

SENATE BILL NO. 37

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY SENATORS FRENCH, Ellis, Thomas

Introduced: 1/21/09

Referred: Senate Special Committee on World Trade, Technology, and Innovations, 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, unless the context requires otherwise, references to the "board" in
10 AS 37.13.125 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 37.13 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 or indirect holdings or might have holdings in the future that have
5 active business operations in Sudan. The board shall prepare and update on a quarterly
6 basis a scrutinized companies list. A company that stops active business operations in
7 Sudan shall be removed from the list, and a company that becomes engaged in or
8 resumes active business operations in Sudan shall be added to the list. The scrutinized
9 companies list shall be created and updated based on evolving information, including
10 information obtained by

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

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

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

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

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

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

31 (3) it has undertaken significant humanitarian efforts in conjunction

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

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

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

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

30 (e) Indirect holdings of the fund in assets of a company on the scrutinized
31 companies list that has active business operations need not be divested if the assets are

1 part of a separate, actively managed commingled fund in which other investors also
2 own shares or interests. However, the board shall submit a letter to the manager of the
3 actively managed fund requesting that consideration be given to removing the
4 company from the fund or creating a similar actively managed fund with assets that do
5 not include companies with active business operations in Sudan. If the manager
6 creates that other fund, the board shall replace investments in the original fund with
7 investments in the other fund in an expedited manner that is consistent with the
8 prudent investment standard.

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

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

17 (h) In this section,

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

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

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

1 Sudan;

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

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

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

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

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

27 (9) "scrutinized company" means a company

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

1 commissioned by the government of Sudan if

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

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

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

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

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

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

29 (A) has been halted; and

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

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

1 government of Sudan;

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

4 (A) to stop attacks on civilians;

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

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

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

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

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

16 **TRANSITION.** Within 90 days after the effective date of AS 37.10.212, added by sec.
17 1 of this Act, and of AS 37.13.125, added by sec. 2 of this Act, the Alaska Retirement
18 Management Board and the Board of Trustees of the Alaska Permanent Fund Corporation
19 shall prepare the initial list of scrutinized companies required to be identified by those
20 sections.