

HOUSE BILL NO. 92

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/28/09

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; and providing for an effective date."**

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

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

8 FINDINGS. The legislature finds that

9 (1) since 1997, the federal government has imposed fiscal sanctions against
10 the Government of Sudan for acts of terrorism and atrocities directed against civilians in the
11 Darfur region of Sudan;

12 (2) the fiscal sanctions described in (1) of this section are monitored through
13 the United States Department of the Treasury's office of foreign assets control;

14 (3) the State of Alaska controls significant financial assets through

1 investments in the Alaska permanent fund and funding of the State of Alaska retirement
2 systems, supplemental annuity plans, and deferred compensation, among other funds;

3 (4) it is a fundamental responsibility of the State of Alaska to decide where,
4 how, and by whom financial resources in its control are invested, taking into account
5 numerous pertinent factors; and

6 (5) the investment of financial resources in business firms and financial
7 institutions with ties to the repressive regime in the Sudan is inconsistent with the moral and
8 political values of the people of Alaska.

9 * **Sec. 2.** AS 37.10 is amended by adding new sections to read:

10 **Sec. 37.10.072. Sudan divestment.** (a) The commissioner or any fiduciary of a
11 fund subject to this title may not invest in and if owned, shall cause the fund to divest
12 ownership in the publicly traded securities of a company that is placed by the
13 commissioner on a list of companies that conduct or have direct investments in
14 business operations in Sudan. On or before January 31 of each year, if the fund has
15 investments managed by an outside investment manager, the fiduciary shall direct the
16 investment manager not to invest in and if owned, to divest ownership in the publicly
17 traded securities of a company that is placed by the commissioner on a list of
18 companies that conduct or have direct investments in business operations in Sudan.

19 (b) If an investment in a fund under (a) of this section is managed as a
20 commingled investment or other business structure in which the fund is not the sole
21 owner of the investment interest or the investment is an index fund, the provisions of
22 (a) of this section do not apply. The commissioner shall require that, on or before
23 January 31 of each year, the fiduciary submit letters to the managers of commingled
24 investments requesting the manager to consider removing from the commingled
25 investment any company on the list of companies that conduct or have direct
26 investments in business operations in Sudan.

27 (c) The commissioner shall create and update on or before December 31 of
28 each year a list of companies that conduct or have direct investments in business
29 operations in Sudan.

30 (d) The commissioner shall make reasonable efforts to investigate all publicly
31 traded companies to determine whether the company conducts or has direct

1 investments in business operations in Sudan. In conducting the investigation, the
2 commissioner may use the following:

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

6 (2) information supplied by institutional investors that have divested
7 from companies that conduct or have direct investments in business operations in
8 Sudan.

9 (e) The commissioner shall provide written notice and an opportunity to
10 comment in writing to each company identified as a company that conducts or has
11 direct investments in business operations in Sudan under (d) of this section.

12 (f) The commissioner shall add a company identified under (d) of this section
13 to the list of companies that conduct or have direct investments in business operations
14 in Sudan not earlier than 90 days after providing written notice under (e) of this
15 section, unless the company demonstrates to the commissioner that it does not conduct
16 or have direct investments in business operations in Sudan.

17 (g) The commissioner shall make every effort to avoid erroneously adding a
18 company to the list of companies that conduct or have direct investments in business
19 operations in Sudan. The commissioner shall verify that the company conducts or has
20 direct investments in business operations in Sudan before adding it to the list of
21 companies that conduct or have direct investments in business operations in Sudan.

22 (h) On or before January 31 of each year, the commissioner shall advise the
23 president of the senate, the speaker of the house, and the United States presidential
24 special envoy for Sudan of the companies on the list of companies that conduct or
25 have direct investments in business operations in Sudan.

26 (i) The commissioner of revenue may adopt regulations under AS 44.62 to
27 carry out the purposes of the section.

28 (j) In this section

29 (1) "business operations"

30 (A) means power production activities, mineral extraction
31 activities, oil-related activities, or the production of military equipment;

1 (B) does not include operations that the company can
2 demonstrate

3 (i) are conducted under contract directly and
4 exclusively with the regional government of southern Sudan;

5 (ii) are conducted under a license from the United
6 States Department of the Treasury, office of foreign assets control, or
7 are expressly exempted under federal law from the requirement to be
8 conducted under such a license;

9 (iii) consist of providing goods or services to
10 marginalized populations of Sudan;

11 (iv) consist of providing goods or services to an
12 internationally recognized peacekeeping force or humanitarian
13 organization;

14 (v) consist of providing goods or services that are used
15 only to promote health or education; or

16 (vi) have been voluntarily suspended;

