divestment as a factor.

SUDAN DIVESTMENT

TASK FORCE

A project of the Genocide Intervention Network

Some American firms exempted from US sanctions, including Xerox and 3M, have decided to curtail all non-humanitarian operations in the country. Companies have also begun to go so far as to list the divestment movement as a potential concern on SEC filings. Finally, in a clear sign of concern, companies tied to Sudan have spent increasing amounts on political contributions to Congressional leaders who are supporting Sudan divestment legislation.

Sudan divestment keeps the media focused on Darfur.

Divestment continues to keep Darfur in the public eye and sends a clear message to both the Federal government and the international community that the crisis warrants attention. Additionally, the divestment campaign highlights the role that foreign corporations and governments play in sustaining the genocidal policies of the government of Sudan. Coverage for divestment has appeared in the New York Times, Wall Street Journal, Washington Post, International Herald Tribune, LA Times, BBC, Financial Times, NPR, Christian Science Monitor, and many other media outlets. See www.sudandivestment.org/inthenews.asp for a representative listing.

Targeted Divestment: Supported by Foreign Policy and Financial Experts

Prominent foreign policy experts and think tanks which do not classically support blanket sanctions, including experts from the International Crisis Group, Harvard University, the Heritage Foundation, and former UN Envoy to Sudan, Jan Pronk, have all endorsed targeted sanctions, including divestment, on the Sudanese regime calling it a critical tool for influencing the behavior of the Sudanese government and bringing long-term peace and security to the region. In March 2007, the *Associated Press* reported that opposition leaders in Sudan have also expressed support for targeted sanctions on the Khartoum government. Finally, a number of Sudan experts from around the globe have pointed to targeted divestment as a financially prudent strategy for helping to stop genocide in Darfur.

International Crisis Group
"The [targeted Sudan divestment] campaign should be encouraged, including by naming and shaming companies, and copied in other countries."

Roberta Cohen – Senior Advisor, The Brookings Institution
"In the view of some analysts, divestment campaigns may prove more effective than sanctions. Rolls Royce's withdrawal from Sudan this past year reportedly surprised the government and affected the import of needed machine parts. The Sudanese government has publicly urged an end to divestment actions, underscoring the potential sting of their impact."

UN Human Rights Council
"…the General Assembly should call upon all UN institutions and offices to abstain from entering into business transactions with [foreign companies that have an adverse impact on the situation of human rights in Darfur]."

Joseph Stiglitz - Nobel Prize Winner and Trustee of Amherst College
"The government does not have a heavy development agenda--it's not as though the government is busy building schools in Darfur. It's a pretty clear case of this money being used against the government's own people."

Alfred Taban, editor of the independent newspaper the Khartoum Monitor
"[Sudanese officials are] very worried about such sanctions. They get a lot of money from these companies."

A Coalition 15 Former European, Canadian, and US Foreign Ministers
"If by the end [of 2006], Mr Bashir still refuses or, more likely, continues pretending to agree one day and saying no the next, he should pay a stiff price. That price should include…measures to target revenue from Sudan's oil sales."

For a full report on the efficacy of targeted divestment and complete references, visit www.sudandivestment.org/position.asp.

LEGISLATIVE RESEARCH REPORT

JANUARY 22, 2009

REPORT NUMBER 09.096

DIVESTMENT OF QUALIFYING COMPANIES OPERATING IN SUDAN FROM ALASKA PUBLIC FUNDS

BY DANIEL LESH, LEGISLATIVE ANALYST

You asked about state economic sanctions against the government of Sudan via the divestment of public assets in certain companies. Specifically, you asked for a review of relevant U.S. state laws and a description of the potential effects of a "targeted divestment" law on the State of Alaska with respect to the Alaska Permanent Fund and other Alaska state funds.

