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**Senator Hollis French**

Capitol Room 417  
465-3892  
465-6595 fax



**MEMORANDUM**

Date: 4/03/2009

To: Senator Linda Menard, Chair  
Senate State Affairs Committee

From: Senator Hollis French *HSF*

RE: Request for Hearing -- SB 37 Divest Investments In Sudan

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This is a request that you schedule a hearing on SB 37 "Divest Investments in Sudan" at the earliest possible date.

I have attached a copy of the bill, a sponsor statement and some related materials for your use.

A blank CS is currently being prepared for the legislation. When it is complete, I will provide your office with copies and an explanation of changes. We anticipate that this blank CS will be ready by Monday, April 6.

I appreciate your consideration.

Attachments

# Alaska State Legislature



Senator Hollis French

## **SB 37 - Divest Investments in Sudan**

### **Sponsor Statement**

Government supported genocide has killed hundreds of thousands of people and displaced approximately 2.5 million residents from the Darfur region of Sudan. This legislation will enact a targeted divestment program that prevents the state of Alaska from investing Permanent Fund and retirement plan dollars in companies that directly finance genocide in Darfur. SB 37 gives Alaska the opportunity to join the states, businesses and educational institutions that refuse to fund such atrocities.

Targeted divestment is a proven tactic to reduce the viability of genocide in Darfur. Twenty seven other states have divested from businesses that operate in the region. The cost to these states has been negligible. Institutions have found no noticeable decrease in returns when divestment only targets companies that have explicit financial links to the conflict. Holdings in these companies amount to seven investments valued at less than 0.1% of all Permanent Fund assets, showing that the implementation of this legislation will not require a major shift in investment strategy.

Results from the divestment movement have been promising. Sudan, unlike many foreign governments that sponsor genocide, has responded favorably when threatened with economic sanctions. Partly as a result of the divestment movement, the Sudanese government purchased a six-page, \$1 million advertisement in the New York Times that sought out foreign direct investment. As more companies pull out of the region or encourage the government of Sudan to halt violent acts, the end of genocide is highly probable.

Ignoring genocide has left several scars on recent American history. With the cost of action so small, Alaska has no excuse to sit on the sidelines. I urge you to support this important and meaningful piece of legislation.

**Senator Hollis French**


Capitol Room 417  
465-3892  
465-6595 fax



**MEMORANDUM**

Date: 4/8/2009

To: Senator Linda Menard, Chair  
Senate State Affairs Committee

From: Senator Hollis French 

RE: Explanation of Changes to Senate Bill 37

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The CS for Senate Bill 37 (version \R) makes the following changes:

- The list of companies participating in prohibited activities is prepared annually, as opposed to quarterly.
- The commissioner – and not the ARM board or the APFC – prepares and maintains this list.
- All scrutinized companies, whether the state invests in them or not, are notified that they have been placed on a list prohibiting investment. Each version of the bill allows for a 90 days period when an identified company can clarify its activities in Sudan, correcting the record if they have been inaccurately identified for divestment.
- Divestment in the new bill is limited to direct investments held by the state. The new CS does not require divestment from commingled or index funds that include prohibited companies on their investment list. This change should help to remove the fiscal impact of the legislation.
- Divestment must occur 90 days after a company is added to the prohibited investment list.
- The new legislation would put the burden of divestment compliance on the accountants, who deal with investment decisions daily, and not the managers of the funds. This change will also help reduce the fiscal impact of the legislation.

26-LS0240\R  
Cook  
4/6/09

**CS FOR SENATE BILL NO. 37( )**

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

**BY**

**Offered:  
Referred:**

**Sponsor(s): SENATORS FRENCH, Ellis, Thomas**

**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, 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 the state's 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 a fiduciary of a  
11 fund subject to this title may not invest in and shall cause the fund to divest ownership,  
12 if any, in the publicly traded securities of a company that the commissioner places on  
13 a list of companies that conduct or have direct investments in business operations in  
14 Sudan. Divestment of an ownership interest in a company shall occur within 90 days  
15 after it is placed on the list created and updated under (c) of this section if the  
16 investment is managed by the commissioner or fiduciary. On or before January 31 of  
17 each year, if a fund has investments managed by an outside investment manager, the  
18 fiduciary shall direct the investment manager not to invest in and to divest, within 90  
19 days after receiving the direction, ownership, if any, in the publicly traded securities of  
20 a company that the commissioner places on a list of companies that conduct or have  
21 direct investments in business operations in Sudan.

