

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 45

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

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

Introduced: 2/25/09

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 and 37.13.126. For
9 purposes of this subsection, references to the "board" in AS 37.13.125 and in
10 AS 37.13.126 are construed to mean the "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 37.10.220 is amended by adding a new subsection to read:

2 (d) The board shall comply with AS 37.13.125.

3 * **Sec. 3.** AS 37.13.120 is amended by adding a new subsection to read:

4 (f) The board shall comply with AS 37.13.125.

5 * **Sec. 4.** AS 37.13 is amended by adding new sections to read:

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

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

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

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

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

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

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

1 an internationally approved security force for Darfur, or that alter the record on human
2 rights abuses in Darfur;

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

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

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

13 (c) The board shall, on an ongoing basis, identify the companies on the
14 scrutinized companies list in which the fund has direct holdings. For each identified
15 company, the board shall determine whether the company is engaged in active
16 business operations or is now engaged only in inactive business operations. The board
17 shall send a written notice informing each company engaged only in inactive business
18 operations of the requirements of this section and shall encourage the company to
19 refrain from initiating active business operations. After sending the notice, the board
20 shall remove the company from the scrutinized companies list relied on by the board.
21 The board shall send a written notice to each company engaged in active business
22 operations that the company is subject to divestment by the fund. The notice must
23 offer the company the opportunity to clarify its activities in Sudan and encourage the
24 company to stop its active business operations or convert the active business
25 operations to inactive business operations to avoid divestment by the fund. If, within
26 90 days after the notice has been sent, the company stops its active business
27 operations, the company shall be removed from the scrutinized companies list relied
28 on by the board.

29 (d) If, 90 days after notice is sent by the board, a company continues to have
30 active business operations in Sudan, all publicly traded securities of the company held
31 directly by the fund and managed by a hired manager or by an employee of the fund

1 shall be immediately sold, redeemed, or otherwise divested. At least 50 percent of the
2 assets of the company held directly by the fund but not managed by a hired manager
3 or an employee of the fund shall be divested within nine months after the company's
4 most recent placement on the scrutinized companies list, and the balance of those
5 assets shall be divested during the next six months.

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

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

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

18 (h) In this section,

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

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

29 (3) "government of Sudan" means the government in Khartoum,
30 Sudan, lead by the National Congress Party or any successor government, including
31 the coalition Government of National Unity agreed on in the Comprehensive Peace

1 Agreement for Sudan, but does not include the regional government of southern
2 Sudan;

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

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

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

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

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

28 (9) "scrutinized company" means a company

29 (A) with business operations that involve contracts with,
30 provision of supplies to, or provision of services to the government of Sudan, a
31 company in which the government of Sudan has a direct or indirect equity

1 interest, or a company that is involved in a consortium or project
2 commissioned by the government of Sudan if

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

10 (ii) more than 10 percent of the company's revenue or
11 assets linked to Sudan involve power production activities and less than
12 75 percent of the company's power production activities include
13 projects to provide power or electricity to the marginalized populations
14 of Sudan;

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

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

25 **Sec. 37.13.126. Divestment exemptions, immunity, and indemnification.**

26 For actions taken in compliance with AS 37.13.125 or inaction done in good faith, the
27 agents, attorneys, trustees, officers, employees, staff, custodians, research firms, and
28 investment managers under contract, and board members complying with
29 AS 37.10.220 or AS 37.13.120 are

30 (1) exempt from any conflicting state statutory or common law
31 obligations, including any obligations with respect to choice of asset managers,

1 investment funds, or investments for the fund's securities portfolios;

2 (2) immune from liability under state or local law;

3 (3) indemnified and held harmless by the State of Alaska from claims,
4 demands, suits, actions, damages, judgments, costs, charges, and expenses, including
5 costs and attorney fees, and against all liability, losses, and damages of any nature that
6 agents, attorneys, trustees, officers, employees, staff, custodians, research firms, and
7 investment managers under contract and board members may at any time sustain by
8 reason of any decision to restrict, reduce, or eliminate investments made in
9 compliance with AS 37.13.126; and

10 (4) immune from adverse licensing actions under AS 08.

11 * **Sec. 5.** AS 37.10.212, 37.10.220(d); AS 37.13.120(f), 37.13.125, and 37.13.126 are
12 repealed on the day after the Alaska Retirement Management Board and the Board of
13 Trustees of the Alaska Permanent Fund Corporation jointly inform the revisor of statutes that

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

16 (A) has been halted; and

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

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

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

22 (A) to stop attacks on civilians;

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

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

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

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

1 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 TRANSITION. Within 90 days after the effective date of AS 37.10.212, added by sec.
4 1 of this Act, AS 37.10.220(d), added by sec. 2 of this Act, AS 37.13.120(f), added by sec. 3
5 of this Act, and AS 37.13.125 and 37.13.126, added by sec. 4 of this Act, the Alaska
6 Retirement Management Board and the Board of Trustees of the Alaska Permanent Fund
7 Corporation shall prepare the initial list of scrutinized companies required to be identified by
8 those sections or shall select a scrutinized companies list generated by another entity.