



all companies operating in Sudan. Four additional states have adopted similar policies through their executive branches.<sup>2</sup> Louisiana and Maryland, respectively, have weaker laws that encourage and allow divestment or encourage divestment and prohibit future investments. Lawmakers in another eleven states are considering measures that address divestment from Sudan. The U.S. Congress is currently considering the Sudan Accountability and Divestment Act, which would authorize but not require state and local governments to disassociate from companies operating in Sudan and would prohibit granting new federal contracts to such companies.<sup>3</sup> In Table 1, we detail the status of state legislation related to divestment of public assets from Sudan.

The laws and pending legislation listed in Table 1 generally follow one of two models. Of the 35 divestment policies, 18 follow a targeted approach that applies only to specific types of foreign companies operating in Sudan.<sup>4</sup> This approach relies on the creation and maintenance of lists of companies that are deemed to be supporting the genocide in Sudan.<sup>5</sup> Most of the targeted companies operate 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 some other types of organizations. A number of states (Florida, Georgia, Kentucky, Louisiana, and Missouri) also include other countries, such as Iran, North Korea, and Syria, in their legislation. As you may know, no domestic companies are affected by these divestment laws, because U.S. companies are prohibited from operating in Sudan by federal executive orders dating from 1997.<sup>6</sup>

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<sup>2</sup> In two additional states, Nevada and New Mexico, executive leaders have urged state pension fund managers to enact a targeted divestment from Sudan but no action has been taken.

<sup>3</sup> This bill, H.R. 180, passed the House, and on October 17, 2007, passed out of the Senate Committee on Banking, Housing, and Urban Affairs. It partially addresses constitutional concerns raised by President Bush and a U.S. District Court decision that struck down a 2005 divestment law in Illinois. Recently, Illinois passed new divestment legislation to address the court's concerns, which involved violations of the foreign commerce, foreign affairs, and supremacy clauses of the U.S. Constitution.

<sup>4</sup> Targeted divestment is advocated by the Sudan Divestment Task Force (SDTF), the leading advocacy organization on this issue. According to the SDTF, 14 states have adopted versions of its model legislation on targeted divestment. We include this model as Attachment B and apply its provision to Alaska in this report. We include an example of non-targeted divestment legislation from Illinois as Attachment C.

<sup>5</sup> In this report, we use the Sudan Divestment Task Force's list of targeted companies, which is available at <http://www.sudandivestment.org/reportrequest.asp>, to screen Alaska state funds.

<sup>6</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
<i>Targeted Divestment Legislation</i>		
California	Cal. Gov. Code § 7513.6 (2007)	
Colorado	Colo. Rev. Stat., § 24-54.8-100 (2007)	
Florida	Fla. Stat. § 215.473 (2007)	
Hawaii	Act No. 192, Session Law 2007	
Indiana	Ind. Code Ann. § 5-10.2-9	
Iowa	Chapter 10a, Session Law 2007	
Kansas	Kan. Stat. Ann. § 74-4923 and 74-4960 (2007)	
Minnesota	Minn. Stat. § 11A.243 (2007)	
New York <sup>(a)</sup>	Executive Branch Policy	
North Carolina	Session Law 2007-486	
Rhode Island	Chapter 93, Session Law 2007	
Texas	Tex. Gov't Code Ann. § 806.001 (2007)	
Vermont <sup>(b)</sup>	Executive Branch Policy	
Kentucky		HB 25
Michigan		SB 0555, HB 4854
Ohio		SB 161
Pennsylvania		HB 1140
Wisconsin		AB 124, SB 57
<i>Non-targeted (Blanket) Divestment Legislation</i>		
Illinois <sup>(c)</sup>	Public Act No. 95-521, Session Law 2007	
Maine	Me. Rev. Stat. Ann. tit. 5, § 1956 (2007)	
Massachusetts	Mass. Gen. Laws Ann. ch. 32, § 23 (2006)	
New Jersey	N.J. Stat. Ann. § 52:18A-89.9 (2007)	
Oregon	ORS § 293.811-817 (2006)	
Delaware		SE 9
Georgia		HB 2-6, SB 199
<i>Non-binding Measures Encouraging Divestment</i>		
Arkansas <sup>(d)</sup>	SCR 20 & Executive Branch Policy	
Connecticut <sup>(d)</sup>	Conn. Gen. Stat. § 3-21e (2007) & Executive Branch Policy	
Louisiana	La. Rev. Stat. Ann. § 11:312 (2007)	
Maryland <sup>(e)</sup>	Md. Code Ann. § 21-123.1 (2007)	
Nevada <sup>(f)</sup>	Executive Branch Policy	
New Mexico <sup>(f)</sup>	Executive Branch Policy	
Missouri		HCR 32
New Hampshire <sup>(g)</sup>		L.S.R. 2506
Oklahoma		H.R. 1026
Wyoming		HB 245

**NOTES:** (a) New York's state comptroller adopted a targeted divestment policy.  
 (b) Vermont's pension fund has enacted a targeted divestment from Sudan.  
 (c) The 2007 Illinois law amended the state's 2005 law, which was found to be unconstitutional.  
 (d) Arkansas and Connecticut passed non-binding legislation but have divested significant assets.  
 (e) Maryland law encourages divestment and prohibits future investments in all companies with operations in Sudan.  
 (f) Executive leaders in Nevada and New Mexico have urged the adoption of a targeted divestment policy but no action has been taken.  
 (g) A bill was filed on October 3rd in New Hampshire, but has not been introduced; no details are available at this time.  
**SOURCES:** LexisNexis; Sudan Divestment Task Force, "State of Sudan Divestment," available at [http://www.sudan-divestment.org/docs/state\\_of\\_sudan\\_divestment.pdf](http://www.sudan-divestment.org/docs/state_of_sudan_divestment.pdf) (Attachment A).

## TARGETED DIVESTMENT OF ALASKA STATE FUNDS

By our calculation, at this writing, the balances of all state invested assets total approximately \$67.2 billion.<sup>7</sup> Of these investments, a very small portion would be subject to divestment under a targeted approach.<sup>8</sup> Of the \$37.8 billion in the Alaska Permanent Fund, we calculate that, at this writing, a maximum of \$41.2 million (about 0.1%) would require divestment (Table 2).<sup>9</sup> We screened the Alaska Retirement Management Board's investments and did not find any holdings in companies targeted for divestment. We did not screen state funds outside the investment authority of the Alaska Permanent Fund Corporation or Alaska Retirement Management Board.

**Table 2: Alaska Permanent Fund Stock Holdings Subject to Divestment**

Company	Market Value	Country
WEATHERFORD INTL LTD BERMUDA	\$ 20,157,763	Bermuda
ALSTOM	\$ 6,883,272	France
MALAYSIA INT SHIP MYR1(ALIEN MKT)-SHIPPING MYR1	\$ 5,621,257	Malaysia
PETROCHINA CO HKD 0.1	\$ 2,375,614	China
WEATHERFORD INTL LTD	\$ 2,156,478	Bermuda
PETROFAC LTD USD 0	\$ 1,091,701	UK
DONGFENG MOTOR GRP CO LTD-H	\$ 1,084,951	China
WARTSILA B EUR 3.5-METRA OYJ ABF BORD EUR3.5	\$ 778,410	Finland
WEIR GROUP PLC (THE)	\$ 508,336	UK
MITSUI ENGINEERING + SHIPB JPY 50.0-& SHIPBUILDING Y50	\$ 401,628	Japan
LUNDIN PETROLEUM AB	\$ 74,408	Sweden
CNPC HONG KONG LIMITED	\$ 63,335	Bermuda
<b>TOTAL</b>	<b>\$ 41,197,153</b>	

**NOTES:** 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 here.

**SOURCES:** All stock information was obtained on October 30, 2007, from the Alaska Permanent Fund Corporation's website at <http://www.apfc.org/divestments/stocks.cfm?unshow=france>.

<sup>7</sup> These funds include the Alaska Permanent Fund (\$37.8 billion); funds under the fiduciary responsibilities of the Commissioner of Revenue, which include Alaska Retirement Management Board funds (\$19.2 billion; including the Public Employees' Retirement System, Teachers' Retirement System, Judicial Retirement System, National Guard/Naval Militia Retirement System, Alaska Supplemental Annuity Plan, Alaska Deferred Compensation Plan, Alaska Defined Contribution Plan), General Fund and other Non-segregated Investments (GeFONSI; \$4.4 billion), Constitutional Budget Reserve Fund (\$2.7 billion), and other funds (\$2.7 billion; including the Public School Trust Fund, Alaska Children's Trust, Investment Loss Trust Fund, Supplemental Benefits Trust Fund, General Obligation Bond Fund, International Airports Fund, International Airports Construction Fund, Retiree Health Insurance Fund, Power Cost Equalization Endowment Fund, Mine Reclamation Fund, and Alaska Sport Fish Construction Fund); and state funds outside the fiduciary responsibility of the Commissioner of Revenue (\$0.4 billion, including the University of Alaska Trust Fund, Alaska Student Loan Corporation Fund, Exxon Valdez Oil Spill Investment Fund, and Mental Health Trust Reserve Fund). Information on state funds obtained from Gary Bader, chief investment officer, Alaska Department of Revenue, (907) 465-4399.

<sup>8</sup> Only the portions of funds with publicly-traded equity in foreign companies 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 model we apply here, 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 are allowed 90 days to compile and adopt a "scrutinized companies list" based on criteria outlined in the legislation. Following adoption of the list, the fund must contact all scrutinized companies in which they have holdings and allow them 90 days to change their offending operations before becoming subject to divestment. Within 9 months of the adoption of the "scrutinized companies list," the fund must complete the divestment of 50 percent of holdings in scrutinized companies. Within 15 months, 100 percent of holdings in scrutinized companies must be divested. Funds are not required to divest indirect, actively managed holdings. This timeframe is within that described by Alaska funds as reasonable.<sup>10</sup> Lastly, ongoing reporting requirements and the screening of future investments would be required.

The Alaska Permanent Fund and the Alaska Retirement Management Board expressed reservations about the wisdom of divestment, citing increased administrative costs and possible declines in fund performance.<sup>11</sup> We note, however, that recent divestment research we reviewed, which ultimately argues against divestment, concludes that fund performance changes are usually "negligible, and in most cases zero."<sup>12</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 significant 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>10</sup> Of the \$41.2 million in Alaska Permanent Fund assets targeted for divestment, \$20.2 million are assets in Weatherford International Ltd., which has filed documents with the Securities and Exchange Commission announcing the company's intent to discontinue doing business in Sudan. Following this action, assets in this company would not be subject to divestment.

<sup>11</sup> Personal correspondence 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. 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>12</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>13</sup> See page 6 of "Should Public Plans Engage in Social Investing," Center for Retirement Research at Boston College, Attachment D, for a description of empirical research on the impacts of divestment on fund performance.

**Attachment A**

**Sudan Divestment Task Force**

**"State of Sudan Divestment"**

*[http://www.sudandivestment.org/docs/state\\_of\\_sudan\\_divestment.pdf](http://www.sudandivestment.org/docs/state_of_sudan_divestment.pdf)*



# SUDAN DIVESTMENT

TASK FORCE

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## The State of Sudan Divestment:

An Overview of States, Cities, Universities, Companies, and Private Pensions  
Currently Working on Sudan Divestment

December 24, 2005 (UPDATED *October 26, 2007*)

A Report by  
The Sudan Divestment Task Force

SUDAN DIVESTMENT TASK FORCE

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## SUDAN DIVESTMENT TASK FORCE

### I. Introduction

This State of Sudan Divestment report provides details on the progress of numerous states, cities, universities, and companies that have active divestment campaigns as well as the status of ex-Sudan investment offerings by asset managers and private pension plans. The report serves as a resource for various individuals and organizations examining the issue of divestment from companies that support the Government of Sudan as it commits genocide in the Darfur region of Sudan. To our knowledge, the current status of Sudan divestment as of August 2007 is as follows (please also see [www.sudandivestment.org/home.asp#map](http://www.sudandivestment.org/home.asp#map)):

The states of California, Colorado, Florida, Hawaii, Indiana, Iowa, Kansas, Minnesota, New York, Rhode Island, Texas, and Vermont have all adopted the Sudan Divestment Task Force model of targeted Sudan divestment. While the states of New Jersey, Illinois, Oregon, Maine, Connecticut, Maryland and Arkansas have all approved divestment plans. Finally, over a dozen states have active divestment movements with varying levels of involvement from state officials. Religious and international campaigns have also gathered steam; several religious organizations have divested or restricted future investments, including the Evangelical Covenant Church, National Ministries and Unitarian Universalist Church. Internationally, Canadian universities and provinces have initiated divestment campaigns and over half a dozen European countries have active divestment campaigns. Cities have contributed to the divestment movement as well: San Francisco, CA; Providence, RI; New Haven, CT; Philadelphia, PA; Denver, CO; Los Angeles, CA; Pittsburgh, PA and Miami Beach, FL have passed measures prohibiting certain Sudan investments while the fiduciaries of Buffalo, NY; Newton, MA, and other smaller cities are considering the issue. At the university level, over fifty institutions have enacted restrictions on Sudan investments. There are emerging or active Sudan divestment campaigns at over two dozen other colleges and universities. At the asset manager level, a grassroots campaign targeting Fidelity Investments and Warren Buffet's holding company, Berkshire Hathaway, has been initiated. Berkshire Hathaway holds roughly \$3 billion in PetroChina, one of the primary offending companies in Sudan, making it the largest single shareholder in the company. At the private pension fund level, there is an active divestment campaign for TIAA-CREF, the nation's largest such fund. Finally, the investment community has begun to respond to investors demands for Sudan free investment opportunities. A limited number of ex-Sudan investment vehicles have been developed or are being developed by asset managers such as Northern Trust, Barclays Global Investors, State Street Global Advisors as well as several socially responsible investing firms. Third party research firms have begun to develop list of companies that meet the targeted divestment criteria. A number of Sudan-free mutua

## SUDAN DIVESTMENT TASK FORCE

funds have also been recently introduced.

Below, we provide more detail and contact information on many of the campaigns mentioned above, as well as others not mentioned in this introduction. However, we acknowledge that other individuals and groups may be organizing without our knowledge. If you do have information on other campaigns, please e-mail us at [info@sudandivestment.org](mailto:info@sudandivestment.org) so we can update this report.

### II. State of Divestment: State Legislatures

The State of Sudan Divestment report provides a historical account of the divestiture movements in each state. This document does not address the specifics of each piece of legislation. Despite passing the Sudan Divestment Task Force model of targeted Sudan divestment legislation, each state labeled 'Divested: Task Force Model' will have unique legislation, subject to the amendment process in each respective legislature. These amendments do not compromise the integrity of the legislation. Rather, the amendments often deal with the specifics of implementation and reporting. Details on the nuances of each bill are available by email [info@sudandivestment.org](mailto:info@sudandivestment.org).

The overwhelming majority of Sudan divestment legislation is passed as a stand alone item. However, in some cases, bills have included multiple premises. These instances are noted and details are available by contacting us by email, [info@sudandivestment.org](mailto:info@sudandivestment.org).

#### **Alabama (Campaign Initiated)**

##### *Legislative Status:*

A targeted Sudan divestment campaign has been initiated.

##### *Website and Articles:*

<http://www.sudandivestment.org/alabama>

##### *Contact:*

Max Croes  
Advocacy Associate, Sudan Divestment Task Force  
[alabama@sudandivestment.org](mailto:alabama@sudandivestment.org)

#### **Alaska (Campaign Initiated)**

##### *Legislative Status:*

A targeted Sudan divestment campaign has been initiated.

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### *Website and Articles:*

<http://www.sudandivestment.org/alaska>

### *Contact:*

Max Croes  
Advocacy Associate, Sudan Divestment Task Force  
[alaska@sudandivestment.org](mailto:alaska@sudandivestment.org)

## **Arizona (Campaign Initiated)**

### *Legislative Status:*

In the 2007 legislative session, Senator Paula Aboud and Representative Phil Lopes attempted to pass an amendment requiring divestment from Sudan, but this amendment was stripped in conference committee.

Representative Kyrsten Sinema has agreed to introduce legislation based off of the Sudan Divestment Task Force's targeted divestment model in the 2008 legislative session. The Arizona Education Association has endorsed targeted Sudan divestment.

### *Website and Articles:*

<http://www.sudandivestment.org/arizona>

### *Contact:*

Scott Wisor  
Senior National Field Organizer, Sudan Divestment Task Force  
[arizona@sudandivestment.org](mailto:arizona@sudandivestment.org)

## **Arkansas (Divested: Other Model)**

### *Legislative Status:*

In March 2007, the Arkansas General Assembly passed SCR20 which was sponsored by Senator Sue Madison. The resolution passed both houses of the Assembly and received the signature of Governor Beebe. SCR20 encourages Arkansas State Retirement Systems to identify their investments in companies operating in Sudan and then divest from these companies until the genocide in Darfur has ended.

The Arkansas Teachers Retirement System (ATRS), which oversees \$11 billion in assets,

## SUDAN DIVESTMENT TASK FORCE

voted to adopt a Sudan divestment policy. ATRS has no direct holdings in any of the worst offending companies as identified by the Sudan Divestment Task Force. ATRS has written to their fund managers requesting that they implement Sudan divestment policies. ATRS has acquired both the broader and more restrictive KLD list of companies and voted to adopt Sudan divestment based on the KLD list based off of Sudan Divestment Task Force criteria of targeted Sudan divestment.

The Arkansas State Employees Retirement System, which oversees \$5 billion in assets, has written to their fund managers requesting that they comply with Senate Resolution 20, but have publicly stated that they do not intend to purchase or maintain a list of companies that operate in Sudan.

### *Bill Text:*

<http://www.arkleg.state.ar.us/2007/scripts/alar/bills/bills.asp?billno=SCR20>

### *Website and Articles:*

<http://www.sudandivestment.org/arkansas>

### *Contact:*

Sudan Divestment Task Force  
[arkansas@sudandivestment.org](mailto:arkansas@sudandivestment.org)

## **California (Divested: Task Force Model)**

### *Legislative Status:*

On September 25, 2006, California Governor Arnold Schwarzenegger was joined by actors George Clooney and Don Cheadle, former Secretary of State George Shultz, executive members of the Sudan Divestment Task Force, and other community leaders at a public signing for AB 2941, adopting a targeted divestment policy for the California Public Employees Retirement System (CalPERS) and California State Teachers Retirement System (CalSTRS) and indemnifying the boards of both funds.

### *History:*

In August 2005, the California legislature adopted Assembly Concurrent Resolution #11 (ACR11) which urges CalPERS and CalSTRS to encourage their portfolio companies doing business in Sudan "to act responsibly and not take actions that promote or otherwise enable human rights violations in the Sudan."<sup>1</sup>

Separately, in a letter dated August 8, 2005, CalPERS Board Members Willie Brown, Jr.