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

30 (c) The commissioner shall create and update annually on or before  
31 December 31 a list of companies that conduct or have direct investments in business

1 operations in Sudan.

2 (d) The commissioner shall make reasonable efforts to investigate all publicly  
3 traded companies to determine whether the company conducts or has direct  
4 investments in business operations in Sudan. In conducting the investigation, the  
5 commissioner may use the following:

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

9 (2) information supplied by institutional investors that have divested  
10 from companies that conduct or have direct investments in business operations in  
11 Sudan.

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

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

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

25 (h) Annually, on or before January 31, the commissioner shall advise the  
26 president of the senate, the speaker of the house of representatives, and the United  
27 States presidential special envoy for Sudan of the companies on the list of companies  
28 that conduct or have direct investments in business operations in Sudan.

29 (i) The commissioner may adopt regulations under AS 44.62 to carry out the  
30 purposes of the section.

31 (j) In this section,

1 (1) "business operations"

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

4 (B) does not include operations that the company can  
5 demonstrate

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

8 (ii) are conducted under a license from the United  
9 States Department of the Treasury, Office of Foreign Assets Control, or  
10 are expressly exempted from licensure under federal law;

11 (iii) consist of providing goods or services to  
12 marginalized populations of Sudan;

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

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

18 (vi) have been voluntarily suspended;

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

20 (3) "Government of Sudan"

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

24 (B) includes the coalition Government of National Unity  
25 agreed upon in the Comprehensive Peace Agreement for Sudan;

26 (C) does not include the regional government of southern  
27 Sudan;

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

1 (5) "military equipment"

2 (A) means weapons, arms, military supplies, and equipment  
3 that readily may be used for military purposes;

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

7 (6) "mineral extraction activities"

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

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

13 (7) "oil-related activities" means

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

16 (B) constructing, maintaining, or operating a pipeline, refinery,  
17 or other oil field infrastructure;

18 (8) "power production activities"

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

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

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

28 For actions taken, or inaction done in good faith, in compliance with AS 37.10.072,  
29 the commissioner of revenue, a fiduciary, an agent, attorney, trustee, officer,  
30 employee, staff, custodian, research firm, or investment manager under contract of the  
31 commissioner of revenue or the fiduciary, and board members complying with

1 AS 37.10.220 or AS 37.13.120 are

2 (1) exempt from a conflicting state statutory or common law  
3 obligation, including an obligation with respect to choice of an asset manager,  
4 investment fund, or investment for the securities portfolio of the public fund;

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

6 (3) indemnified and held harmless by the State of Alaska from claims,  
7 demands, suits, actions, damages, judgments, costs, charges, and expenses, including  
8 costs and attorney fees, and against all liability, losses, and damages of any nature that  
9 the commissioner of revenue, the fiduciary, the agent, attorney, trustee, officer,  
10 employee, staff, custodian, research firm, or investment manager under contract of the  
11 commissioner of revenue or the fiduciary, or the board member may, at any time,  
12 sustain because of a decision to restrict, reduce, or eliminate an investment made in  
13 compliance with AS 37.10.072; and

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

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

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

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

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

19 \* Sec. 5. REPEAL. Section 1 of this Act; AS 37.10.072, 37.10.220(d); and AS 37.13.120(f),  
20 are repealed on the earliest of the day after

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

24 (A) abide by the United Nations Security Council Resolution 1769  
25 (2007);

26 (B) cease attacks on civilians;

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

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

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

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

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

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

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

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

# FISCAL NOTE

**STATE OF ALASKA**  
**2009 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 37  
 ( ) Publish Date: \_\_\_\_\_

Identifier (file name): SB37-DOR-TRS-03-30-09 Dept. Affected: Revenue  
 Title: Sudan Divestiture RDU: Treasury  
 Component: ARMB/ARMB Custody/Treasury  
 Sponsor: Senator French  
 Requester: Senate World Trade, Technology and Innovation 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 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	***	***	***	***	***	***	***	***
<b>CAPITAL EXPENDITURES</b>	***	***	***	***	***	***	***	***
<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

**FUND SOURCE** (Thousands of Dollars)

	FY 2010	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							
<b>TOTAL</b>	***	***	***	***	***	***	***

Estimate of any current year (FY2009) cost: \_\_\_\_\_

**POSITIONS**

	FY 2010	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	0.0
Part-time	0.0	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	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  
 Division: Treasury Division  
 Approved by: Jerry Burnett, Deputy Commissioner  
Department of Revenue

