

Senate File 361 - Enrolled

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SENATE FILE 361

AN ACT

CONCERNING INVESTMENT OF CERTAIN PUBLIC FUNDS IN COMPANIES
DOING BUSINESS IN SUDAN BY THE TREASURER OF STATE, PUBLIC
RETIREMENT SYSTEMS IN IOWA, AND THE STATE BOARD OF REGENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 12A.1 LEGISLATIVE FINDINGS AND
INTENT.

The general assembly is deeply concerned over the human
rights situation in Sudan which calls for stepped-up
international efforts to end the crisis in Sudan's Darfur
region, and concurs with United States policy which has
officially declared that genocide is ongoing in the Sudan, and
demands that the government of Sudan bring an end to these
atrocities. Therefore, the general assembly intends that
state funds and funds administered by the state, including
public employee retirement funds, should not be invested in
companies that provide power production-related services,
mineral extraction activities, oil-related activities, or
military equipment to the government of Sudan, or are
complicit in the genocide in Darfur, given the ongoing
genocide in that country, the previous atrocities perpetrated
by the government of Sudan, and the abysmal human rights
situation in that country.

Sec. 2. NEW SECTION. 12A.2 DEFINITIONS.

As used in this chapter, unless the context otherwise
requires:

1. "Active business operations" means all business
operations that are not inactive business operations.

2. "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.

3. "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.

4. "Complicit" means taking actions during any preceding
twenty-month period which have directly 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 security force for Darfur;
actively working to deny, cover up, or alter the record on
human rights abuses in Darfur; or other similar actions.

5. "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.

6. "Government of Sudan" means the government in Khartoum,
Sudan, which is led by the National Congress Party 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.

7. "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.

8. "Indirect holdings" in a company means all securities
of that company held in an account or 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 chapter.
Indirect holdings include but are not limited to mutual funds,
fund of funds, private equity funds, hedge funds, and real

3 4 estate funds.
3 5 9. "Marginalized populations of Sudan" include but are not
3 6 limited to the portion of the population in the Darfur region
3 7 that has been genocidally victimized; the portion of the
3 8 population of southern Sudan victimized by Sudan's north-south
3 9 civil war; the Beja, Rashidiya, and other similarly
3 10 underserved groups of eastern Sudan; the Nubian and other
3 11 similarly underserved groups in Sudan's Abyei, Southern Blue
3 12 Nile, and Nuba Mountain regions; and the Amri, Hamadab,
3 13 Manasir, and other similarly underserved groups of northern
3 14 Sudan.

3 15 10. "Military equipment" means weapons, arms, military
3 16 supplies, and equipment that readily may be used for military
3 17 purposes, including but not limited to radar systems or
3 18 military-grade transport vehicles, or supplies or services
3 19 sold or provided directly or indirectly to any force actively
3 20 participating in armed conflict in Sudan.

3 21 11. "Mineral extraction activities" include exploring,
3 22 extracting, processing, transporting, or wholesale selling or
3 23 trading of elemental minerals or associated metal alloys or
3 24 oxides, including gold, copper, chromium, chromite, diamonds,
3 25 iron, iron ore, silver, tungsten, uranium, and zinc, as well
3 26 as facilitating such activities, including by providing
3 27 supplies or services in support of such activities.

3 28 12. "Oil-related activities" include but are not limited
3 29 to owning rights to oil blocks; exporting, extracting,
3 30 producing, refining, processing, exploring for, transporting,
3 31 selling, or trading of oil; constructing, maintaining, or
3 32 operating a pipeline, refinery, or other oil field
3 33 infrastructure; and facilitating such activities, including by
3 34 providing supplies or services in support of such activities,
3 35 provided that the mere retail sale of gasoline and related
4 1 consumer products shall not be considered oil-related

4 2 activities.
4 3 13. "Power production activities" means any business
4 4 operation that involves a project commissioned by the National
4 5 Electricity Corporation of Sudan or other similar government
4 6 of Sudan entity whose purpose is to facilitate power
4 7 generation and delivery, including but not limited to
4 8 establishing power generating plants or hydroelectric dams,
4 9 selling or installing components for the project, providing
4 10 service contracts related to the installation or maintenance
4 11 of the project, as well as facilitating such activities,
4 12 including by providing supplies or services in support of such
4 13 activities.

4 14 14. "Public fund" means the treasurer of state, the state
4 15 board of regents, the public safety peace officers' retirement
4 16 system created in chapter 97A, the Iowa public employees'
4 17 retirement system created in chapter 97B, the statewide fire
4 18 and police retirement system created in chapter 411, or the
4 19 judicial retirement system created in chapter 602.

