

HB

45

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 45
 () Publish Date: _____

Identifier (file name): HB45-DOR-TRS-1-20-09 Dept. Affected: Revenue
 Title Sudan Divestiture RDU Treasury
 Component ARMB/ARMB Custody/Treasury
 Sponsor Representative Gara
 Requester House State Affairs Component Number 2813/2812/121

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES							
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)

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
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

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Full-time	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
Temporary	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 managers 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 _____
 Approved by: Jerry Burnett, Deputy Commissioner Date 1/23/2009
Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 45
 () Publish Date: _____

Identifier (file name): HB45-REV-APFC-01-26-09 Dept. Affected: Revenue
 Title: DIVEST INVESTMENTS IN SUDAN RDU: AK Permanent Fund Corporation
 Component: AK Permanent Fund Corporation
 Sponsor: Representative Gara
 Requester: House State Affairs Component Number: 109

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual	20.0		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	30.0
TOTAL OPERATING	50.0	0.0	50.0	50.0	50.0	50.0	50.0	50.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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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	50.0
TOTAL	50.0	0.0	50.0	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 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
 Approved by: _____

Phone 907-796-1520
 Date/Time January
 Date _____

LEGISLATIVE RESEARCH REPORT

JANUARY 27, 2009



REPORT NUMBER 09.118

DIVESTMENT OF QUALIFYING COMPANIES OPERATING IN SUDAN FROM ALASKA PUBLIC FUNDS

PREPARED FOR REPRESENTATIVE LES GARA

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.

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 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.

¹ Data on state legislation are from *Lexis.com* and the Sudan Divestment Task Force's chart of "Divestment Statistics."

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 apply their model legislation—which is substantially the same as bills 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	
<i>Targeted divestment measure</i>			
Alaska		HB 5, HB 45, SB 37	
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		
<i>Non-targeted (blanket) divestment measure</i>			
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)		
<i>Non-binding measures encouraging divestment</i>			
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 Arkansas and Connecticut are non-binding, but the states have divested significant assets. **SOURCES:** Lexis.com; Sudan Divestment Task Force.

TARGETED DIVESTMENT OF ALASKA STATE FUNDS

The state of Alaska maintains invested assets totalling about \$60 billion.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
<i>Permanent Fund</i>		
China Petroleum (Petrochina)	\$ 14,353,173	China
Dongfeng Automobile Company Limited	\$ 1,302,581	China
Wartsila	\$ 93,466	Finland
Lundin Petroleum	\$ 44,681	Sweden
TOTAL FOR PERMANENT FUND	\$ 15,793,900	
<i>Other State Funds Managed by Division of Treasury</i>		
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 in 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 the website of the Department of Revenue.

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

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, for a description of empirical research on the impacts of divestment on fund performance.