Phone 465-2300  
 Date/Time 1/23/09 12:00 AM  
 Date 3/30/2009

# FISCAL NOTE

STATE OF ALASKA  
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 37  
( ) Publish Date: \_\_\_\_\_

Identifier (file name): SB37-REV-APFC-03-30-09 Dept. Affected: Revenue  
Title: DIVEST INVESTMENTS IN SUDAN RDU: AK Permanent Fund Corporation  
Component: AK Permanent Fund Corporation  
Sponsor: Senator French  
Requester: Senate World Trade, Tech, Innovations 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
<b>OPERATING EXPENDITURES</b>								
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
<b>TOTAL OPERATING</b>	<b>50.0</b>	<b>0.0</b>	<b>50.0</b>	<b>50.0</b>	<b>50.0</b>	<b>50.0</b>	<b>50.0</b>	<b>50.0</b>

<b>CAPITAL EXPENDITURES</b>								
<b>CHANGE IN REVENUES ( )</b>								

**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
<b>TOTAL</b>	<b>50.0</b>	<b>0.0</b>	<b>50.0</b>	<b>50.0</b>	<b>50.0</b>	<b>50.0</b>	<b>50.0</b>	<b>50.0</b>

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 directly 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 Phone 907-796-1520  
Division: Alaska Permanent Fund Corporation Date/Time March  
Approved by: \_\_\_\_\_ Date \_\_\_\_\_



# SUDAN DIVESTMENT

TASK FORCE

A project of the Genocide Intervention Network

## EFFICACY OF TARGETED DIVESTMENT AT A GLANCE

The government of Sudan has been historically responsive to economic pressure.

US sanctions declared in 1997 caused the Sudanese government to drop its support for terror and cooperate with the US on counter-terrorism. The emerging Sudan divestment movement has already caught the attention of the Sudanese government, which has spent considerable time and energy attacking the campaign, even going so far as to purchase a six page ad for more than \$1 million in the New York Times to counteract the divestment movement. Unlike isolated countries that tend to shrug off sanctions, the Sudanese government is desperately trying to attract foreign investment. Threats to these efforts are taken very seriously by Sudan.

Divestment makes genocide costly.

Under current political and diplomatic pressure the Sudanese government incurs virtually no cost for continuing its genocide in Darfur, beyond further damage to its image in the West. Divestment, however, forces the Sudanese government to pay a price for its refusal to restore peace and security to Darfur.

Widespread divestment causes share price depreciation.

While the effect of divestment on offending companies' share prices thus far remains unclear, the divestment movement is spreading with enormous speed, both in the US and internationally. It is only a matter of time before enough assets have been divested to actually make a substantial impact on share prices. There is precedent for share price depreciation vis-à-vis a previous Sudan divestment campaign—Talisman Energy's share price was estimated to have dropped roughly a third on account of the divestment campaign against it.

Foreign direct investment enables the Sudanese government to carry out genocide in Darfur.

Recent increases in foreign direct investment in Sudan, particularly in the oil industry, have disproportionately benefited Sudan's military and elite. Since oil was first extracted in 1999, Sudan's military budget has more than doubled. It is estimated that 70-80% of oil revenue is now funneled into Sudan's military.

The Sudanese government is paying attention to the divestment movement.

The Sudanese embassy authored a press release and an op-ed condemning divestment, and the Sudanese ambassador actually spoke by phone with activists in an attempt to discourage divestment. The Sudanese government even took out a six-page ad in the New York Times this past March extolling Sudan as a peaceful country worthy of foreign direct investment.

Companies in Sudan are already responding to shareholder pressure.

CHC Helicopter Corporation, the world's largest provider of helicopter services to the global offshore oil and gas industry and previously a highly scrutinized company in Sudan, recently ceased all business operations in Sudan for the indefinite future after substantial levels of inquiry from a range of concerned investors. Another firm operating in Sudan and an S&P 500 company, Schlumberger, which provides oil-field services to the major oil consortiums in Sudan, has committed to reinforcing its existing outreach programs by implementing substantial humanitarian programs to reach marginalized populations in the country.

Also this year, Rolls Royce PLC, which sells oil-engineering equipment, announced its decision to leave Sudan citing "increasing international humanitarian concerns about the situation in Darfur." Additionally, Swiss power giant ABB announced its decision to suspend all non-humanitarian operations in Sudan—a decision in which divestment played a partial role. Shortly thereafter, one of Germany's largest companies, Siemens, pledged to pull out of the country, also citing the pressure created by divestment as a factor.