4 20 15. "Scrutinized company" means any company that is not a
4 21 social development company that meets any of the following
4 22 criteria:

4 23 a. The company has business operations that involve
4 24 contracts with or provision of supplies or services to the
4 25 government of Sudan, companies in which the government of
4 26 Sudan has any direct or indirect equity share, government of
4 27 Sudan-commissioned consortiums or projects, or companies
4 28 involved in government of Sudan-commissioned consortiums or
4 29 projects; and meets any of the additional following criteria:

4 30 (1) More than ten percent of the company's revenues or
4 31 assets linked to Sudan involve oil-related activities or
4 32 mineral extraction activities, less than seventy-five percent
4 33 of the company's revenues or assets linked to Sudan involve
4 34 contracts with or provision of oil-related or mineral
4 35 extracting products or services to the regional government of
5 1 southern Sudan or a project or consortium created exclusively
5 2 by that regional government, and the company has failed to
5 3 take substantial action.

5 4 (2) More than ten percent of the company's revenues or
5 5 assets linked to Sudan involve power production activities,
5 6 less than seventy-five percent of the company's power
5 7 production activities include projects whose intent is to
5 8 provide power or electricity to the marginalized populations
5 9 of Sudan, and the company has failed to take substantial
5 10 action.

5 11 b. The company is complicit in the Darfur genocide.

5 12 c. The company supplies military equipment within Sudan,
5 13 unless it clearly shows that the military equipment cannot be
5 14 used to facilitate offensive military actions in Sudan or the

5 15 company implements rigorous and verifiable safeguards to
5 16 prevent use of that equipment by forces actively participating
5 17 in armed conflict, for example, through post-sale tracking of
5 18 such equipment by the company, certification from a reputable
5 19 and objective third party that such equipment is not being
5 20 used by a party participating in armed conflict in Sudan, or
5 21 sale of such equipment solely to the regional government of
5 22 southern Sudan or any internationally recognized peacekeeping
5 23 force or humanitarian organization.

5 24 16. "Social development company" means a company that is
5 25 not complicit in the Darfur genocide whose primary purpose in
5 26 Sudan is to provide humanitarian goods or services, including
5 27 medicine or medical equipment, agricultural supplies or
5 28 infrastructure, educational opportunities, journalism-related
5 29 activities, information or information materials,
5 30 spiritual-related activities, services of a purely clerical or
5 31 reporting nature, food, clothing, or general consumer goods
5 32 that are unrelated to oil-related activities, mineral
5 33 extraction activities, or power production activities.

5 34 17. "Substantial action" means adopting, publicizing, and
5 35 implementing a formal plan to cease scrutinized business
6 1 operations within one year and to refrain from any such new
6 2 business operations; undertaking significant humanitarian
6 3 efforts on behalf of one or more marginalized populations of
6 4 Sudan; or through engagement with the government of Sudan,
6 5 materially improving conditions for the genocidally victimized
6 6 population in Darfur.

6 7 Sec. 3. NEW SECTION. 12A.3 IDENTIFICATION OF COMPANIES
6 8 == NOTICE.

6 9 1. a. By July 1, 2007, the public fund shall make its
6 10 best efforts to identify all scrutinized companies in which
6 11 the public fund has direct or indirect holdings or could
6 12 possibly have such holdings in the future and shall create and
6 13 make available to the public a scrutinized companies list for
6 14 that public fund. The list shall further identify whether the
6 15 company has inactive business operations or active business
6 16 operations. The public fund shall review and update, if
6 17 necessary, the scrutinized companies list and the
6 18 determination of whether a company has inactive or active
6 19 business operations on a quarterly basis thereafter.

6 20 b. In making its best efforts to identify scrutinized
6 21 companies and companies with inactive business operations or
6 22 active business operations, the public fund may review and
6 23 rely, in the best judgment of the public fund, on publicly
6 24 available information regarding companies with business
6 25 operations in Sudan, such as information provided by the Sudan
6 26 divestment task force, and including other information that
6 27 may be provided by nonprofit organizations, research firms,
6 28 international organizations, and government entities. The
6 29 public fund may also contact asset managers and institutional
6 30 investors for the public fund to identify scrutinized
6 31 companies based upon industry recognized lists of such
6 32 companies that the public fund may have indirect holdings in.

6 33 2. a. For each company on the scrutinized companies list
6 34 with only inactive business operations in which the public
6 35 fund has direct or indirect holdings, the public fund shall
7 1 send a written notice informing the company of the
7 2 requirements of this chapter and encouraging it to continue to
7 3 refrain from initiating active business operations in Sudan
7 4 until it is able to avoid scrutinized business operations.
7 5 The public fund shall continue to provide such written notice
7 6 on an annual basis if the company remains a scrutinized
7 7 company with inactive business operations.