<sup>1</sup> [http://www.leginfo.ca.gov/pub/bill\\_asm/ab\\_0001-0020/acr\\_11\\_bill\\_20050830\\_chaptered.html](http://www.leginfo.ca.gov/pub/bill_asm/ab_0001-0020/acr_11_bill_20050830_chaptered.html)

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and California Treasurer Phil Angelides requested that CalPERS ensure that the pension fund's investments in companies doing business in the Sudan are not contributing to genocide and human suffering in the Darfur region of that country. Specifically, the Treasurer and Member Brown's letter requested that staff provide to the Board a report identifying any companies that have business operations in the Sudan and the exact nature of those business activities. Secondly, they requested that CalPERS take all necessary steps to ensure that companies are not engaged in any business activities that in any way support genocide in Darfur, including directly engaging with each company.<sup>2</sup>

CalPERS followed up on Angelides' and Browns' request by:

- (1) Building a coalition with four other public pension plans to establish an engagement process with companies doing business in Sudan.
- (2) Building a second coalition of 50 pension funds that engaged the U.S. Department of Commerce, U.S. Department of State, U.S. Department of the Treasury, and the U.S. Securities and Exchange Commission.
- (3) Engaging 46 external investment managers and 1,869 portfolio companies in an effort to identify companies that may be operating in Sudan.
- (4) Identifying, through its coalition with four other public pension plans, five companies in the CalPERS portfolio to directly engage regarding business activities in the Sudan: ABB, Siemens, Alcatel, Total SA, and Royal Dutch Shell.
- (5) Engaging those five companies to determine their relationship to the Sudanese government and the Darfur genocide.<sup>3</sup>

On December 12, 2005, CalPERS reported the results of its ongoing research and engagement process. Specifically, it noted that of the five initial companies it had investigated, ABB, Alcatel and Siemens all had business relationships with the Sudanese government or government-controlled entities. CalPERS staff reported that the other two companies, Total SA and Royal Dutch Shell, had operations in Sudan but no clear business affiliation with the Sudanese government.<sup>4</sup>

Based on CalPERS' findings, Treasurer Angelides recommended that CalPERS continue to monitor the Sudanese business activities of Total SA and Royal Dutch Shell while proposing that CalPERS "use the power of the funds' \$200 billion investment portfolio to demand that... ABB, Ltd., Alcatel, and Siemens AG cease their business ties with the Sudanese government and all government-controlled entities." The CalPERS Board approved the Treasurer's proposal in a 9 to 2 vote on December 12, 2005.<sup>5</sup> The CalPERS staff also plans to continue its research and engagement process, reporting back to the CalPERS' Committee on Investments on a regular basis.

Also in December, Treasurer Angelides urged CalSTRS to divest from its PetroChina holdings following the fiasco and cover-up of the Nov. 13 PetroChina chemical spill in China. Angelides noted that the combination of PetroChina's negligent behavior at home and troubling relationship with the government of Sudan indicated that investment in the

<sup>2</sup> CalPERS Agenda Item 6a: Committee on Investments Meeting, September 19, 2005. <http://www.calpers.ca.gov/govdocs/about/board/calperssta/agendas/invest/200509/item06a-00.pdf>

<sup>3</sup> At  
<sup>4</sup> California State Treasurer News Release, December 12, 2005  
[http://www.treasurer.ca.gov/newsreleases/2005/20051212\\_sudan.pdf](http://www.treasurer.ca.gov/newsreleases/2005/20051212_sudan.pdf)

<sup>5</sup> At

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company was too risky for CalSTRS. As is widely known, Angelides pointed out that PetroChina's parent company, the Chinese-government oil company China National Petroleum Corp., holds a 40% stake in the Sudanese-government created Greater Nile Petroleum Operating Company, which provides revenue to the Sudanese government.<sup>6</sup>

CalPERS subsequently sent letters of concern to Siemens, Alcatel, and ABB urging them to halt their business ties to Sudan. The companies' responded in the negative in the middle of February 2006.

CalSTRS researchers investigated divestment from multiple Sudan-related companies, including PetroChina. While letters were sent to these companies, CalSTRS staff research, at the time, determined that South African divestment by CalSTRS did not fulfill the prudent investor rule and that the fund would be vulnerable to liability if it were to divest from Sudan, no matter how few companies were under consideration. CalSTRS Trustee Roger Kozberg noted at the time, "Short of thermonuclear war, this [divestment] is a direction we ought not take."

Assembly Bill 2941, introduced by Assemblymember Paul Koretz, passed out of the Assembly by a bipartisan vote of 72-4 in May 2006 and passed out of the California Senate by a bipartisan vote of 29-7.

### *Independent Actions taken by the Pension Systems:*

As follow-up to the April 2006 meeting of the CalSTRS Board (when they indicated their intent to divest and instructed staff to develop a financially prudent plan), CalSTRS agreed to the following Sudan policy in early June: CalSTRS "will actively engage management of companies with ties to the Sudanese government. If portfolio companies fail to comply with the fund's 20 risk factors [a set of social, moral, and economic risk factors that determines whether CalSTRS will invest in a company], CalSTRS will direct its active managers to find suitable alternate investments that wouldn't impair returns or add risk to the portfolio. CalSTRS' passive portfolios will stop buying shares of companies that violate pension fund policy." The California divestment bill, AB2941, would require CalSTRS to divest from passive holdings.

On May 15, 2006, CalPERS agreed to disinvest from the same nine companies from which the University of California had divested. While CalPERS had no current holdings in the nine companies, the Sacramento Bee noted, "Five CalPERS money managers include Bharat and Oil & Natural Gas as part of a benchmark used to measure their investment performance. Now, they will be specifically precluded from investing in the two Indian companies." This action was taken independently of AB 2941.

### *Bill Text:*

[http://www.leginfo.ca.gov/pub/bill/asn/ab\\_2901-](http://www.leginfo.ca.gov/pub/bill/asn/ab_2901-)

<sup>6</sup> California State Treasurer News Release, December 2, 2005  
[http://www.treasurer.ca.gov/news-releases/2005/20051202\\_petrochina.pdf](http://www.treasurer.ca.gov/news-releases/2005/20051202_petrochina.pdf)

## SUDAN DIVESTMENT TASK FORCE

[2950/ab\\_2941\\_bill\\_20060925\\_chaptered.html](#)

### *Website and Articles:*

<http://www.sudandivestment.org/california>

### *Contact:*

Adam Sterling  
Director, Sudan Divestment Task Force  
[asterling@sudandivestment.org](mailto:asterling@sudandivestment.org)

## **Colorado (Divested: Task Force Model)**

### *Legislative Status:*

On April 19, 2007, Colorado Governor Bill Ritter signed House Bill 1184, Colorado's targeted Sudan divestment bill, into law.

Speaker of the House Andrew Romanoff and Senate President Pro-Tempore Peter Groff sponsored HB 1184, a bill based on the Sudan Divestment Task Force model of targeted divestment.

Additionally, HB 1184 was endorsed by the Public Employees' Retirement Association of Colorado (PERA).

### *Bill Text:*

[http://www.leg.state.co.us/Clics/Clics\\_1007A/csl.nsf/\(shbillcont\)/C67D12670D14E9E787257251007B243B?Open&file=1184\\_ren.pdf](http://www.leg.state.co.us/Clics/Clics_1007A/csl.nsf/(shbillcont)/C67D12670D14E9E787257251007B243B?Open&file=1184_ren.pdf)

### *Website and Articles:*

<http://www.sudandivestment.org/colorado>

### *Contact:*

Scott Wisor  
Senior National Field Organizer, Sudan Divestment Task Force  
[Colorado@sudandivestment.org](mailto:Colorado@sudandivestment.org)

## **Connecticut (Divested: Other Model)**

### *Legislative Status:*

A non-binding divestment resolution passed the Connecticut legislature and was signed by the governor on May 8, 2006. The non-binding resolution was requested by Treasurer

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Denise Nappier, principal fiduciary of the \$24 billion Connecticut Retirement Plans and Trust Funds (CRPTF), to affirm her statutory authority to divest from companies that her office identifies as offending. The legislation goes into extensive detail on what qualities a company may demonstrate to be offending. The legislation also gives significant leeway to Treasurer Nappier to decide what factors are important in determining if a particular company should be targeted. Nappier has emphasized that divestment would occur at the end of an engagement process with companies identified as offending.

Treasurer Nappier announced on May 9, 2007 that she is directing investment managers who invest the funds of the CRPTF to divest from Sinopec. As of April 30, the CRPTF held 12,439,950 shares with a market value of \$11,085,867.72 in Sinopec. In addition, Nappier announced that she is prohibiting direct investment in the following 5 companies: Bharat Heavy Electricals Ltd., Nam Fatt Corp., Oil and Natural Gas Corp. (ONGC), PECO Group and Sudan Telecom (Sudatel). In addition to the above companies, investment in PetroChina has been prohibited since its initial public offering in 2000.

Staff of the Treasurer's office has initiated a dialogue with approximately 25 companies, and it is anticipated that additional companies will be contacted in the near future. According to the Treasurer's office, dialogue is ongoing with eight companies in which CRPTF's holdings are valued at approximately \$10,000,000.

### *Full Text:*

<http://www.state.ct.us/off/pressreleases/press.2006/pr02.2406legislation.pdf>

### *Website and Articles:*

<http://www.sudandivestment.org/connecticut>

### *Contact:*

Sudan Divestment Task Force  
[connecticut@sudandivestment.org](mailto:connecticut@sudandivestment.org)

## **Delaware (Campaign Initiated)**

In June 2007 the Delaware House of Representatives passed a non-binding resolution calling for targeted Sudan divestment.

Targeted Sudan divestment legislation will be introduced in 2008 by Senator Harris McDowell.

### *Website and Articles:*

<http://www.sudandivestment.org/delaware>

## SUDAN DIVESTMENT TASK FORCE

### *Contact:*

Max Croes  
Advocacy Associate, Sudan Divestment Task Force  
[dcraware@sudandivestment.org](mailto:dcraware@sudandivestment.org)

### **Florida (Divested: Task Force Model)**

On June 8, 2007 Governor Charlie Crist signed legislation containing targeted Sudan divestment language.

Senate Bill 2142 was introduced by State Senator Ted Deutch, the bill language had multiple premisses aside from Sudan divestment.

### *Bill Text:*

[http://www.flhouse.gov/Sections/Documents/loaddoc.aspx?FileName=\\_2142cr.html&DocumentType=Bill&BillNumber=2142&Session=2007](http://www.flhouse.gov/Sections/Documents/loaddoc.aspx?FileName=_2142cr.html&DocumentType=Bill&BillNumber=2142&Session=2007)

### *Website and Articles:*

<http://www.sudandivestment.org/florida>

### *Contact:*

Daniel Millenson  
National Advocacy Director, Sudan Divestment Task Force  
[dmillenson@sudandivestment.org](mailto:dmillenson@sudandivestment.org)

### **Georgia (Campaign Initiated)**

### *Legislative Status:*

A targeted Sudan divestment campaign has been initiated.

### *Website and Articles:*

<http://www.sudandivestment.org/georgia>

### *Contact:*

Daniel Millenson  
National Advocacy Director, Sudan Divestment Task Force  
[georgia@sudandivestment.org](mailto:georgia@sudandivestment.org)

## SUDAN DIVESTMENT TASK FORCE

### **Hawaii (Campaign Initiated)**

#### *Legislative Status:*

On June 18th, 2007 Lieutenant Governor Duke Aiona signed House Bill 34, based on the Sudan Divestment Task Force model of targeted Sudan divestment.

House Bill 34 was introduced by State Representative Roy Takumi.

#### *Bill text:*

HB 34: <http://www.capitol.hawaii.gov/sessioncurrent/Bills/HB34.htm>

#### *Website and Articles:*

<http://www.sudandivestment.org/hawaii>

#### *Contact:*

*Sudan Divestment Task Force*  
[Hawaii@sudandivestment.org](mailto:Hawaii@sudandivestment.org)

### **Idaho (Campaign Initiated)**

#### *Legislative Status:*

In 2007, a targeted Sudan divestment bill was voted down in committee.

In September, 2007, the Public Employee Retirement System of Idaho began offering Sudan Free fund options for beneficiaries investing into defined contribution plans (401(k) plans). This is the first such offering of public fund in the United States.

Acknowledging that a majority of Sudan Related Investments are in defined benefit plans, Idahoans are actively pursuing binding targeted Sudan divestment legislation for the 2008 session.

#### *Website and Articles:*

<http://www.sudandivestment.org/idaho>

#### *Contact:*

**John Sullivan**  
[idahodivestment@hotmail.com](mailto:idahodivestment@hotmail.com)

## SUDAN DIVESTMENT TASK FORCE

### **Illinois (Divested: Other Model)**

#### *Legislative Status:*

In June 2005, the Illinois state legislature passed into law a blanket Sudan divestment plan that affected the entire Illinois pensions system. The Illinois statute targeted all companies with ties to Sudan, and mandated divestment on all of the states investment vehicles.

In late February 2007, U.S. District Judge Matthew F. Kennelly ruled Illinois' blanket Sudan divestment statute to be unconstitutional. However, instead of striking down divestment per se as unconstitutional, Judge Kennelly defined certain limits to Sudan divestment statutes and ruled that Illinois had crossed those certain limits.

In response, Illinois Senator Jacqueline Collins has filed Senate Bill 1169, legislation intended to amend the law to bring it in line with constitutional requirements outlined by Judge Kennelly. The bill awaits approval from the Governor.

#### *Bill Text:*

<http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=09-0079> (original statute)  
[http://www.ilga.gov/legislation/95/SB/0950/SB1169/am\(02\).htm](http://www.ilga.gov/legislation/95/SB/0950/SB1169/am(02).htm) (amended legislation)

#### *Website and Articles:*

<http://www.sudandivestment.org/illinois>

#### *Contact:*

*Sudan Divestment Task Force*  
[info@sudandivestment.org](mailto:info@sudandivestment.org)

### **Indiana (Divested: Task Force Model)**

#### *Legislative Status:*

On May 3, 2007, Indiana Governor Mitch Daniels signed House Bill 1067, Indiana's targeted Sudan divestment bill, into law. The law is based on the Sudan Divestment Task Force Model of targeted Sudan divestment, this language does not stand alone.

House Bill 1067 was based on legislation originally introduced by Indiana Representatives Matt Pierce and Cindy Noe and Senators John Brocken and Gary Dillon.

#### *Bill Text:*

<http://www.in.gov/legislative/bills/2007/HB/HB1484.1.html>

## SUDAN DIVESTMENT TASK FORCE

### *Website and Articles:*

<http://www.sudandivestment.org/indiana>

### *Contact:*

Sudan Divestment Task Force  
[Indiana@sudandivestment.org](mailto:Indiana@sudandivestment.org)

## **Iowa (Divested: Task Force Model)**

### *Legislative Status:*

On April 5, 2007 Iowa Governor Chet Culver signed Senate File 361; Iowa's targeted Sudan divestment legislation. The law is based on the Sudan Divestment Task Force Model of targeted Sudan divestment.

In addition to divesting Iowa's state pension plan from Sudan, the legislation also mandates targeted divestment from Sudan by the University of Iowa, Iowa State University, and the University of Northern Iowa.

State Representative Dawn Pettengill (D-39) had introduced House File 807 and Senator Michael Connolly (D-14) had introduced Senate File 361.

### *Bill Text:*

<http://coo.legis.state.ia.us/Coal-ICE/default.asp?category=billinfo&service=Billbook&hbill=HF2241&menu=text>

### *Website and Articles:*

<http://www.sudandivestment.org/iowa>

### *Contact:*

Sudan Divestment Task Force  
[iowa@sudandivestment.org](mailto:iowa@sudandivestment.org)

## **Kansas (Divested: Task Force Model)**

### *Legislative Status:*

On May 11, 2007, Kansas Governor Kathleen Sebelius signed House Bill 2457. Kansas' targeted Sudan divestment bill, into law. The law is based on the Sudan Divestment Task Force Model of targeted Sudan divestment, the language does not stand alone.

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House Bill 2457 was based on legislation originally introduced by Kansas Senator Donald Betts Jr.

*Bill Text:*

HB 2457: <http://www.kslegislature.org/legsrv-bills/showBill.do?id=164697>

*Website and Articles:*

<http://www.sudandivestment.org/kansas>

*Contact:*

Matthew Vines  
[Kansas@sudandivestment.org](mailto:Kansas@sudandivestment.org)

### **Kentucky (Campaign Initiated)**

In December 2006, the Board of Trustees of the Kentucky State Teacher's Retirement Fund unanimously voted to adopt a non-binding policy of engagement with certain companies operating in Sudan.

A targeted Sudan divestment campaign seeking binding legislation has been initiated.

*Website and Articles:*

<http://www.sudandivestment.org/kentucky>

*Contact:*

Katie Savin  
College Divestment Coordinator, Sudan Divestment Task Force  
[info@sudandivestment.org](mailto:info@sudandivestment.org)

### **Maine (Divested: Other Model)**

*Legislative Status:*

In April 2006, Maine adopted a Sudan divestment statute, LD 1758, for all active investments in separately managed accounts held by the Maine State Retirement System (MSRS). Index funds and all commingled funds are excluded from the bill. The law requires divestment, "in accordance with sound investment criteria and consistent with the board's fiduciary obligations." MSRS utilizes information from the Sudan Divestment Task Force, direct correspondence from companies, and other data sources to develop and maintain their own divestment and engagement lists.

## SUDAN DIVESTMENT TASK FORCE

Separately, in January 2006, State Treasurer David Lemoine ordered the sale of all direct holdings in Schlumberger Ltd. stock held by Maine's \$24 million State Held Trusts.

### *Bill Text:*

<http://janus.state.me.us/legis/LawMakerWeb/externalsiteframe.asp?ID=280019872&LD=1758&Type=1&SessionID=6>

### *Website and Articles:*

<http://www.sudandivestment.org/maine>

### *Contact:*

Sudan Divestment Task Force  
[Maine@sudandivestment.org](mailto:Maine@sudandivestment.org)

## **Maryland (Divested: Other Model)**

### *Legislative Status:*

On April 10, 2007, Maryland Governor Martin O'Malley signed Senate Bill 543, a Sudan divestment bill, into law. The statute urges the Maryland State Retirement and Pension System to divest from any company with operations in Sudan and prohibits future investment in those companies.

Senate Bill 543 was introduced by State Senator Verna Jones.

### *Bill Text:*

<http://mlis.state.md.us/2007RS/billfile/sb0543.htm>

### *Website and Articles:*

<http://www.sudandivestment.org/maryland>

### *Contact:*

Maggie Tiernan  
Senior National Field Organizer, Sudan Divestment Task Force  
[Maryland@sudandivestment.org](mailto:Maryland@sudandivestment.org)

## **Massachusetts (Campaign Initiated)**

### *Legislative Status:*

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In early 2007, State Senator Harriette Chandler, Senator Edward Augustus and Representative Jay Kaufman introduced S2255, based off the Sudan Divestment Task Force targeted divestment model.

In June 2007, S2255 passed the Massachusetts State Senate. Subsequently, the Massachusetts House of Representatives passed S2255 in September.

Currently, S2255 awaits the signature of Governor Deval Patrick. The Governor has already publicly endorsed the legislation.

### *Bill Text:*

S2255: <http://www.mass.gov/legis/bills/senate/185/st02/st02255.htm>

### *Website and Articles:*

<http://www.sudandivestment.org/massachusetts>

### *Contact:*

Daniel Millenson  
National Advocacy Director, Sudan Divestment Task Force  
[Massachusetts@sudandivestment.org](mailto:Massachusetts@sudandivestment.org)

## **Michigan (Campaign Initiated)**

### *Legislative Status:*

State Senator Hansen Clarke has introduced Senate Bill 0555, based off the Sudan Divestment Task Force model of targeted Sudan divestment. Senate Bill 0555 has been referred to the Senate Appropriations committee.

Companion House legislation, House Bill 4854, has been introduced by Representative Alma Wheeler Smith. House Bill 4854 has been referred to the Government Operations Committee.