# SUDAN DIVESTMENT

— TASK FORCE —

A project of the Genocide Intervention Network

Some American firms exempted from US sanctions, including Xerox and 3M, have decided to curtail all non-humanitarian operations in the country. Companies have also begun to go so far as to list the divestment movement as a potential concern on SEC filings. Finally, in a clear sign of concern, companies tied to Sudan have spent increasing amounts on political contributions to Congressional leaders who are supporting Sudan divestment legislation.

Sudan divestment keeps the media focused on Darfur.

Divestment continues to keep Darfur in the public eye and sends a clear message to both the Federal government and the international community that the crisis warrants attention. Additionally, the divestment campaign highlights the role that foreign corporations and governments play in sustaining the genocidal policies of the government of Sudan. Coverage for divestment has appeared in the New York Times, Wall Street Journal, Washington Post, International Herald Tribune, LA Times, BBC, Financial Times, NPR, Christian Science Monitor, and many other media outlets. See [www.sudandivestment.org/intheneews.asp](http://www.sudandivestment.org/intheneews.asp) for a representative listing.

## Targeted Divestment: Supported by Foreign Policy and Financial Experts

Prominent foreign policy experts and think tanks which do not classically support blanket sanctions, including experts from the International Crisis Group, Harvard University, the Heritage Foundation, and former UN Envoy to Sudan, Jan Pronk, have all endorsed targeted sanctions, including divestment, on the Sudanese regime calling it a critical tool for influencing the behavior of the Sudanese government and bringing long-term peace and security to the region. In March 2007, the *Associated Press* reported that opposition leaders in Sudan have also expressed support for targeted sanctions on the Khartoum government. Finally, a number of Sudan experts from around the globe have pointed to targeted divestment as a financially prudent strategy for helping to stop genocide in Darfur.

### International Crisis Group

"The [targeted Sudan divestment] campaign should be encouraged, including by naming and shaming companies, and copied in other countries."

### Roberta Cohen - Senior Advisor, The Brookings Institution

"In the view of some analysts, divestment campaigns may prove more effective than sanctions. Rolls Royce's withdrawal from Sudan this past year reportedly surprised the government and affected the import of needed machine parts. The Sudanese government has publicly urged an end to divestment actions, underscoring the potential sting of their impact."

### UN Human Rights Council

"...the General Assembly should call upon all UN institutions and offices to abstain from entering into business transactions with [foreign companies that have an adverse impact on the situation of human rights in Darfur]."

### Joseph Stiglitz - Nobel Prize Winner and Trustee of Amherst College

"The government does not have a heavy development agenda--it's not as though the government is busy building schools in Darfur. It's a pretty clear case of this money being used against the government's own people."

### Alfred Fabian, editor of the independent newspaper, the Khartoum Monitor

"[Sudanese officials are] very worried about such sanctions. They get a lot of money from these companies."

### A Coalition 15 Former European, Canadian, and US Foreign Ministers

"If by the end [of 2006], Mr Bashir still refuses or, more likely, continues pretending to agree one day and saying no the next, he should pay a stiff price. That price should include...measures to target revenue from Sudan's oil sales."

For a full report on the efficacy of targeted divestment and complete references, visit [www.sudandivestment.org/position.asp](http://www.sudandivestment.org/position.asp).

# LEGISLATIVE RESEARCH REPORT

JANUARY 22, 2009



REPORT NUMBER 09.096

## DIVESTMENT OF QUALIFYING COMPANIES OPERATING IN SUDAN FROM ALASKA PUBLIC FUNDS

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 21<sup>st</sup>, 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 31<sup>st</sup>, 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. The direct impacts of divestment on the state's investment earnings, as well as on targeted companies, are debatable, but in both cases would likely be minimal.

### STATUS OF STATE DIVESTMENT LEGISLATION

As of January 21<sup>st</sup>, 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.<sup>1</sup> 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

<sup>1</sup> Data on state legislation are from *Lexis.com* and the Sudan Divestment Task Force's chart of "Divestment Statistics" (Attachment A).

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.

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.<sup>2</sup> 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 31<sup>st</sup>, 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.<sup>3</sup>

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<sup>2</sup> Targeted divestment is advocated by the Sudan Divestment Task Force (SDTF), a prominent organization in this area. We include their model legislation as Attachment B and apply its provisions—which are substantially the same as those introduced in Alaska—in this report.