7 8 b. For each company on the scrutinized companies list with
7 9 active business operations in which the public fund has direct
7 10 or indirect holdings, the public fund shall send a written
7 11 notice informing the company of its status as a scrutinized
7 12 company with active business operations and that it may become
7 13 subject to divestment and restrictions on investing in the
7 14 company by the public fund. The notice shall offer the
7 15 company the opportunity to clarify its Sudan-related
7 16 activities and shall encourage the company to either cease its
7 17 scrutinized business operations or convert such operations to
7 18 inactive business operations in order to avoid becoming
7 19 subject to divestment and restrictions on investment in the
7 20 company by the public fund. The public fund shall continue to
7 21 provide such written notice on an annual basis if the company
7 22 remains a scrutinized company with active business operations.

7 23 Sec. 4. NEW SECTION. 12A.4 PROHIBITED INVESTMENTS ==
7 24 DIVESTMENT.

7 25 1. The public fund shall not acquire publicly traded

7 26 securities of a company on the public fund's most recent
7 27 scrutinized companies list with active business operations so
7 28 long as such company remains on the public fund's scrutinized
7 29 companies list as a company with active business operations as
7 30 provided in this section.

7 31 2. a. The public fund shall sell, redeem, divest, or
7 32 withdraw all publicly traded securities of a company on the
7 33 public fund's list of scrutinized companies with active
7 34 business operations, so long as the company remains on that
7 35 list, no sooner than ninety days, but no later than eighteen
8 1 months, following the first written notice sent to the
8 2 scrutinized company with active business operations as
8 3 required by section 12A.3.

8 4 b. This subsection shall not be construed to require the
8 5 premature or otherwise imprudent sale, redemption, divestment,
8 6 or withdrawal of an investment, but such sale, redemption,
8 7 divestment, or withdrawal shall be completed as provided by
8 8 this subsection.

8 9 3. The requirements of this section shall not apply to the
8 10 following:

8 11 a. A company which the United States government
8 12 affirmatively declares to be excluded from its present or any
8 13 future federal sanctions regime relating to Sudan.

8 14 b. Indirect holdings of a scrutinized company with active
8 15 business operations. The public fund shall, however, submit
8 16 letters to the managers of such investment funds containing
8 17 companies with scrutinized active business operations
8 18 requesting that they consider removing such companies from the
8 19 fund or create a similar fund with indirect holdings devoid of
8 20 such companies. If the manager creates a similar fund, the
8 21 public fund is encouraged to replace all applicable
8 22 investments with investments in the similar fund consistent
8 23 with prudent investing standards.

8 24 Sec. 5. NEW SECTION. 12A.5 REPORTS.

8 25 1. SCRUTINIZED COMPANIES LIST. Each public fund shall,
8 26 within thirty days after the scrutinized companies list is
8 27 created or updated as required by section 12A.3, make the list
8 28 available to the public.

8 29 2. ANNUAL REPORT. On October 1, 2008, and each October 1
8 30 thereafter, each public fund shall make available to the
8 31 public, and file with the general assembly, an annual report
8 32 covering the prior fiscal year that includes the following:

8 33 a. The scrutinized companies list as of the end of the
8 34 fiscal year.

8 35 b. A summary of all written notices sent as required by
9 1 section 12A.3 during the fiscal year.

9 2 c. All investments sold, redeemed, divested, or withdrawn
9 3 as provided in section 12A.4 during the fiscal year.

9 4 Sec. 6. NEW SECTION. 12A.6 LEGAL OBLIGATIONS.

9 5 With respect to actions taken in compliance with this
9 6 chapter, including all good faith determinations regarding
9 7 companies as required by this chapter, the public fund shall
9 8 be exempt from any conflicting statutory or common law
9 9 obligations, including any such obligations in respect to
9 10 choice of asset managers, investment funds, or investments for
9 11 the public fund's securities portfolios.

9 12 Sec. 7. NEW SECTION. 12A.7 APPLICABILITY.

9 13 The requirements of sections 12A.3, 12A.4, and 12A.5 of
9 14 this chapter shall not apply upon the occurrence of any of the
9 15 following:

9 16 1. The Congress or president of the United States declares
9 17 that the Darfur genocide has been halted for at least twelve
9 18 months.

9 19 2. The United States revokes all sanctions imposed against
9 20 the government of Sudan.

9 21 3. The Congress or president of the United States, through
9 22 legislation or executive order, declares that mandatory
9 23 divestment of the type provided for in this chapter interferes
9 24 with the conduct of United States foreign policy.