### *Website and Articles:*

<http://www.sudandivestment.org/michigan>

### *Bill Text:*

SB 0555:

[http://www.legislature.mi.gov/\(S\(1ht0p45adyonk450o14ld55\)\)/milc.asp?page=getobject&objectname=2007-SB-0555&queryid=18337355](http://www.legislature.mi.gov/(S(1ht0p45adyonk450o14ld55))/milc.asp?page=getobject&objectname=2007-SB-0555&queryid=18337355)

## SUDAN DIVESTMENT TASK FORCE

HB 4854:

[http://www.legislature.mi.gov/\(S\(exwbw4bh4gmqw5ahstnl1nn4\)\)/mileg.aspx?page=Bills&objectname=2007-HB-4854](http://www.legislature.mi.gov/(S(exwbw4bh4gmqw5ahstnl1nn4))/mileg.aspx?page=Bills&objectname=2007-HB-4854)

*Contact:*

Scott Wisor  
Senior National Field Organizer, Sudan Divestment Task Force  
[swisor@sudandivestment.org](mailto:swisor@sudandivestment.org)

### **Minnesota (Divested: Task Force Model)**

*Legislative Status:*

In May 2007, Governor Tim Pawlenty signed Senate File 1075, based on the Sudan Divestment Task Force model of targeted divestment.

Senate File 1075 was introduced by State Senator Sandra Pappas. Companion legislation, House File 1332, was introduced by State Representative Karen Clark.

*Website and Articles:*

<http://www.sudandivestment.org/minnesota>

*Bill Text:*

SF 1075:

<http://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=SF1075.1.html&session=1s85>

HF 1332:

<http://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=HF1332.0.html&session=1s85>

*Contact:*

Scott Wisor  
Senior National Field Organizer, Sudan Divestment Task Force  
[swisor@sudandivestment.org](mailto:swisor@sudandivestment.org)

### **Missouri (Campaign Initiated)**

*Legislative Status:*

In late 2005 a state-owned equity portfolio, the Missouri Investment Trust (MIT), put out a request for proposals to manage a \$5 million international portfolio "terror-free."

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Despite the requirement that the entire portfolio, including any commingled or index funds, be terror-free and the portfolio was a mere \$5 million, MIT received four bids, two of which were from leading Wall Street managers. In June 2006, MIT selected a State Street Global Advisors enhanced index fund to handle the \$5 million investment. According to the state treasurer, State Street will subcontract with Conflict Securities Advisory Group to provide the list of identified stocks. Furthermore, the treasurer has stated that, "historical net return analysis shows no negative impact."

In 2007 Missouri House of Representatives Minority Leader Jeff Harris introduced a blanket Sudan divestment amendment which was stripped in conference committee.

A targeted Sudan divestment campaign has been initiated for the 2008 legislative session.

### *Website and Articles:*

<http://www.sudandivestment.org/missouri>

### *Press Release:*

<http://www.treasurer.missouri.gov/pressroom/MITFund.html>

### *Contact:*

Scott Wisor  
Senior National Field Organizer, Sudan Divestment Task Force  
[Missouri@sudandivestment.org](mailto:Missouri@sudandivestment.org)

## **Nebraska (Campaign Initiated)**

### *Legislative Status:*

A targeted Sudan divestment campaign has been initiated.

### *Website and Articles:*

<http://www.sudandivestment.org/nebraska>

### *Contact:*

Scott Wisor  
Senior National Field Organizer, Sudan Divestment Task Force  
[Nebraska@sudandivestment.org](mailto:Nebraska@sudandivestment.org)

## **Nevada (Campaign Initiated)**

### *Legislative Status:*

## SUDAN DIVESTMENT TASK FORCE

In June 2007 Governor Jim Gibbons joined with Senate Majority Leader William Raggio and Assembly Speaker Barbara Buckley, to encourage the Public Employees Retirement System of Nevada (PERS) to adopt a targeted Sudan divestment policy. PERS has not taken any subsequent action.

### *Website and Articles:*

<http://www.sudandivestment.org/nevada>

### *Contact:*

[Nevada@sudandivestment.org](mailto:Nevada@sudandivestment.org)

## **New Hampshire (Campaign Initiated)**

### *Legislative Status:*

State Representative Jeff Fontas has agreed to introduce targeted Sudan divestment legislation for the 2008 legislative session.

### *Website and Articles:*

<http://www.sudandivestment.org/newhampshire>

### *Contact:*

Daniel Millenson  
National Advocacy Director, Sudan Divestment Task Force  
[info@sudandivestment.org](mailto:info@sudandivestment.org)

## **New Jersey (Divested: Other Model)**

### *Legislative Status:*

Since adopting a blanket divestment statute in July 2005, the state of New Jersey completed divestment of \$2.16 billion from 17 companies identified as having an equity tie to the government of Sudan. The divestment's completion comes two years before the statute's mandatory deadline.

### *Website and Articles:*

<http://www.sudandivestment.org/newjersey>

### *Bill Text:*

## SUDAN DIVESTMENT TASK FORCE

<http://www.nileg.state.nj.us/2004/Bills/AL05/162.PDF>

*Contact:*

Sudan Divestment Task Force  
[info@sudandivestment.org](mailto:info@sudandivestment.org)

### **New Mexico (Campaign Initiated)**

*Legislative Status:*

A targeted Sudan divestment campaign has been initiated.

*Website and Articles:*

<http://www.sudandivestment.org/newmexico>

*Contact:*

Sudan Divestment Task Force  
[newmexico@sudandivestment.org](mailto:newmexico@sudandivestment.org)

### **New York (Divested: Task Force Model)**

*Legislative Status:*

On June 11, 2007, New York State Comptroller Thomas P. DiNapoli announced that the New York State Common Retirement Fund, one of the largest pension funds in the country, will develop and implement a policy designed to place pressure on the Sudanese government to end the genocide currently taking place in Darfur. The Comptroller's policy will follow the Sudan Divestment Task Force's targeted Sudan divestment model.

The New York State Teachers' Retirement Fund has yet to make divestment commitments.

*Press Release and Policy:*

<http://www.osc.state.ny.us/press/releases/june07/061107.htm>

*Website and Articles:*

<http://www.sudandivestment.org/newyork>

*Contact:*

## SUDAN DIVESTMENT TASK FORCE

Sudan Divestment Task Force  
[NewYork@sudandivestment.org](mailto:NewYork@sudandivestment.org)

### **North Carolina (Divested: Task Force Model)**

#### *Legislative Status:*

State Representative Paul Luebke has introduced House Bill 291, targeted Sudan divestment legislation based on the Sudan Divestment Task Force's model in the 2007 legislative session.

In April 2007, House Bill 291 passed the house unanimously.

On July 27<sup>th</sup>, 2007, House Bill 291 received unanimous approval in the Senate.

On August 31<sup>st</sup>, 2007, Governor Mike Easley signed House Bill 291.

Additionally, on November 1, 2006 North Carolina Treasurer Richard Moore announced his decision to divest the North Carolina Retirement System (NCRS), the state's pension fund, from nine companies he identified as providing monetary or military support to the Sudanese government. The initial decision affected NCRS's assets in Bharat Heavy Metals, China Petroleum and Chemical Corp., Nam Fatt, Oil & Natural Gas Company, PECD Berhad, PetroChina Company, Sudan Telecom Company, Tatneft OAO and Videocon Industries Limited, assets totaling \$24 million of the pension fund's \$70 billion. The decision affects offending assets held in all of NCRS' applicable asset classes.

#### *Website and Articles:*

<http://www.sudandivestment.org/northcarolina>

#### **Bill Text:**

HB 291: <http://www.ncga.state.nc.us/Sessions/2007/Bills/House/PDF/H291v2.pdf>

SB 516: <http://www.ncga.state.nc.us/Sessions/2007/Bills/Senate/PDF/S516v1.pdf>

#### *Contact:*

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### **Ohio (Campaign Initiated)**

#### *Legislative Status:*

## SUDAN DIVESTMENT TASK FORCE

State Senator Jeff Jacobson has introduced Senate Bill 161, based off the Sudan Divestment Task Force model of targeted Sudan divestment.

Senate Bill 161 has been referred to the Senate Finance Committee.

Media reports suggest that the state retirement systems have voluntarily agreed to divest their Sudan related assets. The Sudan Divestment Task Force is closely monitoring the possible implementation of this agreement.

Additionally, in January 2006, Ohio passed resolutions (SCR 17 and HCR 19) aimed at pressuring the U.S. Congress for increased action in Darfur and requesting that State pensions consider screening and divesting from Sudan-affiliated companies.

When the Ohio Retirement Study Council, who is charged with advising Ohio's pension funds and their \$143 billion in assets, was contacted by the Task Force in July 2006 about HCR 19, the Director of the Council was unaware of the resolution.

### *Bill Text:*

SB 161: [http://www.legislature.state.oh.us/bills.cfm?ID=127\\_SB\\_161](http://www.legislature.state.oh.us/bills.cfm?ID=127_SB_161)

SCR 17: <http://www.gongwer-oh.com/126/resolutions/scr17.pdf>

### *Website and Articles:*

<http://www.sudandivestment.org/ohio>

### *Contact:*

Sudan Divestment Task Force  
[ohio@sudandivestment.org](mailto:ohio@sudandivestment.org)

## **Oklahoma (Campaign Initiated)**

### *Legislative Status:*

A targeted Sudan divestment campaign has been initiated.

### *Website and Articles:*

<http://www.sudandivestment.org/oklahoma>

### *Contact:*

Max Croes  
Advocacy Associate, Sudan Divestment Task Force

## SUDAN DIVESTMENT TASK FORCE

[oklahoma@sudandivestment.org](mailto:oklahoma@sudandivestment.org)

### **Oregon (Divested: Other Model)**

Since passing a divestment statute in Summer 2005, Oregon has divested 83% (\$35 million) of total asset holdings it has in the first four companies it identified in December of 2005: ABB, PetroChina, Sinopec, and Tatneft.

Based on Oregon's divestment statute (Or. Laws Ch. 774), the fiduciary of Oregon's investments, the Oregon Investment Council (OIC), developed the following definition of "offending company" in a December 7<sup>th</sup>, 2005, meeting:

"Any sole proprietorship, organization, firm, association, corporation, utility, partnership, venture, public franchise, franchisor, franchisee or its wholly owned subsidiary that exists for profit-making purposes or otherwise to secure economic advantage...that is doing business in Sudan: maintaining equipment, facilities, personnel or any other apparatus of business or commerce in Sudan, including the ownership or possession of real or personal property located in Sudan."<sup>7</sup>

Similar to Illinois, Oregon provides the following offending company exemption:

- (1) Investments in companies that are engaged solely in the provision of goods and services intended to relieve human suffering or to promote welfare, health, education or religious or spiritual activities.
- (2) Investments in United States companies authorized by the federal government to do business in Sudan.
- (3) Investments in companies that are engaged solely in journalistic activities.<sup>8</sup>

In contrast to Illinois' broad definition of an offending company as any entity with an equity or *non-equity* tie to Sudan (e.g. companies that provide goods or services to, obtain goods or services from, or have distribution agreements with offending companies), Oregon's definition of offending companies focuses on businesses with an equity tie to Sudan—factories, facilities, land, property, labor, etc. Oregon's legislation, does, however, direct divestment at most types of funds (stocks, bonds, commingled funds, index funds, etc.) for most of the state's investments; some short term investment funds were excluded from the divestment bill in a compromise with the Oregon Treasurer's Office.<sup>9</sup>

Based on their definition of offending companies, the OIC chose four companies for their initial stage of divestment in December 2005: PetroChina, ABB Lt, Sinopec, and Tatneft (the Stanford Four). It is not clear how or why these four companies were chosen. While the initial round did not include divestment from "indirect" holdings such as index funds containing offending stock, part of the policy that was adopted in December 2005 was a placeholder policy for the future implementation of ex-Sudan index funds. According to John Turner, Chief of Staff for the principle sponsor of Oregon's divestment legislation (Oregon Representative Peter Buckley), Oregon will implement "indirect" index fund

<sup>7</sup> OIC draft policy 4/1.15

<sup>8</sup> Section VII, Oregon SB 1089, Oregon Laws Ch 774. <http://www.leg.state.or.us/05orlaws/05sb0700.chr/0774scs.pdf>

<sup>9</sup> Personal communication with John Turner, Chief of Staff to Oregon State Representative Peter Buckley; [johnturner@gn.ai.com](mailto:johnturner@gn.ai.com)

## SUDAN DIVESTMENT TASK FORCE

divestment once appropriate index funds become available.<sup>10</sup>

In the future, Oregon will continue to work with its external managers to identify and screen its portfolios with an emphasis on the external fund managers taking the lead. Part of Oregon's law requires these managers to "act reasonably" to investigate companies' ties with Sudan, screen investments containing Oregon assets, and report back to the Treasury on any action taken. On or before January 15 of each year, the State Treasurer will report to the Legislative Assembly on actions taken by the State Treasurer and the OIC.<sup>11</sup> The State Treasurer will consult with the council in preparing the reports. Presumably, this reporting requirement will allow Oregon's legislature to track divestment progress and raise concerns if asset managers aren't making reasonable progress.

### *Bill Text:*

<http://landru.leg.state.or.us/05reg/asures/hb3400.dir/hb3499.intro.html>

### *Website and Articles:*

<http://www.sudandivestment.org/oregon>

### *Contact:*

Sudan Divestment Task Force  
[info@sudandivestment.org](mailto:info@sudandivestment.org)

## **Pennsylvania (Campaign Initiated)**

### *Legislative Status:*

State Representative Babette Josephs, chair of the House State Government Committee, has introduced House Bill 1140, based on the Sudan Divestment Task Force model of targeted Sudan divestment.

In July 2007 House Bill 1140 passed the Pennsylvania House of Representatives. The bill has been referred to the State Senate.

### **HB 1140:**

<http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2007&sessInd=0&billBody=H&billTyp=B&billNbr=1140&pn=1390>

### *Website and Articles:*

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<sup>10</sup> *Id.*

<sup>11</sup> Please see the 2007 report for more information. [http://www.sudandivestment.org/docs/Oregon Sudan Divestment 2007 Report from Treasurer.pdf](http://www.sudandivestment.org/docs/Oregon%20Sudan%20Divestment%202007%20Report%20from%20Treasurer.pdf)

## SUDAN DIVESTMENT TASK FORCE

<http://www.sudandivestment.org/pennsylvania>

*Contact:*

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### **Rhode Island (Divested: Task Force Model)**

*Legislative Status:*

On June 22nd, 2007 Governor Donald L. Carcieri signed Senate Bill 87 and House Bill 5142, both based off the Sudan Divestment Task Force model of targeted Sudan divestment.

*Website and Articles:*

<http://www.sudandivestment.org/rhodeisland>

*Contact:*

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Senior National Field Organizer, Sudan Divestment Task Force  
[RhodeIsland@sudandivestment.org](mailto:RhodeIsland@sudandivestment.org)

### **South Carolina (Legislation Failed)**

*Legislative Status:*

State Senator Joel Laurie had introduced Senate Bill 241, based of the California targeted Sudan divestment statute, however, the bill failed to pass the 2007 legislative session.

The South Carolina Retirement System doesn't currently hold international equity investments and therefore has no investments in companies targeted by the Sudan Divestment Task Force.

*Website and Articles:*

<http://www.sudan divestment.org/southcarolina>

*Contact:*

[Southcarolina@sudandivestment.org](mailto:Southcarolina@sudandivestment.org)

## SUDAN DIVESTMENT TASK FORCE

### **Tennessee (Campaign Initiated)**

#### *Legislative Status:*

A targeted Sudan divestment campaign has been initiated.

#### *Website and Articles:*

<http://www.sudandivestment.org/tennessee>

#### *Contact:*

**Max Croes**  
*Advocacy Associate, Sudan Divestment Task Force*  
[tennessee@sudandivestment.org](mailto:tennessee@sudandivestment.org)

### **Texas (Divested: Task Force Model)**

#### *Legislative Status:*

On June 15th, 2007 Governor Rick Perry held a public signing for Senate Bill 247, based off the Sudan Divestment Task Force model of targeted Sudan divestment.

Senator Rodney Ellis had introduced Senate Bill 247 and Representative Corbin Van Arsdale had introduced House Bill 667, companion legislation in the House of Representatives.

#### *Website and Articles:*

<http://www.sudandivestment.org/texas>

#### *Contact:*

**Adam Sterling**  
*Director, Sudan Divestment Task Force*  
[Texas@sudandivestment.org](mailto:Texas@sudandivestment.org)

### **Utah (Campaign Initiated)**

#### *Legislative Status:*

A targeted Sudan divestment campaign has been initiated.

#### *Website and Articles:*

## SUDAN DIVESTMENT TASK FORCE

<http://www.sudandivestment.org/utah>

*Contact:*

Max Croes  
Advocacy Associate, Sudan Divestment Task Force  
Utah@sudandivestment.org

### **Vermont (Divested: Task Force Model)**

*Legislative Status:*

In February 2007, Vermont State Treasurer Jeb Spaulding oversaw the state pension fund's targeted divestment from Sudan. Vermont became the second state to adopt the Task Force's model for targeted divestment and the seventh state overall to divest from Sudan.

*Website and Articles:*

<http://www.sudandivestment.org/vermont>

*Contact:*

Daniel Millenson  
National Advocacy Director, Sudan Divestment Task Force  
[Vermont@sudandivestment.org](mailto:Vermont@sudandivestment.org)

### **Virginia (Campaign Initiated)**

*Legislative Status:*

In early 2007, Virginia Delegates Shannon Valentine and John O'Bannon introduced HB 1828, based off the Sudan Divestment Task Force model of targeted Sudan divestment. State Senators Ken Cuccinelli, Jeannemarie Devolites Davis, and Patricia Ticer filed SB 1331, companion legislation in the Senate.

HB 1828 died in the Subcommittee on Compensation and Retirement for the House Appropriations Committee.

SB 1331 unanimously passed the Senate and passed the House Committee on Appropriations with a substitute. After the substitute failed to pass the Senate, a conference committee was established, but no compromise was reached and SB 1331 died in committee.

In 2008, targeted Sudan divestment legislation will be introduced in the House of Delegates by Delegates Shannon Valentine and John O'Bannon. Companion Senate

## SUDAN DIVESTMENT TASK FORCE

legislation is anticipated.

### *Website and Articles:*

<http://www.sudandivestment.org/virginia>

### *Contact:*

**Max Croes**  
*Advocacy Associate, Sudan Divestment Task Force*  
[Virginia@sudandivestment.org](mailto:Virginia@sudandivestment.org)

## **Washington (Campaign Initiated)**

### *Legislative Status:*

A targeted Sudan divestment campaign has been initiated.

### *Website and Articles:*

<http://www.sudandivestment.org/washington>

### *Contact:*

**Nina McMurry**  
*Advocacy Analyst, Sudan Divestment Task Force*  
[Washington@sudandivestment.org](mailto:Washington@sudandivestment.org)

## **West Virginia (Campaign Initiated)**

### *Legislative Status:*

A targeted Sudan divestment campaign has been initiated.

### *Website and Articles:*

<http://www.sudandivestment.org/westvirginia>

### *Contact:*

**Max Croes**  
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[westvirginia@sudandivestment.org](mailto:westvirginia@sudandivestment.org)

## SUDAN DIVESTMENT TASK FORCE

### **Wisconsin (Campaign Initiated)**

#### *Legislative Status:*

State Representative Fred Kessler (D-Milwaukee) has introduced AB 124 and State Senator Sheila Harsdorf (R-River Falls) has introduced SB 57. Both bills are based on the Sudan Divestment Task Force model of targeted divestment.

Assembly Bill 124 has been referred to the committee on financial institutions. Senate Bill 57 has been referred to the committee on Veterans and Military Affairs, Biotechnology and Financial Institutions.