<sup>3</sup> 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
<b>Targeted divestment measure</b>		
Alaska		HB 5, HB 45, SB
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. Govt Code Ann. § 806.001 (2007)	
Vermont	Executive Branch Policy	
<b>Non-targeted (blanket) divestment measure</b>		
Georgia		HB 99
Illinois <sup>(a)</sup>	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)	
<b>Non-binding measures encouraging divestment</b>		
Arkansas <sup>(b)</sup>	SCR 20 & Executive Branch Policy	
Connecticut <sup>(b)</sup>	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's "Divestment Statistics" chart (Attachment A).

## TARGETED DIVESTMENT OF ALASKA STATE FUNDS

The state of Alaska maintains invested assets totalling about \$60 billion dollars.<sup>4</sup> Of these investments, a small portion (about \$20 million) would be subject to divestment under a targeted approach.<sup>5</sup> As of December 31<sup>st</sup>, 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 31<sup>st</sup>, 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
<b>TOTAL FOR PERMANENT FUND</b>	<b>\$ 15,793,900</b>	
<i>Other State Funds Managed by Division of Treasury</i>		
Alstom	\$ 1,596,456	France
Abb	\$ 1,216,860	Switzerland
Wartsila	\$ 987,127	Finland
<b>TOTAL FOR OTHER STATE FUNDS</b>	<b>\$ 3,800,443</b>	
<b>GRAND TOTAL</b>	<b>\$ 19,594,343</b>	

**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 in 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.

<sup>4</sup> As of November 30<sup>th</sup>, 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 a Department of Revenue table, which we include as Attachment C.

<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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."<sup>9</sup>

Due to the nature of the global investment marketplace, it is debatable, but unlikely, that the divestment of Alaska public funds from targeted companies would have a direct, negative economic impact on those companies. Clearly, however, divestment laws have drawn considerable press attention and are a prominent factor in the ongoing debate regarding public response to the genocide occurring in Sudan.

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I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> See page 6 of "Should Public Plans Engage in Social Investing?," a publication of the Center for Retirement Research at Boston College (Attachment D), for a description of empirical research on the impacts of divestment on fund performance.



<http://www.benferencz.org/>

Benjamin B. Ferencz

Beginning in 1945 with his prosecution of war criminals during the Nuremberg War Crimes Tribunal, the work of Benjamin Ferencz has long focused on issues of international criminal justice and world peace. A strong supporter of the International Criminal Court, Mr. Ferencz advocates steps to replace the "rule of force with the rule of law."

This website is devoted to his life's work - from transcripts of the Nuremberg hearings to his more recent writing and lectures dealing with the current questions confronting the world.

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<http://www.benferencz.org/index.php?id=4&article=1>

Prepublication: Ending Impunity for the Crime of Aggression

By Benjamin B. Ferencz

published: September 2009

source: Prepublication draft of article expected to be published in Case Western Journal of International Law, Fall 2009

ABSTRACT: Jurisdiction of the International Criminal Court over the crime of aggression has been deferred for reasons that are not persuasive. Aggression has already been adequately defined. The UN Security Council and the International Criminal Court are linked by the existing ICC Statute adopted in Rome. Compromises already reflected in the Rome Statute will be difficult to revise by new amendments. Ambiguities are best resolved by ICC Judges. Nuremberg's condemnation of "the supreme international crime" should not be repudiated. The ICC must be enabled to deter aggressions by bringing transgressors to justice.

AGGRESSION HAS ALREADY BEEN ADEQUATELY DEFINED

(1) From Nuremberg in 1946 to Rome in 1998

\* '46 The International Military Tribunal at Nuremberg (IMT), composed of esteemed judges from the United Kingdom, France, the Soviet Union and the United State, acknowledged that ex post facto punishment was abhorrent to the law of all civilized nations. They observed that the general principles of justice should be respected but not followed blindly.