9 25 4. A controlling circuit or district court of the United
9 26 States issues an opinion that declares the mandatory
9 27 divestment of the type provided for in this chapter or similar
9 28 statutes of other states is preempted by the federal law of
9 29 the United States.

9 30 Sec. 8. Section 12.8, unnumbered paragraph 1, Code 2007,
9 31 is amended to read as follows:

9 32 The treasurer of state shall invest or deposit, subject to
9 33 chapter 12A and as provided by law, any of the public funds
9 34 not currently needed for operating expenses and shall do so
9 35 upon receipt of monthly notice from the director of the
10 1 department of administrative services of the amount not so

10 2 needed. In the event of loss on redemption or sale of
10 3 securities invested as prescribed by law, and if the
10 4 transaction is reported to the executive council, neither the
10 5 treasurer nor director of the department of administrative
10 6 services is personally liable but the loss shall be charged
10 7 against the funds which would have received the profits or
10 8 interest of the investment and there is appropriated from the
10 9 funds the amount so required.

10 10 Sec. 9. Section 97A.7, subsection 1, Code 2007, is amended
10 11 to read as follows:

10 12 1. The board of trustees shall be the trustees of the
10 13 several funds created by this chapter as provided in section
10 14 97A.8 and shall have full power to invest and reinvest such
10 15 funds subject to the terms, conditions, limitations, and
10 16 restrictions imposed by subsection 2 of this section and
10 17 chapter 12A, and subject to like terms, conditions,
10 18 limitations, and restrictions said trustees shall have full
10 19 power to hold, purchase, sell, assign, transfer, or dispose of
10 20 any of the securities and investments in which any of the
10 21 funds created herein shall have been invested, as well as of
10 22 the proceeds of said investments and any moneys belonging to
10 23 said funds. The board of trustees may authorize the treasurer
10 24 of state to exercise any of the duties of this section. When
10 25 so authorized the treasurer of state shall report any
10 26 transactions to the board of trustees at its next monthly
10 27 meeting.

10 28 Sec. 10. Section 97B.4, subsection 5, Code 2007, is
10 29 amended to read as follows:

10 30 5. INVESTMENTS. The system, through the chief investment
10 31 officer, shall invest, subject to chapter 12A and in
10 32 accordance with the investment policy and goal statement
10 33 established by the board, the portion of the retirement fund
10 34 which, in the judgment of the system, is not needed for
10 35 current payment of benefits under this chapter subject to the
11 1 requirements of section 97B.7A.

11 2 Sec. 11. Section 262.14, unnumbered paragraph 1, Code
11 3 2007, is amended to read as follows:

11 4 The board may invest funds belonging to the institutions,
11 5 subject to chapter 12A and the following regulations:

11 6 Sec. 12. Section 411.7, subsection 1, Code 2007, is
11 7 amended to read as follows:

11 8 1. The board of trustees is the trustee of the fire and
11 9 police retirement fund created in section 411.8 and shall
11 10 annually establish an investment policy to govern the
11 11 investment and reinvestment of the moneys in the fund, subject
11 12 to the terms, conditions, limitations, and restrictions
11 13 imposed by subsection 2 and chapter 12A. Subject to like
11 14 terms, conditions, limitations, and restrictions the system
11 15 has full power to hold, purchase, sell, assign, transfer, or
11 16 dispose of any of the securities and investments in which the
11 17 fund has been invested, as well as of the proceeds of the
11 18 investments and any moneys belonging to the fund.

11 19 Sec. 13. Section 602.9111, subsection 1, Code 2007, is
11 20 amended to read as follows:

11 21 1. So much of the judicial retirement fund as may not be
11 22 necessary to be kept on hand for the making of disbursements
11 23 under this article shall be invested by the treasurer of state
11 24 in any investments authorized for the Iowa public employees'
11 25 retirement system in section 97B.7A and subject to the
11 26 requirements of chapter 12A, and the earnings therefrom shall
11 27 be credited to the fund. The treasurer of state may execute
11 28 contracts and agreements with investment advisors,
11 29 consultants, and investment management and benefit consultant
11 30 firms in the administration of the judicial retirement fund.
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11 34 _____
11 35 JOHN P. KIBBIE
11 36 President of the Senate

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12 5 PATRICK J. MURPHY
12 6 Speaker of the House

12 7 I hereby certify that this bill originated in the Senate and
12 8 is known as Senate File 361, Eighty-second General Assembly.
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12 12 _____
12 13 MICHAEL E. MARSHALL

Secretary of the Senate

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12 14 Approved _____, 2007

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12 17 _____

12 18 CHESTER J. CULVER

12 19 Governor