#### *Website and Articles:*

<http://www.sudandivestment.org/wisconsin>

#### *Contact:*

Scott Warren  
Senior National Field Organizer, Sudan Divestment Task Force  
[Wisconsin@sudandivestment.org](mailto:Wisconsin@sudandivestment.org)

### **III. State of Divestment: Cities and Municipalities**

#### **Atlanta, Georgia (Campaign Initiated)**

A targeted Sudan divestment campaign has been initiated.

#### *Website and Articles:*

<http://www.sudandivestment.org/campaigns.asp?campaignid=257>

#### *Contact:*

Daniel Millenson  
National Advocacy Director  
[dmillenson@sudandivestment.org](mailto:dmillenson@sudandivestment.org)

#### **Buffalo, NY (Campaign Initiated)**

A targeted Sudan divestment campaign has been initiated.

**Attachment B**

**Sudan Divestment Task Force**

**"Targeted Sudan Divestment: Model Legislation"**

*[http://www.sudandivestment.org/docs/task\\_force\\_targeted\\_divestment\\_model.pdf](http://www.sudandivestment.org/docs/task_force_targeted_divestment_model.pdf)*



# SUDAN DIVESTMENT

TASK FORCE

A Project of the Genocide Intervention Network

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## Targeted Sudan Divestment: Model Legislation

The Divestment Policy of  
The Sudan Divestment Task Force

December 8, 2006 (UPDATED) *April 16, 2007*

## SUDAN DIVESTMENT TASK FORCE

In this document, sections that are highlighted in red are intended to be filled in by each institution, council, or legislature adopting targeted divestment.

AN ACT relating to: provisions for how the [pension fund systems or other affected entities of the state] shall address certain investments relating to Sudan.

The people of the [State of x, represented in the State Senate and Assembly], do enact as follows:

### Section 1: Legislative Findings

(a) On July 23, 2004, the United States Congress declared that "the atrocities unfolding in Darfur, Sudan, are genocide."

(b) On September 9, 2004, Secretary of State Colin L. Powell told the U.S. Senate Foreign Relations Committee that "genocide has occurred and may still be occurring in Darfur" and "the Government of Sudan and the Janjaweed bear responsibility."

(c) On September 21, 2004, addressing the United Nations General Assembly, President George W. Bush affirmed the Secretary of State's finding and stated, "[A]t this hour, the world is witnessing terrible suffering and horrible crimes in the Darfur region of Sudan, crimes my government has concluded are genocide."

(d) On December 7, 2004, the U.S. Congress noted that the genocidal policy in Darfur has led to reports of "systematic rape of thousands of women and girls, the abduction of women and children, and the destruction of hundreds of ethnically African villages, including the poisoning of their wells and the plunder of their crops and cattle upon which the people of such villages sustain themselves."

(e) Also on December 7, 2004, Congress found that "the Government of Sudan has restricted access by humanitarian and human rights workers to the Darfur area through

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intimidation by military and security forces, and through bureaucratic and administrative obstruction, in an attempt to inflict the most devastating harm on those individuals displaced from their villages and homes without any means of sustenance or shelter."

(f) On September 25, 2006, Congress reaffirmed that "the genocide unfolding in the Darfur region of Sudan is characterized by acts of terrorism and atrocities directed against civilians, including mass murder, rape, and sexual violence committed by the Janjaweed and associated militias with the complicity and support of the National Congress Party-led faction of the Government of Sudan."

(g) On September 26, 2006, the U.S. House of Representatives stated that "an estimated 300,000 to 400,000 people have been killed by the Government of Sudan and its Janjaweed allies since the [Darfur] crisis began in 2003, more than 2,000,000 people have been displaced from their homes, and more than 250,000 people from Darfur remain in refugee camps in Chad."

(h) The Darfur crisis represents the first time the United States Government has labeled ongoing atrocities a genocide.

(i) The Federal Government has imposed sanctions against the Government of Sudan since 1997. These sanctions are monitored through the U.S. Treasury Department's Office of Foreign Assets Control (OFAC).

(j) According to a former chair of the U.S. Securities and Exchange Commission, "the fact that a foreign company is doing material business with a country, government, or entity on OFAC's sanctions list is, in the SEC staff's view, substantially likely to be significant to a reasonable investor's decision about whether to invest in that company."

(k) Since 1993, the U.S. Secretary of State has determined that Sudan is a country the government of which has repeatedly provided support for acts of international terrorism.

## SUDAN DIVESTMENT TASK FORCE

thereby restricting United States assistance, defense exports and sales, and financial and other transactions with the Government of Sudan.

(l) A 2006 U.S. House of Representatives report states that "a company's association with sponsors of terrorism and human rights abuses, no matter how large or small, can have a materially adverse result on a public company's operations, financial condition, earnings, and stock prices, all of which can negatively affect the value of an investment."

(m) In response to the financial risk posed by investments in companies doing business with a terrorist-sponsoring state, the Securities and Exchange Commission established its Office of Global Security Risk to provide for enhanced disclosure of material information regarding such companies.

(n) The current Sudan divestment movement encompasses nearly 100 universities, cities, states, and private pension plans.

(o) Companies facing such widespread divestment present further material risk to remaining investors.

(p) It is a fundamental responsibility of the [State of X] to decide where, how, and by whom financial resources in its control should be invested, taking into account numerous pertinent factors.

(q) It is the prerogative and desire of the [State of X], in respect to investment resources in its control and to the extent reasonable, with due consideration for, among other things, return on investment, on behalf of itself and its investment beneficiaries, not to participate in an ownership or capital-providing capacity with entities that provide significant practical support for genocide, including certain non-United States companies presently doing business in Sudan.

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(r) It is the judgment of the [State Legislature] that this Act should remain in effect only insofar as it continues to be consistent with, and does not unduly interfere with, the foreign policy of the United States as determined by the Federal Government.

(s) It is the judgment of this [State Legislature] that mandatory divestment of public funds from certain companies is a measure that should be employed sparingly and judiciously. A Congressional and Presidential declaration of genocide satisfies this high threshold.

### Section 2: Definitions

As used in this Act, the following definitions shall apply:

(a) "Active Business Operations" means all Business Operations that are not Inactive Business Operations.

(b) "Business Operations" means engaging in commerce in any form in Sudan, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(c) "Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for profit-making purposes.

(d) "Complicit" means taking actions during any preceding twenty (20) month period which have supported or promoted the genocidal campaign in Darfur, including, but not limited to, preventing Darfur's victimized population from communicating with each other, encouraging Sudanese citizens to speak out against an internationally approved

## SUDAN DIVESTMENT TASK FORCE

security force for Darfur, actively working to deny, cover up, or alter the record on human rights abuses in Darfur, or other similar actions.

(e) "Direct Holdings" in a Company means all securities of that Company held directly by the Public Fund or in an account or fund in which the Public Fund owns all shares or interests.

(f) "Government of Sudan" means the government in Khartoum, Sudan, which is led by the National Congress Party (formerly known as the National Islamic Front) or any successor government formed on or after October 13, 2006 (including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan) and does not include the regional government of southern Sudan.

(g) "Inactive Business Operations" means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

(h) "Indirect Holdings" in a Company means all securities of that Company held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the Public Fund, in which the Public Fund owns shares or interests together with other investors not subject to the provisions of this Act.

(i) "Marginalized Populations Of Sudan" include, but are not limited to, the portion of the population in the Darfur region that has been genocidally victimized; the portion of the population of southern Sudan victimized by Sudan's North-South civil war; the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain regions; and the Anri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

## SUDAN DIVESTMENT TASK FORCE

(j) "Military Equipment" means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including, but not limited to, radar systems or military-grade transport vehicles; or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(k) "Mineral Extraction Activities" include exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(l) "Oil-Related Activities" include, but are not limited to, owning rights to oil blocks; exploring, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including by providing supplies or services in support of such activities, provided that the mere retail sale of gasoline and related consumer products shall not be considered Oil-Related Activities.

(m) "Power Production Activities" means any Business Operation that involves a project commissioned by the National Electricity Corporation (NEC) of Sudan or other similar Government of Sudan entity whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(n) "Public Fund" means [the state's pension fund systems and other affected assets] or the [trustees and other appropriate designates] in charge of [the state's pension fund systems and other assets targeted by this bill].

*[Important Drafting Note: It is critical in this definition to specify precisely which of the many funds/assets managed by the state will be targeted (or, more generally, which*

## SUDAN DIVESTMENT TASK FORCE

*TYPES of funds/assets are to be targeted) and then specify exactly who the appropriate manager of such funds/assets are. It may be the case that not all funds/assets under management by a trustee are appropriate for targeting and this needs to be specified here in the definition of Public Fund.]*

(o) "Scrutinized" Company means any Company that meets the criteria in paragraph (1), paragraph (2), or paragraph (3) below:

(1) The Company has Business Operations that involve contracts with and/or provision of supplies or services to (A) the Government of Sudan, (B) Companies in which the Government of Sudan has any direct or indirect equity share, (C) Government of Sudan-commissioned consortiums or projects, or (D) Companies involved in Government of Sudan-commissioned consortiums or projects; and

(i) More than ten percent (10%) of the Company's revenues or assets linked to Sudan involve Oil-Related Activities or Mineral Extraction Activities; less than seventy-five percent (75%) of the Company's revenues or assets linked to Sudan involve contracts with and/or provision of Oil-Related or Mineral Extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government; and the Company has failed to take Substantial Action; or

(ii) More than ten percent (10%) of the Company's revenues or assets linked to Sudan involve Power Production Activities; less than seventy-five percent (75%) of the Company's Power Production Activities include projects whose intent is to provide power or electricity to the Marginalized Populations Of Sudan; and the Company has failed to take Substantial Action.

(2) The Company is Complicit in the Darfur genocide.

## SUDAN DIVESTMENT TASK FORCE

(3) The Company supplies Military Equipment within Sudan, unless it clearly shows that the Military Equipment cannot be used to facilitate offensive military actions in Sudan or the Company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict, for example, through post-sale tracking of such equipment by the Company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

Notwithstanding anything herein to the contrary, a Social Development Company which is not Complicit in the Darfur genocide shall not be considered a Scrutinized Company.

(p) "Social Development Company" means a Company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to Oil-Related Activities, Mineral Extraction Activities, or Power Production Activities.

(q) "Substantial Action" means adopting, publicizing, and implementing a formal plan to cease Scrutinized Business Operations within one year and to refrain from any such new Business Operations; or undertaking significant humanitarian efforts in conjunction with an international organization, the Government of Sudan, the regional government of southern Sudan, or a non-profit entity and evaluated and certified by an independent third party to be substantial in relationship to the company's Sudan Business Operations and of benefit to one or more Marginalized Populations of Sudan; or through engagement with the Government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

## SUDAN DIVESTMENT TASK FORCE

### Section 3: Identification of Companies

(a) Within 90 days following passage of this Act, the Public Fund shall make its best efforts to identify all Scrutinized Companies in which the Public Fund has Direct or Indirect Holdings or could possibly have such holdings in the future. Such effort shall include, as appropriate:

(1) Reviewing and relying, as appropriate in the Public Fund's judgment, on publicly available information regarding Companies with Business Operations in Sudan, including information provided by non-profit organizations, research firms, international organizations, and government entities; and/or

(2) Contacting asset managers contracted by the Public Fund that invest in Companies with Business Operations in Sudan; and/or

(3) Contacting other institutional investors that have divested from and/or engaged with Companies that have Business Operations in Sudan.

(b) By the first meeting of the Public Fund following the 90-day period described in subsection (a), the Public Fund shall assemble all Scrutinized Companies identified into a "Scrutinized Companies List."

(c) The Public Fund shall update the Scrutinized Companies List on a quarterly basis based on evolving information from, among other sources, those listed in subsection (a).

### Section 4: Required Actions

The Public Fund shall adhere to the following procedure for Companies on the Scrutinized Companies List:

## SUDAN DIVESTMENT TASK FORCE

### (a) Engagement

(1) The Public Fund shall immediately determine the Companies on the Scrutinized Companies List in which the Public Fund owns Direct or Indirect Holdings.

(2) For each Company identified in paragraph (1) with only Inactive Business Operations, the Public Fund shall send a written notice informing the Company of this Act and encouraging it to continue to refrain from initiating Active Business Operations in Sudan until it is able to avoid Scrutinized Business Operations. The Public Fund shall continue such correspondence on a semi-annual basis.

(3) For each Company newly identified in paragraph (1) with Active Business Operations, the Public Fund shall send a written notice informing the Company of its Scrutinized Company status and that it may become subject to divestment by the Public Fund. The notice shall offer the Company the opportunity to clarify its Sudan-related activities and shall encourage the Company, within 90 days, to either cease its Scrutinized Business Operations or convert such operations to Inactive Business Operations in order to avoid qualifying for divestment by the Public Fund.

(4) If, within 90 days following the Public Fund's first engagement with a Company pursuant to paragraph (3), that Company ceases Scrutinized Business Operations, the Company shall be removed from the Scrutinized Companies List and the provisions of this Section shall cease to apply to it unless it resumes Scrutinized Business Operations. If, within 90 days following the Public Fund's first engagement, the Company converts its Scrutinized Active Business Operations to Inactive Business Operations, the Company shall be subject to all provisions relating thereto.

### (b) Divestment

## SUDAN DIVESTMENT TASK FORCE

(1) If, after 90 days following the Public Fund's first engagement with a Company pursuant to subsection (a)(3), the Company continues to have Scrutinized Active Business Operations, and only while such Company continues to have Scrutinized Active Business Operations, the Public Fund shall sell, redeem, divest, or withdraw all publicly-traded securities of the Company, except as provided below, according to the following schedule:

(i) At least 50% of such assets shall be removed from the Public Fund's assets under management by 9 months after the Company's most recent appearance on the Scrutinized Companies List.

(ii) 100% of such assets shall be removed from the Public Fund's assets under management within 15 months after the Company's most recent appearance on the Scrutinized Companies List.

(2) If a Company that ceased Scrutinized Active Business Operations following engagement pursuant to subsection (a)(3) resumes such operations, paragraph (1) shall immediately apply, and the Public Fund shall send a written notice to the Company. The Company shall also be immediately reintroduced onto the Scrutinized Companies List.

### (c) Prohibition

At no time shall the Public Fund acquire securities of Companies on the Scrutinized Companies List that have Active Business Operations, except as provided below.

### (d) Exemption

## SUDAN DIVESTMENT TASK FORCE

No Company which the United States Government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Sudan shall be subject to divestment or investment prohibition pursuant to subsections (b) and (c).

### (c) Excluded Securities

Notwithstanding anything herein to the contrary, subsections (b) and (c) shall not apply to Indirect Holdings in actively managed investment funds. The Public Fund shall, however, submit letters to the managers of such investment funds containing Companies with Scrutinized Active Business Operations requesting that they consider removing such Companies from the fund or create a similar actively managed fund with Indirect Holdings devoid of such Companies. If the manager creates a similar fund, the Public Fund shall replace all applicable investments with investments in the similar fund in an expedited timeframe consistent with prudent investing standards. For the purposes of this Section, "private equity" funds shall be deemed to be actively managed investment funds.

### Section 5: Reporting

(a) The Public Fund shall file a publicly-available report to the [State Legislature and Attorney General] that includes the Scrutinized Companies List within 30 days after the list is created.

(b) Annually thereafter, the Public Fund shall file a publicly-available report to the [State Legislature and Attorney General] and send a copy of that report to the United States Presidential Special Envoy to Sudan (or an appropriate designee or successor) that includes:

(1) A summary of correspondence with Companies engaged by the Public Fund under Sections 4(a)(2) and (a)(3);

## SUDAN DIVESTMENT TASK FORCE

- (2) All investments sold, redeemed, divested, or withdrawn in compliance with Section 4(b);
- (3) All prohibited investments under Section 4(c); and
- (4) Any progress made under Section 4(e).

### Section 6: Provisions for Expiration of Act

This Act shall expire upon the occurrence of any of the following:

- (a) The Congress or President of the United States declares that the Darfur genocide has been halted for at least 12 months; or
- (b) The United States revokes all sanctions imposed against the Government of Sudan; or
- (c) The Congress or President of the United States declares that the Government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons; or
- (d) The Congress or President of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this Act interferes with the conduct of United States foreign policy.

### Section 7: Other Legal Obligations

With respect to actions taken in compliance with this Act, including all good faith determinations regarding Companies as required by this Act, the Public Fund shall be

## SUDAN DIVESTMENT TASK FORCE

exempt from any conflicting statutory or common law obligations, including any such obligations in respect to choice of asset managers, investment funds, or investments for the Public Fund's securities portfolios.

### Section 8: Reinvestment in Certain Companies with Scrutinized Active Business Operations

Notwithstanding anything herein to the contrary, the Public Fund shall be permitted to cease divesting from certain Scrutinized Companies pursuant to Section 4(b) and/or reinvest in certain Scrutinized Companies from which it divested pursuant to Section 4(b) if clear and convincing evidence shows that the value for all assets under management by the Public Fund becomes equal to or less than 99.50% (50 basis points) of the hypothetical value of all assets under management by the Public Fund assuming no divestment for any company had occurred under Section 4(b). Cessation of divestment, reinvestment, and/or any subsequent ongoing investment authorized by this section shall be strictly limited to the minimum steps necessary to avoid the contingency set forth in the preceding sentence. For any cessation of divestment, reinvestment, and/or subsequent ongoing investment authorized by this section, the Public Fund shall provide a written report to the [State's legislature and Attorney General] in advance of initial reinvestment, updated semi-annually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease divestment, reinvest, and/or remain invested in Companies with Scrutinized Active Business Operations. This section has no application to reinvestment in Companies on the ground that they have ceased to have Scrutinized Active Business Operations.

### Section 9: Enforcement

The Attorney General is charged with enforcing the provisions of this Act and, through any lawful designee, may bring such actions in court as are necessary to do so.

### Section 10: Severability

## SUDAN DIVESTMENT TASK FORCE

If any one or more provision, section, subsection, sentence, clause, phrase, or word of this legislation or the application thereof to any person or circumstance is found to be invalid, illegal, unenforceable or unconstitutional, the same is hereby declared to be severable and the balance of this legislation shall remain effective and functional notwithstanding such invalidity, illegality, unenforceability or unconstitutionality. The [State Legislature] hereby declares that it would have passed this legislation, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared invalid, illegal, unenforceable or unconstitutional, including, but not limited to, each of the engagement, divestment, and prohibition provisions of this legislation.

**Attachment C**

Illinois Public Act No. 95-521, 2007

**"An Act to disassociate from genocide and terrorism in Sudan"**

LEXSEE 2007 BILL TEXT IL S.B. 1169

THE STATE OF ILLINOIS  
BILL TEXT

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2007 IL S.B. 1169

ILLINOIS 95TH GENERAL ASSEMBLY

SENATE BILL 1169

BILL TRACKING REPORT: 2007 Bill Tracking IL S.B. 1169

*2007 Bill Text IL S.B. 1169*

**VERSION:** Enacted

**VERSION-DATE:** August 28, 2007

**SYNOPSIS:** AN ACT concerning finance.

**NOTICE:** [A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A]  
[D> Text within these symbols is deleted <D]

**TEXT:** WHEREAS, This amendatory Act of the 95th General Assembly may also be cited as an Act to disassociate from genocide and terrorism in Sudan; therefore

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Deposit of State Moneys Act is amended by reenacting and changing Section 22.5 as follows:

(15 ILCS 520/22.5)(from Ch. 130, par. 41a)

(For force and effect of certain provisions, see Section 90 of P.A. 94-79)

Sec. 22.5. Permitted investments. The State Treasurer may, with the approval of the Governor, invest and reinvest any State money in the treasury which is not needed for current expenditures due or about to become due, in obligations of the United States government or its agencies or of National Mortgage Associations established by or under the National Housing Act, 1201 U.S.C. 1701 et seq., or in mortgage participation certificates representing undivided interests in specified, first-lien conventional residential Illinois mortgages that are underwritten, insured, guaranteed, or purchased by the Federal Home Loan Mortgage Corporation or in Affordable Housing Program Trust Fund Bonds or Notes as defined in and issued pursuant to the Illinois Housing Development Act. All such obligations shall be considered as cash and may be delivered over as cash by a State Treasurer to his successor.