SUMMARY

As of January 21st, 2009, at least 31 states have adopted or are considering implementing policies to divest state assets from Sudan, where the U.S. Congress has declared that genocide is taking place. Twenty-seven of these states have enacted divestment policies. By our calculation, as of December 31st, 2008, state investments totaling roughly $19.6 million would be subject to divestment under legislation currently introduced in Alaska (HB 5, HB 45, SB 37). If any one of these bills became law, divestment of these assets would be accomplished over an 18-month period and would incur additional administrative costs. The direct impacts of divestment on the state's investment earnings, as well as on targeted companies, are debatable, but in both cases would likely be minimal.

STATUS OF STATE DIVESTMENT LEGISLATION

As of January 21st, 2009, at least 31 states have adopted or are considering implementing policies to divest state assets from Sudan, where the U.S. Congress has declared that genocide is taking place.[1] Lawmakers in 20 states have enacted laws that require state funds to divest holdings in some or all companies operating in Sudan. Seven additional states have adopted

[1] Data on state legislation are from *Lexis.com* and the Sudan Divestment Task Force's chart of "Divestment Statistics" (Attachment A).

similar policies through their executive branches. Louisiana's legislature has passed a law encouraging divestment, but state officials do not appear to be following this recommendation. Lawmakers in another three states are considering measures that address divestment from Sudan. Please see Table 1 for details on Sudan divestment legislation in each of these states.

The laws and pending legislation listed in Table 1 generally follow one of two models. Of the 31 divestment policies, 21—including the policy proposed in Alaska—follow a targeted approach that is applicable only to specific types of foreign companies operating in Sudan.[2] A targeted approach relies on the creation and maintenance of lists of companies that are deemed to be supporting the genocide in Sudan. Most of the targeted companies participate in Sudan's oil industry and pay taxes and royalties that fund the Sudanese government.

States that do not follow a targeted divestment approach prohibit investment in any company operating in Sudan, though generally with an exception for humanitarian and various other types of organizations. A number of states (Colorado, Florida, Georgia, Kentucky, Louisiana, Maryland, and Missouri) have also included other countries, such as Iran, North Korea, and Syria, in their divestment policies.

On December 31st, 2007, President Bush signed the Sudan Accountability and Divestment Act, which authorizes—but does not require—state and local governments to disassociate from companies operating in Sudan and prohibits the granting of new federal contracts to those foreign companies.

As you may know, no domestic companies are affected by state divestment laws, because U.S. companies are prohibited from operating in Sudan by federal executive orders dating from 1997.[3]

[2] Targeted divestment is advocated by the Sudan Divestment Task Force (SDTF), a prominent organization in this area. We include their model legislation as Attachment B and apply its provisions—which are substantially the same as those introduced in Alaska—in this report.

[3] Executive Orders 13067 (1997), 13400 (2006), and 13412 (2006).

Table 1: Status of State Legislation Related to Divestment of Public Funds from Sudan

State	Citation	Pending Legislation
Targeted divestment measure		
Alaska		HB 5, HB 45, SB
Arizona	Ariz. Rev. Stat. § 35-391 (2008)	
California	Cal. Gov. Code § 7513.6 (2007)	
Colorado	Colo. Rev. Stat. § 24-54.8 (2007)	
Florida	Fla. Stat. § 215.473 (2007)	
Hawaii	Act No. 192, Session Law 2007	
Indiana	Ind. Code. Ann. § 5-10.2-9	
Iowa	Iowa Code § 12F (2007)	
Kansas	Kan. Stat. Ann. § 74-4923 and 74-4960 (2007)	
Massachusetts	Chapter 151, Session Law 2007	
Michigan	Mich. Comp. Laws Ann. § 38.1133 (2008)	
Minnesota	Minn. Stat. § 11A.243 (2007)	
Nebraska		LB 140
New Hampshire	N.H. Rev. Stat. Ann. § 100-D (2008)	
New Mexico	Executive Branch Policy	
New York	Executive Branch Policy	
North Carolina	N.C. Gen. Stat. § 147-86 (2008)	
Ohio	Executive Branch Policy	
South Carolina	S.D. Codified Laws § 9-16-55 (2008)	
Texas	Tex. Gov't Code Ann. § 806.001 (2007)	
Vermont	Executive Branch Policy	
Non-targeted (blanket) divestment measure		
Georgia		HB 99
Illinois[a]	40 Ill. Comp. Stat. 5/1-110.6 (2007)	
Maine	Me. Rev. Stat. Ann. tit. 5, § 1956 (2007)	
Maryland	Md. Code Ann. § 21-123.1 (2008)	
Missouri	Executive Branch Policy	
New Jersey	N.J. Stat. Ann. § 52:18A-89.9 (2007)	
Oregon	Or. Rev. Stat. § 293.811-817 (2006)	
Non-binding measures encouraging divestment		
Arkansas[b]	SCR 20 & Executive Branch Policy	
Connecticut[b]	Conn. Gen. Stat. § 3-21e (2007) & Executive Branch Policy	
Louisiana	La. Rev. Stat. Ann. § 11:312 (2007)	