The tribunal was explicit that declaring aggression to be "the supreme international crime" was not an exercise of arbitrary power on the part of the victors, as has often been alleged, but the reflection of an evolutionary process that had evolved after countless millions of people had been killed in brutal warfare. "To assert that it is unjust to punish

those who in defiance of treaties and assurances have attacked neighboring states without warning is obviously untrue, for in such circumstances the attacker must know that he is doing wrong, and so far from it being unjust to punish him, it would be unjust if his wrong were allowed to go unpunished." [1] "This law is not static", said the Tribunal, "but by continual adaptation follows the needs of a changing world." [2]

Article 6 of the Nuremberg Charter defined Crimes Against Peace as "planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing." [3]

This broad definition was the basis for war crimes trials in Tokyo and elsewhere. [4] The Nuremberg Charter and Judgment were adhered to by 19 more nations and unanimously affirmed by the first General Assembly of the United Nations. [5] U.S. Supreme Court Justice Robert H. Jackson, in his Opening Statement said, "We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well". [6] Jackson made clear that if law is to serve a useful purpose "it must condemn aggressions by any other nations, including those who sit here now in judgment."

To help implement its plan for a criminal code to be enforced by an international criminal court, the U.N. General Assembly appointed Special Committees on the Question of Defining Aggression. The definition of aggression was reached by consensus as an integrated and indivisible package and approved by the General Assembly in 1974 as Resolution 3314. Agreement was made possible by a number of rather vague compromises and exculpatory clauses of such creative ambiguity that nations with opposing views could interpret its contradictions to support their own political objectives. [7] The consensus definition began with a generic declaration that "Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the U.N." Obvious illustrations, such as invasion, military occupation, bombardment, blockade or attack were listed, but it was stipulated that the Security Council could determine that these prima facie indicators were not aggression and that other acts were aggression. (Italics added.) It was left to the Council to decide whether any act of a state was aggression or not.

<http://www.ratical.org/ratville/CAH/Ferencz.html>

You wrote this letter because you believe that we have a choice between whether our country chooses to resolve disputes on the battlefield or in the courtroom. In other words, law versus war. Is that correct?

Yes. I prefer law to war under all circumstances.

**Ferencz:**

**Clark:**

And so how does that apply to this particular case in the aftermath of the terrorist attacks?

**Ferencz:**

\* { What has happened here is not war in its traditional sense. This is clearly a crime against humanity. War crimes are crimes which happen in war time. There is a confusion there. This is a crime against humanity because it is deliberate and intentional killing of large numbers of civilians for political or other purposes. That is not tolerable under the international systems. And it should be prosecuted pursuant to the existing laws.

**Clark:**

So I want to get into that prosecution in just one moment. But first, do you think that the talk of retaliation is not a legitimate response to the death of 5,000 people?

**Ferencz:**

It is never a legitimate response to punish people who are not responsible for the wrong done.

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 ...the ...

- SELF
- INTRO - 37 YRS
- VIETNAM
- SEN MOYER CONCERN
  - PRINCIPLE
  - SUBJECTIVE
  - MARKETS DOWN, SYMPTOM → NOT ATTENDING
  - SPLENDID ISOLATION
- 20 YRS APO: STRIKE - YOUR ATTENTION FERENCE
- "WHAT PUNISHMENT DO I REQUEST?" RULE OF FORCE WITH FORCE OF LAW → INADEQUATE
- IMPRESSION - STATE
- PERSONAL
- LEAST WE CAN DO - WHAT ELSE? - INT'L LAW FAILED
- HANDOVER PAPER
  - TOKEN
  - PRINCIPLE
- DO PAYS
- MARKETS DOWN - ROOT CAUSES - NOT ATTENDING
- SPLENDID ISOLATION

PASS  
SBB7

**SENATE COMMITTEE REPORT**

DATE: 4/3/09

FURTHER: Finance

DATE TURNED IN TO OFFICE: 4/9/09

State Affairs Committee considered SENATE BILL NO. 37

**SB 37 DIVEST INVESTMENTS IN SUDAN**

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

and recommends:

- be replaced with  SCS or  CS SB 37 (STA)
- adopt previous  SCS or  CS CS FORTHCOMING
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

<b>SENATE BILL:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>HOUSE BILL:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____



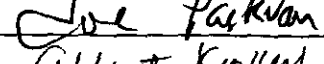
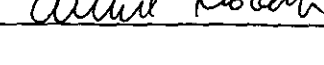
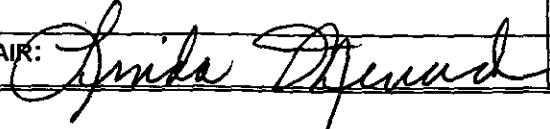
**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
Rev.	3/30/09		✓		2
Rev. PFC		✓			1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	French	X			
	Meyer			X	
	PASKVAN	X			
	Koolah	X			
CHAIR: 	MENARD	X			