The State Treasurer may, with the approval of the Governor, purchase any state bonds with any money in the State Treasury that has been set aside and held for the payment of the principal of and interest on the bonds. The bonds shall be considered as cash and may be delivered over as cash by the State Treasurer to his successor.

The State Treasurer may, with the approval of the Governor, invest or reinvest any State money in the treasury that is not needed for current expenditure due or about to become due, or any money in the State Treasury that has been set aside and held for the payment of the principal of and the interest on any State bonds, in shares, withdrawable accounts,

and investment certificates of savings and building and loan associations, incorporated under the laws of this State or any other state or under the laws of the United States; provided, however, that investments may be made only in those savings and loan or building and loan associations the shares and withdrawable accounts or other forms of investment securities of which are insured by the Federal Deposit Insurance Corporation

The State Treasurer may not invest State money in any savings and loan or building and loan association unless a commitment by the savings and loan (or building and loan) association, executed by the president or chief executive officer of that association, is submitted in the following form:

The ..... Savings and Loan (or Building and Loan) Association pledges not to reject arbitrarily mortgage loans for residential properties within any specific part of the community served by the savings and loan (or building and loan) association because of the location of the property. The savings and loan (or building and loan) association also pledges to make loans available on low and moderate income residential property throughout the community within the limits of its legal restrictions and prudent financial practices.

The State Treasurer may, with the approval of the Governor, invest or reinvest, at a price not to exceed par, any State money in the treasury that is not needed for current expenditures due or about to become due, or any money in the State Treasury that has been set aside and held for the payment of the principal of and interest on any State bonds, in bonds issued by counties or municipal corporations of the State of Illinois

The State Treasurer may, with the approval of the Governor, invest or reinvest any State money in the Treasury which is not needed for current expenditure, due or about to become due, or any money in the State Treasury which has been set aside and held for the payment of the principal of and the interest on any State bonds, in participations in loans, the principal of which participation is fully guaranteed by an agency or instrumentality of the United States government; provided, however, that such loan participations are represented by certificates issued only by banks which are incorporated under the laws of this State or any other state or under the laws of the United States, and such banks, but not the loan participation certificates, are insured by the Federal Deposit Insurance Corporation.

The State Treasurer may, with the approval of the Governor, invest or reinvest any State money in the Treasury that is not needed for current expenditure, due or about to become due, or any money in the State Treasury that has been set aside and held for the payment of the principal of and the interest on any State bonds, in any of the following:

(1) Bonds, notes, certificates of indebtedness, Treasury bills, or other securities now or hereafter issued that are guaranteed by the full faith and credit of the United States of America as to principal and interest.

(2) Bonds, notes, debentures, or other similar obligations of the United States of America, its agencies, and instrumentalities.

(2.5) Bonds, notes, debentures, or other similar obligations of a foreign government, other than the Republic of the Sudan, that are guaranteed by the full faith and credit of that government as to principal and interest, but only if the foreign government has not defaulted and has met its payment obligations in a timely manner on all similar obligations for a period of at least 25 years immediately before the time of acquiring those obligations.

(3) Interest-bearing savings accounts, interest-bearing certificates of deposit, interest-bearing time deposits, or any other investments constituting direct obligations of any bank as defined by the Illinois Banking Act.

(4) Interest-bearing accounts, certificates of deposit, or any other investments constituting direct obligations of any savings and loan associations incorporated under the laws of this State or any other state or under the laws of the United States.

(5) Dividend-bearing share accounts, share certificate accounts, or class of share accounts of a credit union chartered under the laws of this State or the laws of the United States; provided, however, the principal office of the credit union must be located within the State of Illinois.

(6) Bankers' acceptances of banks whose senior obligations are rated in the top 2 rating categories by 2 national rating agencies and maintain that rating during the term of the investment.

(7) Short-term obligations of corporations organized in the United States with assets exceeding \$ 500,000,000 if (i) the obligations are rated at the time of purchase at one of the 3 highest classifications established by at least 2 standard rating services and mature not later than 180 days from the date of purchase, (ii) the purchases do not exceed 10% of the corporation's outstanding obligations, (iii) no more than one-third of the public agency's funds are invested in short-term obligations of corporations, and (iv) the corporation **[A] HAS NOT BEEN IDENTIFIED AS A FORBIDDEN ENTITY, AS THAT TERM IS DEFINED IN SECTION 1-110.6 OF THE ILLINOIS PENSION CODE, BY AN INDEPENDENT RESEARCHING FIRM THAT SPECIALIZES IN GLOBAL SECURITY RISK THAT HAS BEEN ENGAGED BY THE STATE TREASURER [D] is not a forbidden entity, as defined in Section 22.6 of the Deposit of State Moneys Act [D]**.

(8) Money market mutual funds registered under the Investment Company Act of 1940, provided that the portfolio of the money market mutual fund is limited to obligations described in this Section and to agreements to repurchase such obligations.

(9) The Public Treasurers' Investment Pool created under Section 17 of the State Treasurer Act or in a fund managed, operated, and administered by a bank.

(10) Repurchase agreements of government securities having the meaning set out in the Government Securities Act of 1986 subject to the provisions of that Act and the regulations issued thereunder.

(11) Investments made in accordance with the Technology Development Act.

For purposes of this Section, "agencies" of the United States Government includes:

(i) the federal land banks, federal intermediate credit banks, banks for cooperatives, federal farm credit banks, or any other entity authorized to issue debt obligations under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and Acts amendatory thereto;

(ii) the federal home loan banks and the federal home loan mortgage corporation;

(iii) the Commodity Credit Corporation; and

(iv) any other agency created by Act of Congress.

The Treasurer may, with the approval of the Governor, lend any securities acquired under this Act. However, securities may be lent under this Section only in accordance with Federal Financial Institution Examination Council guidelines and only if the securities are collateralized at a level sufficient to assure the safety of the securities, taking into account market value fluctuation. The securities may be collateralized by cash or collateral acceptable under Sections 11 and 11.1. (Source: P.A. 94-79, eff. 1-27-06, for force and effect of certain provisions, see Section 90 of P.A. 94-79.)

Section 10. The State Treasurer Act is amended by changing Section 16.5 as follows:

(15 ILCS 505/16.5)

Sec. 16.5. College Savings Pool. The State Treasurer may establish and administer a College Savings Pool to supplement and enhance the investment opportunities otherwise available to persons seeking to finance the costs of higher education. The State Treasurer, in administering the College Savings Pool, may receive moneys paid into the pool by a participant and may serve as the fiscal agent of that participant for the purpose of holding and investing those moneys.

"Participant", as used in this Section, means any person who makes investments in the pool. "Designated beneficiary", as used in this Section, means any person on whose behalf an account is established in the College Savings Pool by a participant. Both in-state and out-of-state persons may be participants and designated beneficiaries in the College Savings Pool.

New accounts in the College Savings Pool shall be processed through participating financial institutions. "Participating financial institution", as used in this Section, means any financial institution insured by the Federal Deposit Insurance Corporation and lawfully doing business in the State of Illinois and any credit union approved by the State Treasurer and lawfully doing business in the State of Illinois that agrees to process new accounts in the College Savings Pool. Participating financial institutions may charge a processing fee to participants to open an account in the pool that shall not exceed \$ 30 until the year 2001. Beginning in 2001 and every year thereafter, the maximum fee limit shall be adjusted by the Treasurer based on the Consumer Price Index for the North Central Region as published by the United States Department of Labor, Bureau of Labor Statistics for the immediately preceding calendar year. Every contribution

received by a financial institution for investment in the College Savings Pool shall be transferred from the financial institution to a location selected by the State Treasurer within one business day following the day that the funds must be made available in accordance with federal law. All communications from the State Treasurer to participants shall reference the participating financial institution at which the account was processed.

The Treasurer may invest the moneys in the College Savings Pool in the same manner, in the same types of investments [D], and subject to the same limitations [D] provided for the investment of moneys by the Illinois State Board of Investment. To enhance the safety and liquidity of the College Savings Pool, to ensure the diversification of the investment portfolio of the pool, and in an effort to keep investment dollars in the State of Illinois, the State Treasurer shall make a percentage of each account available for investment in participating financial institutions doing business in the State. The State Treasurer shall deposit with the participating financial institution at which the account was processed the following percentage of each account at a prevailing rate offered by the institution, provided that the deposit is federally insured or fully collateralized and the institution accepts the deposit: 10% of the total amount of each account for which the current age of the beneficiary is less than 7 years of age, 20% of the total amount of each account for which the beneficiary is at least 7 years of age and less than 12 years of age, and 50% of the total amount of each account for which the current age of the beneficiary is at least 12 years of age. The State Treasurer shall adjust each account at least annually to ensure compliance with this Section. The Treasurer shall develop, publish, and implement an investment policy covering the investment of the moneys in the College Savings Pool. The policy shall be published (i) at least once each year in at least one newspaper of general circulation in both Springfield and Chicago and (ii) each year as part of the audit of the College Savings Pool by the Auditor General, which shall be distributed to all participants. The Treasurer shall notify all participants in writing, and the Treasurer shall publish in a newspaper of general circulation in both Chicago and Springfield, any changes to the previously published investment policy at least 30 calendar days before implementing the policy. Any investment policy adopted by the Treasurer shall be reviewed and updated if necessary within 90 days following the date that the State Treasurer takes office.

Participants shall be required to use moneys distributed from the College Savings Pool for qualified expenses at eligible educational institutions. "Qualified expenses", as used in this Section, means the following: (i) tuition, fees, and the costs of books, supplies, and equipment required for enrollment or attendance at an eligible educational institution and (ii) certain room and board expenses incurred while attending an eligible educational institution at least half-time. "Eligible educational institutions", as used in this Section, means public and private colleges, junior colleges, graduate schools, and certain vocational institutions that are described in Section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) and that are eligible to participate in Department of Education student aid programs. A student shall be considered to be enrolled at least half-time if the student is enrolled for at least half the full-time academic work load for the course of study the student is pursuing as determined under the standards of the institution at which the student is enrolled. Distributions made from the pool for qualified expenses shall be made directly to the eligible educational institution, directly to a vendor, or in the form of a check payable to both the beneficiary and the institution or vendor. Any moneys that are distributed in any other manner or that are used for expenses other than qualified expenses at an eligible educational institution shall be subject to a penalty of 10% of the earnings unless the beneficiary dies, becomes disabled, or receives a scholarship that equals or exceeds the distribution. Penalties shall be withheld at the time the distribution is made.

The Treasurer shall limit the contributions that may be made on behalf of a designated beneficiary based on an actuarial estimate of what is required to pay tuition, fees, and room and board for 5 undergraduate years at the highest cost eligible educational institution. The contributions made on behalf of a beneficiary who is also a beneficiary under the Illinois Prepaid Tuition Program shall be further restricted to ensure that the contributions in both programs combined do not exceed the limit established for the College Savings Pool. The Treasurer shall provide the Illinois Student Assistance Commission each year at a time designated by the Commission, an electronic report of all participant accounts in the Treasurer's College Savings Pool, listing total contributions and disbursements from each individual account during the previous calendar year. As soon thereafter as is possible following receipt of the Treasurer's report, the Illinois Student Assistance Commission shall, in turn, provide the Treasurer with an electronic report listing those College Savings Pool participants who also participate in the State's prepaid tuition program, administered by the Commission. The Commission shall be responsible for filing any combined tax reports regarding State qualified savings programs required by the United States Internal Revenue Service. The Treasurer shall work with the Illinois Student Assistance Commission to coordinate the marketing of the College Savings Pool and the Illinois Prepaid Tuition Program when considered beneficial by the Treasurer and the Director of the Illinois Student Assistance Commission. The Treasurer's office shall not publicize or otherwise market the College Savings Pool or accept any moneys into the College Savings Pool prior to March 1, 2000. The Treasurer shall provide a separate accounting for each designated beneficiary to each

participant, the Illinois Student Assistance Commission, and the participating financial institution at which the account was processed. No interest in the program may be pledged as security for a loan.

The assets of the College Savings Pool and its income and operation shall be exempt from all taxation by the State of Illinois and any of its subdivisions. The accrued earnings on investments in the Pool once disbursed on behalf of a designated beneficiary shall be similarly exempt from all taxation by the State of Illinois and its subdivisions, so long as they are used for qualified expenses. Contributions to a College Savings Pool account during the taxable year may be deducted from adjusted gross income as provided in Section 203 of the Illinois Income Tax Act. The provisions of this paragraph are exempt from Section 250 of the Illinois Income Tax Act.

The Treasurer shall adopt rules he or she considers necessary for the efficient administration of the College Savings Pool. The rules shall provide whatever additional parameters and restrictions are necessary to ensure that the College Savings Pool meets all of the requirements for a qualified state tuition program under Section 529 of the Internal Revenue Code (26 U.S.C. 529). The rules shall provide for the administration expenses of the pool to be paid from its earnings and for the investment earnings in excess of the expenses and all moneys collected as penalties to be credited or paid monthly to the several participants in the pool in a manner which equitably reflects the differing amounts of their respective investments in the pool and the differing periods of time for which those amounts were in the custody of the pool. Also, the rules shall require the maintenance of records that enable the Treasurer's office to produce a report for each account in the pool at least annually that documents the account balance and investment earnings. Notice of any proposed amendments to the rules and regulations shall be provided to all participants prior to adoption. Amendments to rules and regulations shall apply only to contributions made after the adoption of the amendment.

Upon creating the College Savings Pool, the State Treasurer shall give bond with 2 or more sufficient sureties, payable to and for the benefit of the participants in the College Savings Pool, in the penal sum of \$ 1,000,000, conditioned upon the faithful discharge of his or her duties in relation to the College Savings Pool. (Source: P.A. 92-16, eff. 6-28-01; 92-439, eff. 8-17-01; 92-626, eff. 7-11-02; 93-812, eff. 1-1-05.)

Section 15. The Illinois Pension Code is amended by adding Sections 1-110.6 and 1-110.10 as follows:

(40 ILCS 5/1-110.6 new)

[A] SEC. 1-110.6. TRANSACTIONS PROHIBITED BY RETIREMENT SYSTEMS; REPUBLIC OF THE SUDAN. <A]

[A] (A) THE GOVERNMENT OF THE UNITED STATES HAS DETERMINED THAT SUDAN IS A NATION THAT SPONSORS TERRORISM AND GENOCIDE. THE GENERAL ASSEMBLY FINDS THAT ACTS OF TERRORISM HAVE CAUSED INJURY AND DEATH TO ILLINOIS AND UNITED STATES RESIDENTS WHO SERVE IN THE UNITED STATES MILITARY, AND POSE A SIGNIFICANT THREAT TO SAFETY AND HEALTH IN ILLINOIS. THE GENERAL ASSEMBLY FINDS THAT PUBLIC EMPLOYEES AND THEIR FAMILIES, INCLUDING POLICE OFFICERS AND FIREFIGHTERS, ARE MORE LIKELY THAN OTHERS TO BE AFFECTED BY ACTS OF TERRORISM. THE GENERAL ASSEMBLY FINDS THAT SUDAN CONTINUES TO SOLICIT INVESTMENT AND COMMERCIAL ACTIVITIES BY FORBIDDEN ENTITIES, INCLUDING PRIVATE MARKET FUNDS. THE GENERAL ASSEMBLY FINDS THAT INVESTMENTS IN FORBIDDEN ENTITIES ARE INHERENTLY AND UNDULY RISKY, NOT IN THE INTERESTS OF PUBLIC PENSIONERS AND ILLINOIS TAXPAYERS, AND AGAINST PUBLIC POLICY. THE GENERAL ASSEMBLY FINDS THAT SUDAN'S CAPACITY TO SPONSOR TERRORISM AND GENOCIDE DEPENDS ON OR IS SUPPORTED BY THE ACTIVITIES OF FORBIDDEN ENTITIES. THE GENERAL ASSEMBLY FURTHER FINDS AND RE-AFFIRMS THAT THE PEOPLE OF THE STATE, ACTING THROUGH THEIR REPRESENTATIVES, DO NOT WANT TO BE ASSOCIATED WITH FORBIDDEN ENTITIES, GENOCIDE, AND TERRORISM. <A]

[A] (B) FOR PURPOSES OF THIS SECTION: <A]

[A] "BUSINESS OPERATIONS" MEANS MAINTAINING, SELLING, OR LEASING EQUIPMENT, FACILITIES, PERSONNEL, OR ANY OTHER APPARATUS OF BUSINESS OR COMMERCE IN THE REPUBLIC OF THE SUDAN, INCLUDING THE OWNERSHIP OR POSSESSION OF REAL OR PERSONAL PROPERTY LOCATED IN THE REPUBLIC OF THE SUDAN. <A]

[A] "CERTIFYING COMPANY" MEANS A COMPANY THAT (1) DIRECTLY PROVIDES ASSET MANAGEMENT SERVICES OR ADVICE TO A RETIREMENT SYSTEM OR (2) AS DIRECTLY AUTHORIZED OR REQUESTED BY A RETIREMENT SYSTEM (A) IDENTIFIES PARTICULAR INVESTMENT OPTIONS FOR

CONSIDERATION OR APPROVAL; (B) CHOOSES PARTICULAR INVESTMENT OPTIONS; OR (C) ALLOCATES PARTICULAR AMOUNTS TO BE INVESTED. IF NO COMPANY MEETS THE CRITERIA SET FORTH IN THIS PARAGRAPH, THEN "CERTIFYING COMPANY" SHALL MEAN THE RETIREMENT SYSTEM OFFICER WHO, AS DESIGNATED BY THE BOARD, EXECUTES THE INVESTMENT DECISIONS MADE BY THE BOARD, OR, IN THE ALTERNATIVE, THE COMPANY THAT THE BOARD AUTHORIZES TO COMPLETE THE CERTIFICATION AS THE AGENT OF THAT OFFICER. <A>

[A> "COMPANY" IS ANY ENTITY CAPABLE OF AFFECTING COMMERCE, INCLUDING BUT NOT LIMITED TO (I) A GOVERNMENT, GOVERNMENT AGENCY, NATURAL PERSON, LEGAL PERSON, SOLE PROPRIETORSHIP, PARTNERSHIP, FIRM, CORPORATION, SUBSIDIARY, AFFILIATE, FRANCHISOR, FRANCHISEE, JOINT VENTURE, TRADE ASSOCIATION, FINANCIAL INSTITUTION, UTILITY, PUBLIC FRANCHISE, PROVIDER OF FINANCIAL SERVICES, TRUST, OR ENTERPRISE; AND (II) ANY ASSOCIATION THEREOF. <A>

[A> "DEPARTMENT" MEANS THE PUBLIC PENSION DIVISION OF THE DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION. <A>

[A> "FORBIDDEN ENTITY" MEANS ANY OF THE FOLLOWING: <A>

[A> (1) THE GOVERNMENT OF THE REPUBLIC OF THE SUDAN AND ANY OF ITS AGENCIES, INCLUDING BUT NOT LIMITED TO POLITICAL UNITS AND SUBDIVISIONS; <A>

