

HOUSE BILL NO. 45

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES GARA, GARDNER, PETERSEN, AND KERTTULA, Guttenberg, Gruenberg

Introduced: 1/20/09

Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

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

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

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

7 **Sec. 37.10.212. Investments in companies involved in business in Sudan.**

8 (a) The board shall comply with requirements of AS 37.13.125. For purposes of this
9 subsection, references to the "board" in AS 37.13.125 are construed to mean the
10 "Alaska Retirement Management Board."

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

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

2 **Sec. 37.13.125. Investments in companies involved in business in Sudan.**

3 (a) The board shall make its best efforts to identify all scrutinized companies in which
4 the fund has direct holdings or might have direct holdings in the future that have active
5 business operations in Sudan. The board shall prepare and update on a quarterly basis
6 a scrutinized companies list or, in good faith, rely on a scrutinized companies list
7 generated and updated on a quarterly basis by another entity the board determines has
8 suitable expertise. A company that stops active business operations in Sudan shall be
9 removed from the list, and a company that becomes engaged in or resumes active
10 business operations in Sudan shall be added to the list. The scrutinized companies list
11 prepared by the board or relied on by the board shall be created and updated based on
12 evolving information, including information obtained by

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

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

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

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

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

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

1 active business operations;

2 (3) it has undertaken significant humanitarian efforts in conjunction
3 with an international organization, the government of Sudan, the regional government
4 of southern Sudan, or a nonprofit entity that has been evaluated and certified by an
5 independent entity to be substantial and of benefit to one or more marginalized
6 populations of Sudan; or

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

9 (c) The board shall, on an ongoing basis, identify the companies on the
10 scrutinized companies list in which the fund has direct holdings. For each identified
11 company, the board shall determine whether the company is engaged in active
12 business operations or is now engaged only in inactive business operations. The board
13 shall send a written notice informing each company engaged only in inactive business
14 operations of the requirements of this section and shall encourage the company to
15 refrain from initiating active business operations. After sending the notice, the board
16 shall remove the company from the scrutinized companies list relied on by the board.
17 The board shall send a written notice to each company engaged in active business
18 operations that the company is subject to divestment by the fund. The notice must
19 offer the company the opportunity to clarify its activities in Sudan and encourage the
20 company to stop its active business operations or convert the active business
21 operations to inactive business operations to avoid divestment by the fund. If, within
22 90 days after the notice has been sent, the company stops its active business
23 operations, the company shall be removed from the scrutinized companies list relied
24 on by the board.

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

1 assets shall be divested during the next six months.

2 (e) Indirect holdings of the fund in assets of a company on the scrutinized
3 companies list that has active business operations need not be divested if the assets are
4 part of a separate, actively managed commingled fund in which other investors also
5 own shares or interests.

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

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

14 (h) In this section,

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

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

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

30 (4) "inactive business operations" means the mere continued holding
31 or renewal of rights to property in Sudan previously used for the purpose of generating

1 revenue but not presently used for that purpose;

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

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

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

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

24 (9) "scrutinized company" means a company

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

30 (i) more than 10 percent of the company's revenue or
31 assets linked to Sudan involve oil-related activities or mineral

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

6 (ii) more than 10 percent of the company's revenue or
 7 assets linked to Sudan involve power production activities and less than
 8 75 percent of the company's power production activities include
 9 projects to provide power or electricity to the marginalized populations
 10 of Sudan;

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

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

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

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

26 (A) has been halted; and

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

28 (2) the United States has revoked all sanctions it imposed against the
 29 government of Sudan;

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

- 1 (A) to stop attacks on civilians;
- 2 (B) to demobilize and demilitarize the Janjaweed and associated
3 militias;
- 4 (C) to grant free and unfettered access for deliveries of humanitarian
5 assistance; and
- 6 (D) to allow for the safe and voluntary return of refugees and internally
7 displaced persons; or
- 8 (4) the United States Congress or the President of the United States, through
9 legislation or executive order, declares that mandatory divestment of the types provided for in
10 AS 37.13.125 interferes with the conduct of United States foreign policy.

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

13 TRANSITION. Within 90 days after the effective date of AS 37.10.212, added by sec.
14 1 of this Act, and of AS 37.13.125, added by sec. 2 of this Act, the Alaska Retirement
15 Management Board and the Board of Trustees of the Alaska Permanent Fund Corporation
16 shall prepare the initial list of scrutinized companies required to be identified by those
17 sections or shall select a scrutinized companies list generated by another entity.