NOTES: Pending legislation in some states may not have been captured by our search and this list should not be treated as exhaustive. (a) Illinois' 2007 legislation replaced the state's 2005 law, which was found unconstitutional. (b) Laws in Arkansa and Connecticut are non-binding, but the states have divested significant assets. **SOURCES:** *Lexis.com*; Sudan Divestment Task Force's "Divestment Statistics" chart (Attachment A).

The state of Alaska maintains invested assets totalling about $60 billion dollars.[4] Of these investments, a small portion (about $20 million) would be subject to divestment under a targeted approach.[5] As of December 31st, 2008, we calculate that a maximum of about $15.8 million in Permanent Fund investments (about 0.05% of the $29.7 billion market value of the fund at that time) would require divestment using the Sudan Divestment Task Force's list of targeted companies (see Table 2). In addition, we identified about $3.8 million in other state assets that would be targeted for divestment, using a list of holdings also current through December 31st, 2008.

Table 2: Alaska Permanent Fund and Other State Stock Holdings Subject to Divestment

Company	Market Value	Country
Permanent Fund		
China Petroleum (Petrochina)	$ 14,353,173	China
Dongfeng Automodile Company Limited	$ 1,302,581	China
Wartsila	$ 93,466	Finland
Lundin Petroleum	$ 44,681	Sweden
TOTAL FOR PERMANENT FUND	$ 15,793,900	
Other State Funds Managed by Division of Treasury		
Alstom	$ 1,596,456	France
Abb	$ 1,216,860	Switzerland
Wartsila	$ 987,127	Finland
TOTAL FOR OTHER STATE FUNDS	$ 3,800,443	
GRAND TOTAL	**$ 19,594,343**	

NOTES: Data current as of December 31, 2008. Holdings subject to divestment determined using the Sudan Divestment Task Force's (SDTF) divestment lists. Some of the stocks listed above may be indirect holdings in actively managed investment funds, which are exempt from divestment under the SDTF targeted divestment model applied in this report.
SOURCES: Alaska Permanent Fund holdings obtained from the fund's website, *http://www.apfc.org/*. Data on stock holding sin other state funds obtained from Pam Green, state comptroller, Department of Revenue, (907) 465-3751.

[4] As of November 30th, 2008—the most recent date for which these data are available—the state's investments include the following: the Alaska Permanent Fund ($28.9 billion); funds under the fiduciary responsibility of the Alaska Retirement Management Board, including the Public Employees' Retirement System ($8.6 billion), Teachers' Retirement System ($3.9 billion), Judicial Retirement System ($0.1 billion), National Guard/Naval Militia Retirement System funds ($.02 billion), Supplemental Benefits System funds ($1.8 billion), and Alaska Deferred Compensation Plan funds ($0.4 billion); funds under the fiduciary responsibility of the Commissioner of the Department of Revenue, including the General Fund and other Non-segregated Investments (GeFONSI; $7.8 billion), Constitutional Budget Reserve Fund ($6.1 billion), and other funds ($1.3 billion; including the Public School Trust Fund, Alaska Children's Trust, Investment Loss Trust Fund, General Obligation Bonds, International Airports funds, Retiree Health Insurance Fund, Power Cost Equalization Endowment Fund, Illinois Creek Mine Restoration Fund, Permanent Fund Dividend Fund, and Alaska Sport Fish Construction Fund); and other state funds ($0.2 billion; including the University of Alaska Trust Fund, Alaska Student Loan Corporation funds, Exxon Valdez Oil Spill Investment Fund, and Mental Health Trust Reserve Fund). Information on state funds obtained from a Department of Revenue table, which we include as Attachment C.