17 (2) "commissioner" means the commissioner of revenue;

18 (3) "Government of Sudan"

19 (A) means the government in Khartoum, Sudan, which is led
20 by the National Congress Party, formerly known as the National Islamic Front,
21 or any successor government formed on or after October 13, 2006;

22 (B) includes the coalition National Unity Government agreed
23 upon in the Comprehensive Peace Agreement for Sudan;

24 (C) does not include the regional government of southern
25 Sudan;

26 (4) "marginalized populations of Sudan" means adversely affected
27 groups in regions authorized to receive assistance under sec. 8(c), P.L. 109-344
28 (Darfur Peace and Accountability Act of 2006) and marginalized areas in northern
29 Sudan described in sec. 4(9), P.L. 109-344;

30 (5) "military equipment"

31 (A) means weapons, arms, military supplies, and equipment

1 that readily may be used for military purposes;

2 (B) includes radar systems or military-grade transport vehicles,
3 supplies, or services sold or provided directly to a force actively participating
4 in armed conflict in Sudan;

5 (6) "mineral extraction activities"

6 (A) means exploring, extracting, processing, transporting, or
7 wholesale selling or trading of elemental minerals, associated metal alloys,
8 oxides, or ore;

9 (B) includes activities involving gold, copper, chromium,
10 chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc;

11 (7) "oil-related activities" means

12 (A) exporting, extracting, producing, refining, processing,
13 exploring for, transporting, selling, or trading oil; and

14 (B) constructing, maintaining, or operating a pipeline, refinery,
15 or other oilfield infrastructure;

16 (8) "power production activities"

17 (A) means a business operation that involves a project
18 commissioned by the National Electricity Corporation of Sudan or other
19 similar entity of the Government of Sudan whose purpose is to facilitate power
20 generation and delivery;

21 (B) includes establishing power-generating plants or
22 hydroelectric dams, selling or installing components for the project, or
23 providing service contracts related to the installation or maintenance of the
24 project.

25 **Sec. 37.10.073. Divestment exemptions, immunity, and indemnification.**

26 For actions taken in compliance with AS 37.10.072 or inaction done in good faith, the
27 commissioner of revenue, fiduciary, and the commissioner of revenue's or fiduciary's
28 agents, attorneys, trustees, officers, employees, staff, custodians, research firms, and
29 investment managers under contract, and board members complying with
30 AS 37.10.220 or AS 37.13.120 are

31 (1) exempt from any conflicting state statutory or common law

1 obligations, including any obligations with respect to choice of asset managers,
2 investment funds, or investments for the public fund's securities portfolios;

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

4 (3) indemnified and held harmless by the State of Alaska from claims,
5 demands, suits, actions, damages, judgments, costs, charges, and expenses, including
6 costs and attorney fees, and against all liability, losses, and damages of any nature that
7 the commissioner, fiduciary, and the commissioner's or fiduciary's agents, attorneys,
8 trustees, officers, employees, staff, custodians, research firms, and investment
9 managers under contract may at any time sustain by reason of any decision to restrict,
10 reduce, or eliminate investments made in compliance with AS 37.10.072; and

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

12 * **Sec. 3.** AS 37.10.220 is amended by adding a new subsection to read:

13 (d) The board shall comply with AS 37.10.072.

14 * **Sec. 4.** AS 37.13.120 is amended by adding a new subsection to read:

15 (f) The board shall comply with AS 37.10.072.

16 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 REPEAL. Sections 1, 3, and 4 of this Act and AS 37.10.072, enacted by sec. 2 of this
19 Act, are repealed on the earliest of the day after

20 (1) the commissioner of revenue gives written notice to the revisor of statutes
21 and the lieutenant governor that the President of the United States has certified to Congress
22 that the Government of Sudan has honored its commitments to

23 (A) abide by the United Nations Security Council Resolution 1769
24 (2007);

25 (B) cease attacks on civilians;

26 (C) demobilize and demilitarize the Janjaweed and associated militias;

27 (D) grant free and unfettered access for delivery of humanitarian
28 assistance; and

29 (E) allow for the safe and voluntary return of refugees and internally
30 displaced persons;

31 (2) the United States Congress or the President of the United States, through

1 legislation or executive order, declares that the Sudan divestment authorized in AS 37.10.072
2 interferes with the conduct of United States foreign policy; or

3 (3) P.L. 110-174 (Sudan Accountability and Divestment Act of 2007) is
4 repealed.

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

7 NOTICE. Not later than 30 days after the enactment of this Act, the Department of
8 Law is directed to submit written notice to the attorney general of the United States describing
9 this Act.

10 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).