[A> (2) ANY COMPANY THAT IS WHOLLY OR PARTIALLY MANAGED OR CONTROLLED BY THE GOVERNMENT OF THE REPUBLIC OF THE SUDAN AND ANY OF ITS AGENCIES, INCLUDING BUT NOT LIMITED TO POLITICAL UNITS AND SUBDIVISIONS; <A>

[A> (3) ANY COMPANY (I) THAT IS ESTABLISHED OR ORGANIZED UNDER THE LAWS OF THE REPUBLIC OF THE SUDAN OR (II) WHOSE PRINCIPAL PLACE OF BUSINESS IS IN THE REPUBLIC OF THE SUDAN; <A>

[A> (4) ANY COMPANY (I) IDENTIFIED BY THE OFFICE OF FOREIGN ASSETS CONTROL IN THE UNITED STATES DEPARTMENT OF THE TREASURY AS SPONSORING TERRORIST ACTIVITIES IN THE REPUBLIC OF THE SUDAN; OR (II) FINED, PENALIZED OR SANCTIONED BY THE OFFICE OF FOREIGN ASSETS CONTROL IN THE UNITED STATES DEPARTMENT OF THE TREASURY FOR ANY VIOLATION OF ANY UNITED STATES RULES AND RESTRICTIONS RELATING TO THE REPUBLIC OF THE SUDAN THAT OCCURRED AT ANY TIME FOLLOWING THE EFFECTIVE DATE OF THIS ACT; <A>

[A> (5) ANY PUBLICLY TRADED COMPANY THAT IS INDIVIDUALLY IDENTIFIED BY AN INDEPENDENT RESEARCHING FIRM THAT SPECIALIZES IN GLOBAL SECURITY RISK AND THAT HAS BEEN RETAINED BY A CERTIFYING COMPANY AS PROVIDED IN SUBSECTION (C) OF THIS SECTION AS BEING A COMPANY THAT OWNS OR CONTROLS PROPERTY OR ASSETS LOCATED IN, HAS EMPLOYEES OR FACILITIES LOCATED IN, PROVIDES GOODS OR SERVICES TO, OBTAINS GOODS OR SERVICES FROM, HAS DISTRIBUTION AGREEMENTS WITH, ISSUES CREDITS OR LOANS TO, PURCHASES BONDS OR COMMERCIAL PAPER ISSUED BY, OR INVESTS IN (A) THE REPUBLIC OF THE SUDAN; OR (B) ANY COMPANY DOMICILED IN THE REPUBLIC OF THE SUDAN; AND <A>

[A> (6) ANY PRIVATE MARKET FUND THAT FAILS TO SATISFY THE REQUIREMENTS SET FORTH IN SUBSECTIONS (D) AND (E) OF THIS SECTION. <A>

[A> NOTWITHSTANDING THE FOREGOING, THE TERM "FORBIDDEN ENTITY" SHALL EXCLUDE (A) MUTUAL FUNDS THAT MEET THE REQUIREMENTS OF ITEM (III) OF PARAGRAPH (13) OF SECTION 1-113.2 AND (B) COMPANIES THAT TRANSACT BUSINESS IN THE REPUBLIC OF THE SUDAN UNDER THE LAW, LICENSE, OR PERMIT OF THE UNITED STATES, INCLUDING A LICENSE FROM THE UNITED STATES DEPARTMENT OF THE TREASURY, AND COMPANIES, EXCEPT AGENCIES OF THE REPUBLIC OF THE SUDAN, WHO ARE CERTIFIED AS NON-GOVERNMENT ORGANIZATIONS BY THE UNITED NATIONS, OR WHO ENGAGE SOLELY IN (I) THE PROVISION OF GOODS AND SERVICES INTENDED TO RELIEVE HUMAN SUFFERING OR TO PROMOTE WELFARE, HEALTH, RELIGIOUS AND SPIRITUAL ACTIVITIES, AND EDUCATION OR HUMANITARIAN PURPOSES; OR (II) JOURNALISTIC ACTIVITIES. <A>

[A] "PRIVATE MARKET FUND" MEANS ANY PRIVATE EQUITY FUND, PRIVATE EQUITY FUND OF FUNDS, VENTURE CAPITAL FUND, HEDGE FUND, HEDGE FUND OF FUNDS, REAL ESTATE FUND, OR OTHER INVESTMENT VEHICLE THAT IS NOT PUBLICLY TRADED. <A]

[A] "REPUBLIC OF THE SUDAN" MEANS THOSE GEOGRAPHIC AREAS OF THE REPUBLIC OF SUDAN THAT ARE SUBJECT TO SANCTION OR OTHER RESTRICTIONS PLACED ON COMMERCIAL ACTIVITY IMPOSED BY THE UNITED STATES GOVERNMENT DUE TO AN EXECUTIVE OR CONGRESSIONAL DECLARATION OF GENOCIDE. <A]

[A] "RETIREMENT SYSTEM" MEANS THE STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS, THE JUDGES RETIREMENT SYSTEM OF ILLINOIS, THE GENERAL ASSEMBLY RETIREMENT SYSTEM, THE STATE UNIVERSITY RETIREMENT SYSTEM, AND THE TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS. <A]

[A] (C) A RETIREMENT SYSTEM SHALL NOT TRANSFER OR DISBURSE FUNDS TO, DEPOSIT INTO, ACQUIRE ANY BONDS OR COMMERCIAL PAPER FROM, OR OTHERWISE LOAN TO OR INVEST IN ANY ENTITY UNLESS, AS PROVIDED IN THIS SECTION, A CERTIFYING COMPANY CERTIFIES TO THE RETIREMENT SYSTEM THAT, (1) WITH RESPECT TO INVESTMENTS IN A PUBLICLY TRADED COMPANY, THE CERTIFYING COMPANY HAS RELIED ON INFORMATION PROVIDED BY AN INDEPENDENT RESEARCHING FIRM THAT SPECIALIZES IN GLOBAL SECURITY RISK AND (2) 100% OF THE RETIREMENT SYSTEM'S ASSETS FOR WHICH THE CERTIFYING COMPANY PROVIDES SERVICES OR ADVICE ARE NOT AND HAVE NOT BEEN INVESTED OR REINVESTED IN ANY FORBIDDEN ENTITY AT ANY TIME AFTER 4 MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION. <A]

[A] THE CERTIFYING COMPANY SHALL MAKE THE CERTIFICATION REQUIRED UNDER THIS SUBSECTION (C) TO A RETIREMENT SYSTEM 6 MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION AND ANNUALLY THEREAFTER. A RETIREMENT SYSTEM SHALL SUBMIT THE CERTIFICATIONS TO THE DEPARTMENT, AND THE DEPARTMENT SHALL NOTIFY THE SECRETARY OF FINANCIAL AND PROFESSIONAL REGULATION IF A RETIREMENT SYSTEM FAILS TO DO SO. <A]

[A] (D) WITH RESPECT TO A COMMITMENT OR INVESTMENT MADE PURSUANT TO A WRITTEN AGREEMENT EXECUTED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, EACH PRIVATE MARKET FUND SHALL SUBMIT TO THE APPROPRIATE CERTIFYING COMPANY, AT NO ADDITIONAL COST TO THE RETIREMENT SYSTEM: <A]

[A] (1) AN AFFIDAVIT SWORN UNDER OATH IN WHICH AN EXPRESSLY AUTHORIZED OFFICER OF THE PRIVATE MARKET FUND AVERS THAT THE PRIVATE MARKET FUND (A) DOES NOT OWN OR CONTROL ANY PROPERTY OR ASSET LOCATED IN THE REPUBLIC OF THE SUDAN AND (B) DOES NOT CONDUCT BUSINESS OPERATIONS IN THE REPUBLIC OF THE SUDAN; OR <A]

[A] (2) A CERTIFICATE IN WHICH AN EXPRESSLY AUTHORIZED OFFICER OF THE PRIVATE MARKET FUND CERTIFIES THAT THE PRIVATE MARKET FUND, BASED ON REASONABLE DUE DILIGENCE, HAS DETERMINED THAT, OTHER THAN DIRECT OR INDIRECT INVESTMENTS IN COMPANIES CERTIFIED AS NON-GOVERNMENT ORGANIZATIONS BY THE UNITED NATIONS, THE PRIVATE MARKET FUND HAS NO DIRECT OR INDIRECT INVESTMENT IN ANY COMPANY (A) ORGANIZED UNDER THE LAWS OF THE REPUBLIC OF THE SUDAN; (B) WHOSE PRINCIPAL PLACE OF BUSINESS IS IN THE REPUBLIC OF THE SUDAN; OR (C) THAT CONDUCTS BUSINESS OPERATIONS IN THE REPUBLIC OF THE SUDAN. SUCH CERTIFICATE SHALL BE BASED UPON THE PERIODIC REPORTS RECEIVED BY THE PRIVATE MARKET FUND, AND THE PRIVATE MARKET FUND SHALL AGREE THAT THE CERTIFYING COMPANY, DIRECTLY OR THROUGH AN AGENT, OR THE RETIREMENT SYSTEM, AS THE CASE MAY BE, MAY FROM TIME TO TIME REVIEW THE PRIVATE MARKET FUND'S CERTIFICATION PROCESS. <A]

[A] (E) WITH RESPECT TO A COMMITMENT OR INVESTMENT MADE PURSUANT TO A WRITTEN AGREEMENT EXECUTED AFTER THE EFFECTIVE DATE OF THIS SECTION, EACH PRIVATE MARKET FUND SHALL, AT NO ADDITIONAL COST TO THE RETIREMENT SYSTEM: <A]

[A] (1) SUBMIT TO THE APPROPRIATE CERTIFYING COMPANY AN AFFIDAVIT OR CERTIFICATE CONSISTENT WITH THE REQUIREMENTS PURSUANT TO SUBSECTION (D) OF THIS SECTION; OR <A]

[A] (2) ENTER INTO AN ENFORCEABLE WRITTEN AGREEMENT WITH THE RETIREMENT SYSTEM THAT PROVIDES FOR REMEDIES CONSISTENT WITH THOSE SET FORTH IN SUBSECTION (G) OF THIS SECTION IF ANY OF THE ASSETS OF THE RETIREMENT SYSTEM SHALL BE TRANSFERRED, LOANED, OR OTHERWISE INVESTED IN ANY COMPANY THAT DIRECTLY OR INDIRECTLY (A) HAS FACILITIES OR EMPLOYEES IN THE REPUBLIC OF THE SUDAN OR (B) CONDUCTS BUSINESS OPERATIONS IN THE REPUBLIC OF THE SUDAN. <A]

[A] (F) IN ADDITION TO ANY OTHER PENALTIES AND REMEDIES AVAILABLE UNDER THE LAW OF ILLINOIS AND THE UNITED STATES, ANY TRANSACTION, OTHER THAN A TRANSACTION WITH A PRIVATE MARKET FUND THAT IS GOVERNED BY SUBSECTIONS (G) AND (H) OF THIS SECTION, THAT VIOLATES THE PROVISIONS OF THIS ACT SHALL BE AGAINST PUBLIC POLICY AND VOIDABLE, AT THE SOLE DISCRETION OF THE RETIREMENT SYSTEM. <A]

[A] (G) IF A PRIVATE MARKET FUND FAILS TO PROVIDE THE AFFIDAVIT OR CERTIFICATION REQUIRED IN SUBSECTIONS (D) AND (E) OF THIS SECTION, THEN THE RETIREMENT SYSTEM SHALL, WITHIN 90 DAYS, DIVEST, OR ATTEMPT IN GOOD FAITH TO DIVEST, THE RETIREMENT SYSTEM'S INTEREST IN THE PRIVATE MARKET FUND, PROVIDED THAT THE BOARD OF THE RETIREMENT SYSTEM CONFIRMS THROUGH RESOLUTION THAT THE DIVESTMENT DOES NOT HAVE A MATERIAL AND ADVERSE IMPACT ON THE RETIREMENT SYSTEM. THE RETIREMENT SYSTEM SHALL IMMEDIATELY NOTIFY THE DEPARTMENT, AND THE DEPARTMENT SHALL NOTIFY ALL OTHER RETIREMENT SYSTEMS, AS SOON AS PRACTICABLE, BY POSTING THE NAME OF THE PRIVATE MARKET FUND ON THE DEPARTMENT'S INTERNET WEBSITE OR THROUGH E-MAIL COMMUNICATIONS. NO OTHER RETIREMENT SYSTEM MAY ENTER INTO ANY AGREEMENT UNDER WHICH THE RETIREMENT SYSTEM DIRECTLY OR INDIRECTLY INVESTS IN THE PRIVATE MARKET FUND UNLESS THE PRIVATE MARKET FUND PROVIDES THAT RETIREMENT SYSTEM WITH THE AFFIDAVIT OR CERTIFICATION REQUIRED IN SUBSECTIONS (D) AND (E) OF THIS SECTION AND COMPLIES WITH ALL OTHER PROVISIONS OF THIS SECTION. <A]

[A] (H) IF A PRIVATE MARKET FUND FAILS TO FULFILL ITS OBLIGATIONS UNDER ANY AGREEMENT PROVIDED FOR IN PARAGRAPH (2) OF SUBSECTION (E) OF THIS SECTION, THE RETIREMENT SYSTEM SHALL IMMEDIATELY TAKE LEGAL AND OTHER ACTION TO OBTAIN SATISFACTION THROUGH ALL REMEDIES AND PENALTIES AVAILABLE UNDER THE LAW AND THE AGREEMENT ITSELF. THE RETIREMENT SYSTEM SHALL IMMEDIATELY NOTIFY THE DEPARTMENT, AND THE DEPARTMENT SHALL NOTIFY ALL OTHER RETIREMENT SYSTEMS, AS SOON AS PRACTICABLE, BY POSTING THE NAME OF THE PRIVATE MARKET FUND ON THE DEPARTMENT'S INTERNET WEBSITE OR THROUGH E-MAIL COMMUNICATIONS, AND NO OTHER RETIREMENT SYSTEM MAY ENTER INTO ANY AGREEMENT UNDER WHICH THE RETIREMENT SYSTEM DIRECTLY OR INDIRECTLY INVESTS IN THE PRIVATE MARKET FUND. <A]

[A] (I) THIS SECTION SHALL HAVE FULL FORCE AND EFFECT DURING ANY PERIOD IN WHICH THE REPUBLIC OF THE SUDAN, OR THE OFFICIALS OF THE GOVERNMENT OF THAT REPUBLIC, ARE SUBJECT TO SANCTIONS AUTHORIZED UNDER ANY STATUTE OR EXECUTIVE ORDER OF THE UNITED STATES OR UNTIL SUCH TIME AS THE STATE DEPARTMENT OF THE UNITED STATES CONFIRMS IN THE FEDERAL REGISTER OR THROUGH OTHER MEANS THAT THE REPUBLIC OF THE SUDAN IS NO LONGER SUBJECT TO SANCTIONS BY THE GOVERNMENT OF THE UNITED STATES. <A]

[A] (J) IF ANY PROVISION OF THIS SECTION OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY OF THAT PROVISION OR APPLICATION DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION. <A]

(40 ILCS 5/1-110.10 new)

[A] SEC. 1-110.10. SERVICER CERTIFICATION. <A]

[A] (A) FOR THE PURPOSES OF THIS SECTION: <A]

[A] "ILLINOIS FINANCE ENTITY" MEANS ANY ENTITY CHARTERED UNDER THE ILLINOIS BANKING ACT, THE SAVINGS BANK ACT, THE ILLINOIS CREDIT UNION ACT, OR THE ILLINOIS SAVINGS AND LOAN ACT OF 1985 AND ANY PERSON OR ENTITY LICENSED UNDER THE RESIDENTIAL MORT-

GAGE LICENSE ACT OF 1987, THE CONSUMER INSTALLMENT LOAN ACT, OR THE SALES FINANCE AGENCY ACT. <A>

[A> "RETIREMENT SYSTEM OR PENSION FUND" MEANS A RETIREMENT SYSTEM OR PENSION FUND ESTABLISHED UNDER THIS CODE. <A>

[A> (B) IN ORDER FOR AN ILLINOIS FINANCE ENTITY TO BE ELIGIBLE FOR INVESTMENT OR DEPOSIT OF RETIREMENT SYSTEM OR PENSION FUND ASSETS, THE ILLINOIS FINANCE ENTITY MUST ANNUALLY CERTIFY THAT IT COMPLIES WITH THE REQUIREMENTS OF THE HIGH RISK HOME LOAN ACT AND THE RULES ADOPTED PURSUANT TO THAT ACT THAT ARE APPLICABLE TO THAT ILLINOIS FINANCE ENTITY. FOR ILLINOIS FINANCE ENTITIES WITH WHOM THE RETIREMENT SYSTEM OR PENSION FUND IS INVESTING OR DEPOSITING ASSETS ON THE EFFECTIVE DATE OF THIS SECTION, THE INITIAL CERTIFICATION REQUIRED UNDER THIS SECTION SHALL BE COMPLETED WITHIN 6 MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION. FOR ILLINOIS FINANCE ENTITIES WITH WHOM THE RETIREMENT SYSTEM OR PENSION FUND IS NOT INVESTING OR DEPOSITING ASSETS ON THE EFFECTIVE DATE OF THIS SECTION, THE INITIAL CERTIFICATION REQUIRED UNDER THIS SECTION MUST BE COMPLETED BEFORE THE RETIREMENT SYSTEM OR PENSION FUND MAY INVEST OR DEPOSIT ASSETS WITH THE ILLINOIS FINANCE ENTITY. <A>

[A> (C) A RETIREMENT SYSTEM OR PENSION FUND SHALL SUBMIT THE CERTIFICATIONS TO THE PUBLIC PENSION DIVISION OF THE DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, AND THE DIVISION SHALL NOTIFY THE SECRETARY OF FINANCIAL AND PROFESSIONAL REGULATION IF A RETIREMENT SYSTEM OR PENSION FUND FAILS TO DO SO. <A>

[A> (D) IF AN ILLINOIS FINANCE ENTITY FAILS TO PROVIDE AN INITIAL CERTIFICATION WITHIN 6 MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION OR FAILS TO SUBMIT AN ANNUAL CERTIFICATION, THEN THE RETIREMENT SYSTEM OR PENSION FUND SHALL NOTIFY THE ILLINOIS FINANCE ENTITY. THE ILLINOIS FINANCE ENTITY SHALL, WITHIN 30 DAYS AFTER THE DATE OF NOTIFICATION, EITHER (I) NOTIFY THE RETIREMENT SYSTEM OR PENSION FUND OF ITS INTENTION TO CERTIFY AND COMPLETE CERTIFICATION OR (II) NOTIFY THE RETIREMENT SYSTEM OR PENSION FUND OF ITS INTENTION TO NOT COMPLETE CERTIFICATION. IF AN ILLINOIS FINANCE ENTITY FAILS TO PROVIDE CERTIFICATION, THEN THE RETIREMENT SYSTEM OR PENSION FUND SHALL, WITHIN 90 DAYS, DIVEST, OR ATTEMPT IN GOOD FAITH TO DIVEST, THE RETIREMENT SYSTEM'S OR PENSION FUND'S ASSETS WITH THAT ILLINOIS FINANCE ENTITY. THE RETIREMENT SYSTEM OR PENSION FUND SHALL IMMEDIATELY NOTIFY THE DEPARTMENT OF THE ILLINOIS FINANCE ENTITY'S FAILURE TO PROVIDE CERTIFICATION. <A>

[A> (E) IF ANY PROVISION OF THIS SECTION OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY OF THAT PROVISION OR APPLICATION DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION. <A>

(15 ILCS 520/22.6 rep.)