[5] Only the portions of funds with publicly-traded equity would be affected, which for these funds is typically a small proportion of total investments. Furthermore, the targeted approach we apply here includes an exception for indirect holdings in actively managed, commingled investment funds—the most difficult and expensive type of fund to customize.

Under the targeted divestment bills currently under consideration in Alaska (HB 5, HB 45, SB 37), divestment of the assets described in Table 2 would occur over an 18-month period following the effective date of the legislation. In the first step of the process, fund directors would be allowed 90 days to compile and adopt a "scrutinized companies list" based on criteria and sources outlined in the legislation. Following adoption of the list, funds would be required to contact all scrutinized companies in which they have direct holdings and allow them 90 days to change their offending operations before becoming subject to divestment.[6] Within nine months of the adoption of the "scrutinized companies list," funds would be required to complete the divestment of 50 percent of holdings in scrutinized companies. Within 15 months, 100 percent of holdings in scrutinized companies would be required to be divested. Funds would not be required to divest indirect, actively managed holdings. This timeframe is within that described by Alaska fund managers as reasonable.[7] Lastly, ongoing reporting requirements and the screening of future investments would be required.

In conversations with our office roughly one year ago, the Alaska Permanent Fund and the state's chief investment officer expressed reservations about divestment, citing increased administrative costs and possible declines in fund performance.[8] We note, however, that divestment research we reviewed, which ultimately argues against divestment, concludes that fund performance changes are usually "negligible, and in most cases zero."[9]

Due to the nature of the global investment marketplace, it is debatable, but unlikely, that the divestment of Alaska public funds from targeted companies would have a direct, negative economic impact on those companies. Clearly, however, divestment laws have drawn considerable press attention and are a prominent factor in the ongoing debate regarding public response to the genocide occurring in Sudan.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

[6] Under the divestment models outlined in HB 5 and SB 37, fund directors would also be required to contact mutual fund managers managing *indirect* assets targeted for divestment and held by state funds. In this communication, state fund directors would be required to request consideration that such mutual fund managers divest targeted companies from their applicable portfolios, or create an alternative fund portfolio without holdings in targeted companies.

[7] Personal correspondence in January 2008 with Laura Achee, research and communications liaison, Alaska Permanent Fund Corporation, (907) 796-1522. Ms. Achee stated that most of the assets could be divested in several weeks. However, managers of two accounts that do not allow customization would have to be replaced, a process which generally requires several months. In a January 2008 conversation, Gary Bader, chief investment officer, Alaska Department of Revenue, (907) 465-4399, described a similar process, including the necessity to review contracts with seven asset account managers hired by the Alaska Retirement Management Board.

[8] Ms. Achee, research and communications liaison, Alaska Permanent Fund Corporation, expressed concern that new manager searches could yield managers that do not perform as well as current managers. Overall, in her view, divestment "would have a dampening effect on the Permanent Fund to some degree, without any guarantee that the actions would bring about the desired result in the targeted country." Gary Bader, chief investment officer, Alaska Department of Revenue, expressed his belief that Alaska funds would likely perform substantially worse after divestment.

[9] See page 6 of "Should Public Plans Engage in Social Investing?," a publication of the Center for Retirement Research at Boston College (Attachment D), for a description of empirical research on the impacts of divestment on fund performance.