Section 90. The Deposit of State Moneys Act is amended by repealing Section 22.6.

(40 ILCS 5/1-110.5 rep.)

Section 95. The Illinois Pension Code is amended by repealing Section 1-110.5.

Section 96. The State Mandates Act is amended by adding Section 8.31 as follows:

(30 ILCS 805/8.31 new)

[A> SEC. 8.31. EXEMPT MANDATE. NOTWITHSTANDING SECTIONS 6 AND 8 OF THIS ACT, NO REIMBURSEMENT BY THE STATE IS REQUIRED FOR THE IMPLEMENTATION OF ANY MANDATE CREATED BY THIS AMENDATORY ACT OF THE 95TH GENERAL ASSEMBLY <A>

Section 97. Severability. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity of that provision or application does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application.

Section 99. Effective date. This Act takes effect upon becoming law.

**SPONSOR:** Collins

**SUBJECT:** TREASURY DEPARTMENTS (95%); US STATE GOVERNMENT (93%); PUBLIC FINANCE AGENCIES & TREASURIES (92%); BANKING & FINANCE (63%); MUNICIPAL BONDS (63%); PUBLIC DEBT (63%); BONDS (63%); GOVERNMENT BONDS (63%); MORTGAGE BANKING & FINANCE (62%); APPROVALS (62%); SAVINGS & LOANS (62%);

**LOAD-DATE:** August 29, 2007

**Attachment D**

**"Should Public Plans Engage in Social Investing?"**

**Alicia Munnell, Center for Retirement Research at Boston College, August 2007**

# SHOULD PUBLIC PLANS ENGAGE IN SOCIAL INVESTING?

By ALICIA H. MUNNELL\*

## Introduction

Social investing is a movement that advocates incorporating social and environmental considerations, as well as financial factors, when making investment decisions. The most recent incarnation of this movement is the initiative by state legislatures to force public pension funds to sell their holdings of companies doing business in Sudan. The effort to divest Sudan-linked stocks began in 2004 after the U.S. government characterized the killing and displacement in Darfur province as genocide.<sup>1</sup> Riding on the coattails of the success of the Sudan effort, state legislatures have now targeted Iran, with a goal of "terror-free" investing. The emotional appeal of such actions is powerful. Over 2 million civilians have been displaced and more than 200,000 slaughtered in Darfur since 2003.<sup>2</sup> And Iran refuses to back away from its pursuit of nuclear weapons.<sup>3</sup> But strong arguments also exist against using public pension plans to accomplish foreign policy goals.

This brief explores the current world of social investing, the recent efforts regarding the Sudan and Iran, the likely impact of social investing on the target firms, and the reasons why such activity may be inappropriate for public pension plans.

## What Is Social Investing? How Much? Who's Doing It?

Social investing takes three primary forms: 1) screening (either excluding "bad" companies or including "good" companies); 2) shareholder advocacy; and 3) community investing. The Social Investment Forum (SIF), a trade group of social investors, reports that at the end of 2005, in terms of assets under management, screening is by far the most prevalent approach (see Figure 1). Significantly less is involved in shareholder advocacy, and community investing activity is tiny.

FIGURE 1. SOCIAL INVESTING IN THE UNITED STATES BY TYPE OF STRATEGY, 2005



Source: Social Investment Forum (2006).

\* Alicia H. Munnell is the Director of the Center for Retirement Research at Boston College (CRR) and the Peter F. Drucker Professor of Management Sciences at Boston College's Carroll School of Management. Jeryllyn Libby served as the major research assistant on this project. Dan Muldoon also provided able assistance. John Langbein and Alan Marcus provided valuable comments.

TABLE 1. ASSETS IN SOCIALLY SCREENED PORTFOLIOS, 1999-2005 (BILLIONS)

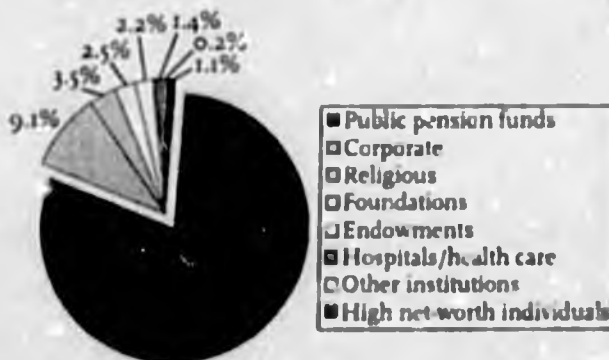
Year	Mutual funds	Separate accounts	Total
1995	\$12	\$150	\$162
1997	57	433	490
1999	154	1,343	1,497
2001	140	1,870	2,010
2003	151	1,992	2,143
2005	179	1,506	1,685

Source: Center for Retirement Research at Boston College (2006).

The Social Investment Forum reports that as of the end of 2005, mutual funds with social screens held \$179 billion and that socially screened "separate accounts," which are managed for individuals and institutional clients, held \$1,506 billion (see Table 1). The SIF calculates that these totals amount to 9.4 percent of all public and private assets under management.

The bulk of the money in separate accounts (80 percent) is the assets of public pension funds (see Figure 2). And screening is pervasive among public funds. The SIF numbers suggest that, in 2005, \$1.2 trillion of public pension fund assets were screened by some criteria. These screened assets accounted for 45 percent of total state and local pension holdings in that year.<sup>4</sup>

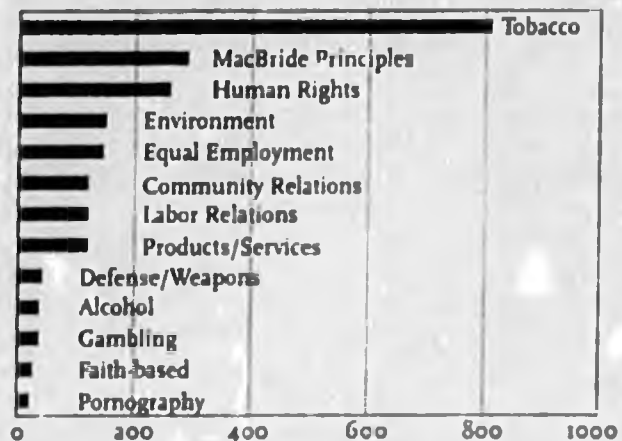
FIGURE 2. SOCIALLY SCREENED INVESTOR ASSETS, 2005



Source: Social Investment Forum (2006).

The screens vary by the nature of the customer. As of 2005, by far the most popular approach for mutual funds was a negative screen for tobacco; alcohol came in second; gambling third.<sup>5</sup> But the pattern for institutional separate accounts, which is dominated by public plans, is quite different. For these accounts, the MacBride Principles (relating to fair hiring in Northern Ireland), Human Rights, the Environment, and Equal Employment Opportunity ranked among the top social concerns (see Figure 3).

FIGURE 3. SOCIAL SCREENING BY INSTITUTIONAL INVESTORS, 2005 (BILLIONS)



Source: Social Investment Forum (2006).

Note that almost none of the screened money is held in private sector defined benefit pension funds.<sup>6</sup> These private plans are covered by the Employee Retirement Income Security Act (ERISA), and right from the beginning the Department of Labor has stringently enforced ERISA's duties of loyalty and prudence.<sup>7</sup> In 1980, the chief administrator of the Department of Labor's pension section published an influential article that warned that the exclusion of investment options would be very hard to defend under ERISA's prudence and loyalty tests.<sup>8</sup> And a 1994 Interpretive Bulletin reminded fiduciaries that they are prohibited from subordinating the interests of participants and beneficiaries ... to unrelated objectives.<sup>9</sup> Thus, ERISA fiduciary law has effectively constrained social investing in private sector defined benefit plans.<sup>10</sup> Social investing is a public pension fund phenomenon.

## Recent Developments – Sudan and Now Iran

During 2005, and therefore not reflected in Figure 3, state legislatures in Arizona, Illinois, Louisiana, New Jersey, and Oregon passed legislation related to companies with operations in Sudan.<sup>11</sup> Since then some states have branched out to include Iran. And Missouri has taken the lead in initiating an entirely “terror-free” investment policy. American companies have been barred for some time from doing business in either Sudan or with states considered sponsors of terrorism according to the U.S. State Department (Cuba, Iran, North Korea, Sudan and Syria).<sup>12</sup> But in a world of global investing, U.S. investors can have a link to Sudan or “terror states” through foreign stock holdings. Such foreign holdings would be most affected by the recent state legislation.

### Sudan

As of August 2007, eighteen states have passed laws regarding divestment of state pension and other funds from Sudan (see Figure 4).<sup>13</sup> Divesting is not easy, however. State and local pension funds tend to invest in global indices, so the exercise involves identifying the companies with links to Sudan and then constructing a Sudan-free index that mimics established benchmarks.

Generally, the states have asked their money managers to figure out which stocks have a Sudan link. Money managers, in turn, have left it to the social investing firms, such as KLD Research and Analytics Institutional Shareholders Services, and the Conflict Securities Advisory Group to identify companies involved in Sudan. KLD originally said that 124 companies were on its Sudan list, including eight American companies.<sup>14</sup> The social investing firms refuse to make the names public, however, since that is how they earn their money.<sup>15</sup> And apparently, the lists are not definitive. Some companies appeared on the original KLD list even though they were not actually doing business in Sudan. And for at least one, 3M, its involvement was the result of a U.N. purchase of Scotchshield Ultra Safety and Security Film to protect embassy and mission windows from explosions, a transaction that was authorized by the federal government.<sup>16</sup>

The Sudan Divestment Task Force (2007) publishes a more tightly targeted list, recommending the divestment of only 28 companies. These are compa-

FIGURE 4. STATES THAT HAVE ENACTED OR ARE CONSIDERING SUDAN DIVESTMENT LEGISLATION, 2007



Sources: National Conference of State Legislatures (2007); Office of Missouri State Treasurer (2005); Sudan Divestment Task Force (2007); State of Arizona (2005), State of Arkansas (2007); and State of Louisiana (2005 and 2007).

nies that 1) do business with the Sudanese government; 2) provide little benefit to the disadvantaged of Sudan; and 3) have not developed policies to prevent their business activities from inadvertently contributing to the government's genocide capability.

Fund managers take the Sudan-link list and attempt to construct “Sudan Free” funds that mimic popular benchmarks. This step is also a challenge. According to the chief investment strategist at Northern Trust, whose fund tracks the Morgan Stanley Capital International Europe Australasia Far East index (MSCI EAFE) index, constructing a “Sudan-free” index will require divesting 25 companies or 9 percent of assets.<sup>17</sup>

Despite the challenges involved, public funds have moved \$2.2 billion away from Sudan-linked companies between 2005 and 2007.<sup>18</sup>

### Iran

More recently, “terror-free” investment has been picking up steam. The primary targets are companies doing business in Iran.<sup>19</sup> As noted above, U.S. companies have long been barred from operating in Iran, but more than 200 multinationals have investments there, from Royal Dutch Shell and France's telecommunications-equipment company Alcatel to Sweden's electronics company Ericsson.<sup>20</sup>

On June 8, 2007, Florida's governor signed a Sudan and Iran Divestiture bill into law. Florida follows other states with regard to Sudan, but is the first to enact divestiture legislation for companies doing business with Iran.<sup>21</sup> Louisiana, which had passed "terror-free investing" legislation in 2005, permits — but does not require — divestment. Arizona, which also passed legislation in 2005, only requires the public retirement system to disclose investments in terror-linked companies. In Illinois, the state Senate passed an Iran divestment bill on June 14, 2007 which would compel the state's five retirement systems to divest Iran-connected companies in energy and other natural resources.<sup>22</sup> California, Georgia, Kansas, Michigan, Missouri, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, and Texas are also considering adopting Iran-free investing (see Figure 5).<sup>23</sup>

If some of the bills are passed in their broadest form, institutions may be forced to sell \$18 billion

in investments.<sup>24</sup> Selling all Iran-related securities would add substantial risk to an indexed international equity portfolio. State Street Global Advisors (SSgA), Boston, has had preliminary conversations with clients about Iran divestments. SSgA estimates that if all companies with ties to Iran were removed from Morgan Stanley's EAFE index and replaced with similar performing companies, it would introduce a tracking error of up to 200 basis points, compared to the tracking error on a typical index of between five and 10 basis points.<sup>25</sup>

Some state legislatures, however, are limiting the scope of divestiture to energy-related stocks, arguing that such action is likely to be most effective in curbing terrorist activities. Narrowing the scope greatly reduces the number of stocks and amount that would have to be sold.<sup>26</sup>

Iran is a more politically complicated issue than Sudan. Sometimes promoters of "divest Iran" suggest that the effort is aimed at Al Qaeda.<sup>27</sup> But Al Qaeda is an enemy without a state and therefore difficult to target. In addition, the U.S. government is not enthusiastic about the effort, because it is working on its own initiative with allies to curtail business transactions tied to nuclear activities and support for terrorism. Treasury and State Department officials have expressed concern that broad-based divestiture could cause a backlash if allies feel that a wide range of companies is under attack.<sup>28</sup>

Despite the complexities involved with Iran, some states have gone even further and are pursuing "terror-free" investing, which extends the scope of the boycott to all the countries on the U.S. State Department's State Sponsors of Terrorism list, which includes Cuba, Syria, and North Korea. Missouri has been at the forefront of this movement. The State Treasurer claims that at least 500 big foreign companies and multinationals do at least some business in countries identified as sponsoring terrorism.<sup>29</sup> The Treasurer's goal is to have all Missouri's investments "terror-free," although the state legislature has not yet passed divestiture legislation for the state pension funds.<sup>30</sup> Anti-terrorism bills have been enacted in Arizona, Florida, and Louisiana.

Given the substantial amount of social investing by public pension funds, it is useful to consider the likely impact of such activity on the targets of the social screen and the likely impact on the pension funds themselves.

FIGURE 5. STATES THAT HAVE ENACTED OR ARE CONSIDERING IRAN DIVESTMENT LEGISLATION, 2007



Sources: National Conference of State Legislatures (2007); Office of Missouri State Treasurer (2005); State of Arizona (2005); and State of Louisiana (2005 and 2007).

## The Economics of Social Investing

The academic literature suggests that social screens are likely to have very little impact on the target company and that the impact on the pension fund depends on the scale of the screen

### *Impact on Targeted Company*

The SIF Report suggests that social investing will have a financial impact — that investors are putting their money to work in ways that will build “a better, more just, and sustainable economy.” The academic literature on the stock market, however, suggests the opposite. And a comprehensive survey on the effect of the South African boycott — the largest and most visible social action — documents virtually no effect, suggesting the real world mirrors the textbook model.

According to standard finance theory, the price of any stock equals the present discounted value of expected future cash flows. Thus, the stock of a particular firm has a lot of close substitutes, which makes the demand curve for a particular stock, in economists’ terms, almost perfectly elastic.<sup>31</sup> That is, even a big change in quantity demanded will lead to only a small change in price. And any significant deviation from the fundamental price would represent a profitable trading opportunity that market participants would quickly exploit and thus correct.<sup>32</sup> In other words, boycotting tobacco stocks or international companies doing business in Sudan or Iran may result in a temporary fall in the stock price, but as long as some buyers remain they can swoop in, purchase the stock, and make money. And the buyers are out there. The “Vice Fund,” which was established in September 2002, specializes in only four sectors — alcohol, tobacco, arms, and gambling, and thus stands ready to buy the stocks screened out of standard portfolios.<sup>33</sup> Thus, the textbooks suggest that boycotting tobacco companies or international companies doing business in Iran is unlikely to have any impact on the price of their stocks.

A 1999 study took a comprehensive look at how equity prices responded to sanctions and pressures for firms to divest their holdings in South Africa.<sup>34</sup> The conclusion that emerges from a series of event studies is that the anti-apartheid shareholder and legislative boycotts had no negative effect on the valu-

ation of banks or corporations with South African operations or on the South African financial markets. This is not to say that the boycott was not important politically, but merely that it did not impact financial markets. The study looks at pressure put on firms from both congressional action and divestiture by pension funds and universities.

The bulk of the congressional action occurred in 1985 and 1986, when the U.S. government passed legislation imposing trade embargoes, currency sanctions, and lending restrictions. Most importantly, the Comprehensive Anti-Apartheid Act of 1986 prohibited new private or public loans to South Africa other than for humanitarian purposes. To test the impact of this prohibition, the study identified ten important legislative events leading up to the 1986 Act and examined their impact on a portfolio of nine banks with South African loans. The results showed few sig-

nificant effects on bank stock prices and where significant they were of the wrong sign.

Pension funds and universities also put

pressure on corporations. Pension fund involvement in the South African issue began when a number of churches threatened to divest from banks doing business in South Africa. In 1977, the first iteration of the “Sullivan principles,” which called for non-segregation of races and equal pay for equal work, was adopted in the hope that by adhering to these principles, companies could continue doing business in South Africa and at the same time promote non-discrimination policies.<sup>35</sup> But many felt that the Sullivan principles did not go far enough, so Reverend Sullivan called in 1987 for companies to withdraw completely from South Africa. Many funds began to divest themselves even of companies that had followed these principles.<sup>36</sup> The study looked at the effect of 16 pension fund divestments on a portfolio of firms with the highest exposure in South Africa. The results showed no evidence that the pension fund divestment announcements hurt firms with major South African operations.

In short, financial textbooks characterize the demand curves for individual stock as infinitely elastic, so the price of the stock of a targeted company is unlikely to be affected by a boycott so long as additional buyers remain to scoop up the profit opportunity. The fact that an effort as large as the boycott of firms doing business in South Africa had virtually no effect on stock prices suggests that the financial effect of social investing on target firms is roughly zero.

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*Injecting politics into pension policy is problematic.*

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### *Impact on the Pension Fund*

But does social investing affect the pension fund adversely? Modern portfolio theory states that investors should diversify their asset holdings over a variety of securities, so that the returns on all financial assets do not move in lockstep.<sup>37</sup> The question is how many securities are needed for the portfolio to be efficient? The answer is that an investor needs only 20-30 stocks to construct a fully diversified portfolio.<sup>38</sup> The small number of required stocks suggests that eliminating, say, tobacco, which accounts for about 1 percent of the market capitalization of the S&P 500, should leave enough securities to construct something very, very close to the market index. As the number excluded increases, it would become increasingly difficult to duplicate the market.<sup>39</sup>

In terms of evidence, considerable research has compared the risk-adjusted return of screened portfolios to the return of unscreened portfolios. Most of the studies cover the period since the mid-1980s. Overall, the results show that the differences in risk-adjusted returns between the screened portfolios and unscreened portfolios are negligible and in most cases zero.<sup>40</sup> A few studies have focused on the effects of divestiture of tobacco stocks in the 1990s and show that the risk and returns for the S&P 500 with and without tobacco stocks were almost identical.<sup>41</sup>

In addition to comparing the performance of screened portfolios to the S&P 500, several studies have examined the performance of social investment funds relative to the S&P 500. The Domini Social Index includes 400 U.S. companies that pass multiple and broad-based social screens, and the Calvert Social Index is a broad-based index including 659 companies. The majority of these studies show that socially screened funds have no significant effect on risk-adjusted returns.<sup>42</sup>

In contrast, the evidence from the early days of the South Africa divestiture suggested that screening out stocks meant large losses. For example, in the 1970s, Princeton University reported that the stocks that had been excluded because of South Africa ties outperformed other holdings by 3 percent.<sup>43</sup> As time passed and researchers undertook more comprehensive studies, the conclusions shifted. For example, one study examined the performance of a South Af-

rica free portfolio compared to an unscreened NYSE portfolio for the period 1960-1983 and found that, after adjusting for risk, the portfolio excluding South Africa companies actually performed better than the unscreened portfolio.<sup>44</sup> The positive results occurred because companies with South Africa ties were large and excluding them companies increased reliance on small-cap stocks, which performed better on a risk-adjusted basis during this period. During the late 1980s, the results were also mixed. On the one hand, a 1998 study analyzed data from the Surveys of State and Local Employees (PENDAT) from the early 1990s and found no significant effect on returns from restrictions on South Africa investments.<sup>45</sup> On the other hand, the S&P 500 including South Africa stocks performed slightly better than the index without the stocks, and one study of public pension plans found that South Africa restrictions had a negative effect on returns.<sup>46</sup> Thus, a large divestiture movement could have some negative effect on returns earned by public plans.

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### *State actions may conflict with federal foreign policy.*

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Another aspect that has received less attention is the administrative costs of social investing. It is possible that social investing is

associated with higher fees and therefore has lower net returns because additional resources are required by fund managers to do the screening. The 2003 SIF Report concluded that socially responsible funds appear as competitive as other funds when it comes to administrative costs. However, others challenge this view by pointing out that some of the large-cap social index funds have above-average fees.<sup>47</sup> Moreover, in the case of Sudan and Iran, constructing new indices to match existing benchmarks involves substantial costs.

In short, theoretical models of portfolio choice imply that restricting the portfolio to socially responsible investments could have an effect on the rate of return by limiting the ability to diversify. Given the large number of stocks available, however, the cost — using traditional asset pricing models — is likely to be negligible. The bulk of the studies, which compare risk-adjusted returns for socially screened portfolios to those of unrestricted portfolios, supports this claim. Although a "terror-free" effort as large as the South African divestiture may have had some effect.<sup>48</sup> And administrative costs may be an important issue.

## Public Plans Are Not Suited to Social Investing

In the late 1970s, some observers identified the large and rapidly growing funds in state and local pension plans as a mechanism for achieving socially and politically desirable objectives. The initial debate focused on attempts to exclude from pension portfolios companies with specific characteristics, such as those with almost totally nonunion workforces or investments in South Africa. The focus quickly shifted to undertaking pension investments that would foster social goals such as economic development and home ownership.<sup>49</sup> Advocates generally contended that the broader goals could be achieved without any loss of return.

Early reports, however, suggested that the targeting did involve sacrificing return. For example, a 1983 study of state-administered pension funds showed that many states had purchased publicly or privately insured mortgage-backed pass-through securities to increase homeownership in their state.<sup>50</sup> Analysis of the risk/return characteristics of these targeted mortgage investments revealed that 11 states either inadvertently or deliberately had sacrificed as much as 200 basis

points to foster homeownership. Similarly, in 1992, Connecticut's state pension fund lost \$25 million attempting to shore up Colt Industries. The firm went bankrupt two years after the fund bought a 47 percent interest in an attempt to protect Connecticut jobs.<sup>51</sup> In Kansas, the state pension fund lost between \$100 and \$200 million on defaulted loans from an in-state investment program that included a chain of video stores, a steel mill, and a failed savings and loan bank.<sup>52</sup> State and local pension funds were on a naive and dangerous path.<sup>53</sup>

The losses in the 1980s and early 1990s were a sharp wake-up call to a number of public pension fund managers who appeared to believe that they could accomplish social goals without sacrificing returns. Over the last 20 years, the rhetoric associated with targeted investments has changed markedly. Public pension fund managers, sensitive to the potential for losses, go out of their way to make clear that they are no longer willing to sacrifice returns for social considerations; almost every definition of social investing includes a requirement that the investment produce a "market rate of return."

In the recent debate regarding Sudan and Iran, trustees of public plans have spoken out opposing such initiatives. Administrators at California's large public pension funds — CalPERS and CalSTERS — oppose the California bills requiring divestiture. A CalPERS spokesman said that determining which companies have dealings with Iran would be a struggle: "We don't necessarily have the resources or the expertise."<sup>54</sup> Similarly, the executive director of Massachusetts' Pension Reserves Investment Management Board, which invests public plan assets, said "You hire us to make you money, and when you restrict our ability to pick stocks, you likely restrict our ability to get returns."<sup>55</sup> Ohio's legislature initially considered following the Missouri model making investments "terror-free" by filtering out all stocks with links to North Korea, Syria, Sudan or Iran. The pension fund administrators argued that the measure would affect stocks of more than 170 companies and require the funds to sell more than \$9 billion. Administrative costs would exceed \$60 million.<sup>56</sup>

Moreover, legislative mandates for pension fund investing may have implications elsewhere in the state. For example, in the case of Ohio the "terror-

free" investing bill would have roped in companies such as Honda, DaimlerChrysler AG, Bridgestone Corporation, Siemens,

and Thyssenkrupp AG, all of which had investments in Ohio.<sup>57</sup> The pension funds estimated these companies employed more than 45,000 workers. In response, the legislature narrowed the scope of the effort and decided to go after only those companies with more than \$20 million in Iran's energy sector.<sup>58</sup>

Most importantly, three aspects of public pension funds make them particularly ill-suited vehicles for social investing.

First, the decision-makers and the stakeholders are not the same people. The decision-makers are either the fund board or the state legislature. The stakeholders are tomorrow's beneficiaries and/or taxpayers. If social investing produces losses either through higher administrative costs or lower returns, tomorrow's taxpayers will have to ante up or future retirees will receive lower benefits. The welfare of these future actors is not well represented in the decision-making process.

Second, whereas the investment practices of many large public funds are first rate, other boards are much less experienced. The boards of smaller

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*Divestment can be complicated, costly, and ineffective.*

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funds often consist of between five and eleven people including mayors, treasurers, comptrollers, city councilors, union leaders, and citizens. The process is often conducted behind closed doors and subject to little public scrutiny. Moreover, many state and local plans are still run in-house and involve the selection of individual stocks rather than broad-based indices. A front page *New York Times* article reported that political money sometimes affects pension investment decisions. As a result, pension boards may overlook excessive fees or high rates of turnover, and they may approve inappropriate investments.<sup>59</sup> Introducing divestment requirements into such an environment is problematic.

The final issue is the slippery slope. This round of divestment began with Sudan and involved only a few stocks. It is quickly spreading to Iran, where the issues are even more complicated and the number of companies substantially greater. If "terror-free" investing gains momentum, what is going to stop the spread to, say, Saudi Arabia, original home of 15 of the 19 hijackers involved in the 9/11 terrorist attacks? At some point, the administrative costs of broad-based divestiture will balloon and excluding large numbers of companies will definitely hurt returns.

## Conclusion

Everyone is horrified by genocide, and no one wants to support terror. Yet even those who sell socially responsible funds admit that the issue of divestiture is complex. "You have to ask yourself what your goal is with divestment. What's there if the government falls? Is there a government there that will take over and be better? If the companies that pull out provide money, goods, and services, is there an understanding that will make the people poorer in the short run?"<sup>60</sup> Yes, the regime changed in South Africa, but many South Africans say that it was the cultural boycott — particularly in sports — rather than the divestiture of companies with South-Africa-linked activities that resulted in the peaceful ascendance of Nelson Mandela as president.<sup>61</sup>

In addition to the issue of effectiveness, the fundamental question is where foreign policy should be made. Sudan does not raise as many issues in this regard as Iran. The State Department is working closely with foreign governments to get specific companies to stop selected activities, particularly in Iran's energy sector. Additionally, in more than one instance, federal courts have ruled that state legisla-

tion regarding social investment was unconstitutional on grounds that it overlapped with federal regulations.<sup>62</sup> Statements by officials at both Treasury and the State Department make clear their concern that a broad-based divestiture could disrupt the government's effort.

But even assuming that divestment is an effective mechanism to stop genocide and reduce terror risk and that state legislatures and pension fund boards are the right place to make foreign policy, the issue remains whether pension funds are an appropriate vehicle for implementing that policy. The answer seems unquestionably "no." The decision-makers are not the people who will bear the brunt of any losses; rather they will accrue to future beneficiaries and/or taxpayers. In many instances, the environment surrounding public pension fund investing is politically charged and encouraging public pension fund trustees to take "their eyes off the prize" of the maximum return for any given level of risk is asking for trouble. And finally, boycotting companies doing business with particular countries is a slippery slope — today Sudan and Iran, tomorrow Saudi Arabia.

## Endnotes

- 1 Actually, as early as 2000, many college endowments and public pension funds, including CalPERS, did not participate in the initial public offering of PetroChina, because of its involvement in oil extraction in Sudan. See Fried (2006).
- 2 Amnesty International (2007) and Hagan and Palloni (2006).
- 3 U.S. Department of Treasury (2007).
- 4 The Federal Reserve Flow of Funds reports total assets for state and local pension plans of \$2,701.5 billion in 2005.
- 5 The majority of funds (64 percent) use 5 or more screens; the remainder are divided between those with a single screen (25 percent) and those with 2-4 screens (11 percent).
- 6 Multi-employer plans have made a few efforts to stimulate demand for union labor, especially in the construction trades. And some health care companies and hospitals screen for tobacco. But generally very little social investment has taken place. The Social Investing Forum (SIF), however, has reported that nearly 10 percent, or \$137 billion, of screened assets are in corporate defined benefit plans. It was impossible for the author to ferret out where this money was. The only corporation mentioned by SIF was the Federal Home Loan and Mortgage Corporation (Freddie Mac). Since Freddie Mac invests most of its money in home mortgages, it is not clear how it is involved in social screening. In a personal communication, SIF's Joshua Humphreys said that there are other corporations that are not included on the list, but SIF refused to give out any additional names.
- 7 ERISA requires a fiduciary to act "solely in the interests of the [plan] participants and beneficiaries... for the exclusive purpose" of providing benefits to them. A fiduciary must also act "with the care, skill, prudence, and diligence" of the traditional "prudent man." See Langbein, Stabile, and Wolk (2006).
- 8 Lanoff (1980).
- 9 U.S. Department of Labor (1994).
- 10 Some companies offer their employees one or more mutual fund options that pursue social investing criteria. Such an option does not raise any fiduciary concerns because the decision is left entirely to the participant.
- 11 The New Jersey legislation requires its pension funds to divest holdings in businesses that have equity stakes in the Sudan. A similar bill in Illinois, enacted in June 2005, provides that a fiduciary should not transact any business with a company doing business with Sudan, although in February 2007 the Federal District Court for the Northern District of Illinois ruled this act unconstitutional. Oregon also passed such a law for its public pension funds, while Louisiana legislation permits, but does not require, divestiture of investments linked to the Sudan.
- 12 U.S. Department of State (2007a). In 1997, President Clinton issued an executive order barring companies from conducting business in the Sudan; foreign businesses do not fall under that restriction.
- 13 For example, Texas legislation, signed into law on June 15, 2007, will require both the Teacher Retirement System and the Texas Employees Retirement System to ask affected companies to cease business in Sudan and to divest shares of unresponsive companies. The Hawaiian Employees' Retirement System was required to divest from Sudan-related investments when legislation went into effect July 1st. In Connecticut, legislation enables the Treasurer to divest state funds invested in companies doing business in Sudan or decide against further or future investments. Nineteen other states have pending divestment legislation or are taking other actions towards divestment. For example, the New York State Comptroller adopted a targeted Sudan divestment policy for the New York State Common Retirement Fund.
- 14 Fried (2006).
- 15 A KLD employee told us that KLD sells their compliance list to institutional money managers who are interested in social divestment and that it is not in the company's best interest to allow outside organizations to obtain their list in whole or in part. KLD also would not provide information about the American companies on the list. This information was obtained through a personal communication with KLD's Randy O'Neill.

- 16 Fried (2006). In a personal communication, 3M's Jacqueline Berry also confirmed the sale of the Security Film to the United Nations.
- 17 Fried (2006) and a personal communication with Northern Trust's Priya Khetarpal.
- 18 Pichardo (2007).
- 19 The U.S. House Financial Services Committee on May 23, 2007 passed legislation that would protect public pension funds and their money managers from litigation in response to Iranian divestiture.
- 20 King (2007).
- 21 The new law requires the State's Board of Administration to contact companies with business ties to Sudan and with energy ties in Iran, asking them to stop such activities; unresponsive companies would have to be divested 90 days after the communication. See *Pensions and Investments* (2007a).
- 22 *Pensions and Investments* (2007b).
- 23 The California legislation, which was proposed in January and as of July is still in committee in the state senate, would force two of the nation's largest pension funds — for the state's public employees and teachers, with combined holdings of \$400 billion — to remove their money from any foreign company doing business with Iran. See Abdollah (2007).
- 24 Pichardo (2007).
- 25 See Pichardo (2007); and also confirmed by a personal communication with SSgA's Gary Conway. Also, according to Northern Trust Global Investments, companies doing business in Iran comprise about 25 percent of the MSCI EAFE index, compared to about 15 percent with ties to Sudan.
- 26 When narrowed, the number of companies involved declines from 100-125 to the 19-25 range. In California, for example, CalPERS would have to divest \$8 billion if a bill introduced by Joel Anderson is passed. If narrowed to companies only with energy interests in Iran, the divestiture requirement drops to \$2 billion. See Pichardo (2007).
- 27 LaFranchi (2007).
- 28 See U.S. Department of Treasury (2007); U.S. Department of State (2007b); and McKinley (2007).
- 29 Karmin (2007).
- 30 See Frick (2007).
- 31 For a summary of the literature on testing the extent to which the supply curve is elastic, see Munnell and Sundén (2005).
- 32 The caveat is, of course, that potential buyers must not think the sale (purchase) reflects a negative (positive) assessment of the firm's financial condition or business prospects that could affect future cash flows. If potential purchasers believe that the seller is disposing of the stock because he knows something adverse they do not, they will revise down their assessment of the stock's value, and the transaction will reduce the price of the stock.
- 33 Apparently the Vice Fund has grown at 20 percent annually since its inception, outpacing the S&P's growth of 16 percent. At first blush, these results appear to contradict the conclusion that screening has no impact, but the period under consideration is far too short for these numbers to have meaningful implications. See Authers (2007).
- 34 Teoh, Welch, and Wazzan (1999).
- 35 During the 1970s, as opposition against the apartheid government increased, social activists charged that companies investing in South Africa indirectly supported the government and its discrimination policies. In an initial effort to resolve the conflict, the Reverend Leon Sullivan in 1977 introduced a set of guidelines for companies doing business in South Africa, the so-called "Sullivan Principles." By 1987, 127 U.S. companies had signed on to the Sullivan principles (Auerbach, 1987).
- 36 For example, CalPERS divested itself of \$9.5 billion worth of shares of companies holding a South African subsidiary. Pressure to divest and a worsening economic and political environment in South Africa led many companies (IBM, Exxon, Ford, GM and Chrysler) to sell their holdings. See Teoh, Welch, and Wazzan (1999).
- 37 An asset can be characterized by its expected return and the risk associated with that return, measured by the variance in returns. The risk of a specific asset can be broken down into two parts: risks that are unique to that stock (firm risk) and risks that stem from market-wide variations such as business cycle variation, inflation, and interest rate fluctuations

(market risk). When assets are combined in a portfolio, the return on the overall portfolio is given by the average return of the assets. And the risk associated with the portfolio is determined by the variance of the individual returns and the degree to which the individual returns vary together (covariance). Thus, by combining assets into a portfolio that have differing risk characteristics, an investor can create an efficient portfolio — a portfolio that is expected to achieve a given level of expected returns while minimizing risk.

38 Assume an investor plans to divide his money among  $n$  stocks selected from the entire market portfolio. The portfolio variance is given by:

$$\text{Portfolio variance} = 1/n * \text{average variance} + (1 - 1/n) * \text{average covariance}$$

As the number of securities in the portfolio increases, the contribution to total risk from the individual firm-specific risk decreases and the contribution from how the risks vary in relation to each other (covariance) increases. Thus, as the number of securities increases, the overall portfolio variance approaches the economy-wide risk, represented by the second term in the equation. With 2 stocks in the portfolio, half of the overall variance is due to firm specific risk and half to market risk. By the time a portfolio contains 10 securities, 90 percent of the portfolio's variance should be determined by the market risk. With a 20 stock portfolio, 95 percent of the variance should be determined by the overall market risk. See Bearley and Myers (1988)

39 Rudd (1981) and Grossman and Sharpe (1986) argue that the investor will not be able to exactly duplicate the market portfolio, because the screened portfolio will have relatively greater covariation in returns. Rudd also argued that social investing will introduce size and other biases into the portfolio, which will lead to a deterioration in long-run performance.

40 Guerard (1997); Hamilton, Jo, and Statman (1993); Statman (2000); Bauer, Koedijk, and Otten (2002); Dhrymes (1998); and Bello (2005). A similar result has been found for bond portfolios (D'Antonio, Johnsen and Hutton, 1997).

41 DiBartolomeo (2000). In the late 1980s and early 1990s, tobacco stocks performed slightly better than the S&P 500 but during the second half of the 1990s the tobacco stocks underperformed the S&P 500 on a risk-adjusted basis (Social Investment Forum, 1999;

and Ferrari, 2000). However, the overall effect of divesting tobacco stocks should be small because they only account for about 1 percent of the S&P 500.

42 Kurtz and DiBartolomeo (1996); DiBartolomeo and Kurtz (1999); DiBartolomeo (1996); and Bello (2005). Some critics of these results contend that the comparable returns reflect the fact that the screened funds invest a higher proportion of their assets in small cap stocks. Small caps have out-performed large caps over the period 1995 to 2007 by more than 3 percentage points (10.9 percent versus 7.8 percent). The discrepancy since the trough in the market in 2002 has been even greater (20.0 percent versus 11.0 percent). Bello (2005) contends, however, that the sizes of the companies in the screened and unscreened portfolios are very similar.

43 Malkiel (1991).

44 Grossman and Sharpe (1986).

45 Munnell and Sundén (2001).

46 Romano (1993).

47 Hickey (2000).

48 A recent study (Karolyi, 2007) of terror-free investing concluded that there were no significant differences in risk or return of stock portfolios screened on the basis of their operations in countries designated as state sponsors of terrorism and the S&P 500. This study, however, focused exclusively on U.S. markets, where very few firms do business in terror-linked countries. The author notes that "Broadening the analysis to incorporate a global investment strategy may render different results and conclusions."

49 Two books were instrumental to broadening the social investing debate — Rifkin and Barber (1978) and Litvak (1981).

50 Munnell (1983).

51 Schwimmer (1992); and Langheim, Stabile, and Wolk (2006).

52 White (1991).

53 In their initial forays into economically targeted investments, public pension fund managers generally

did not appear to recognize the "Catch-22" nature of the exercise. For the most part, the goals of increasing in-state housing investment and maximizing returns are inconsistent in the United States' highly developed capital markets. Any housing investment that offers a competitive return at an appropriate level of risk, such as a GNMA, does not need special consideration by public pension plans nor would such consideration increase the long-run supply of mortgage loans. Investments by pension funds that would increase the supply of housing funds must by definition either produce lower returns or involve greater risk. Sophisticated advocates of targeted investments recognized the efficiency of the market for housing finance and argued that pension funds could make a contribution through innovative forms of housing finance. But that was not what was going on in 1983; the in-state mortgages purchased by public pension funds tended to be conventional fixed-rate 30-year mortgages. See Munnell (1983).

54 McKinley (2007) and also confirmed by a personal communication with CalPERS' Brad Pacheco.

55 Mishra (2006).

56 King (2007).

57 Ohio Retirement Study Council (2007).

58 King (2007).

59 Walsh (2004).

60 The comment is from Julie Gorte, director of social research at Calvert Investments (Fried, 2006).

61 Authers (2007)

62 Stern (2007).

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