

Senate File 361 - Introduced

SENATE FILE _____
BY COMMITTEE ON STATE GOVERNMENT

(SUCCESSOR TO SSB 1106)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act concerning investment of certain public funds in companies
2 doing business in Sudan by the treasurer of state, public
3 retirement systems in Iowa, and the state board of regents.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 1 Section 1. NEW SECTION. 12A.1 LEGISLATIVE FINDINGS AND
1 2 INTENT.
1 3 The general assembly is deeply concerned over the human
1 4 rights situation in Sudan which calls for stepped-up
1 5 international efforts to end the crisis in Sudan's Darfur
1 6 region, and concurs with United States policy which has
1 7 officially declared that genocide is ongoing in the Sudan, and
1 8 demands that the government of Sudan bring an end to these
1 9 atrocities. Therefore, the general assembly intends that
1 10 state funds and funds administered by the state, including
1 11 public employee retirement funds, should not be invested in
1 12 companies that provide power production-related services,
1 13 mineral extraction activities, oil-related activities, or
1 14 military equipment to the government of Sudan, or are
1 15 complicit in the genocide in Darfur, given the ongoing
1 16 genocide in that country, the previous atrocities perpetrated
1 17 by the government of Sudan, and the abysmal human rights
1 18 situation in that country.
1 19 Sec. 2. NEW SECTION. 12A.2 DEFINITIONS.
1 20 As used in this chapter, unless the context otherwise
1 21 requires:
1 22 1. "Active business operations" means all business
1 23 operations that are not inactive business operations.
1 24 2. "Business operations" means engaging in commerce in any
1 25 form in Sudan, including by acquiring, developing,
1 26 maintaining, owning, selling, possessing, leasing, or
1 27 operating equipment, facilities, personnel, products,
1 28 services, personal property, real property, or any other
1 29 apparatus of business or commerce.
1 30 3. "Company" means any sole proprietorship, organization,
1 31 association, corporation, partnership, joint venture, limited
1 32 partnership, limited liability partnership, limited liability
1 33 company, or other entity or business association, including
1 34 all wholly-owned subsidiaries, majority-owned subsidiaries,
1 35 parent companies, or affiliates of such entities or business
2 1 associations, that exists for profit-making purposes.
2 2 4. "Complicit" means taking actions during any preceding
2 3 twenty-month period which have directly supported or promoted
2 4 the genocidal campaign in Darfur, including but not limited to
2 5 preventing Darfur's victimized population from communicating
2 6 with each other; encouraging Sudanese citizens to speak out
2 7 against an internationally approved security force for Darfur;
2 8 actively working to deny, cover up, or alter the record on
2 9 human rights abuses in Darfur; or other similar actions.
2 10 5. "Direct holdings" in a company means all securities of
2 11 that company held directly by the public fund or in an account
2 12 or fund in which the public fund owns all shares or interests.
2 13 6. "Government of Sudan" means the government in Khartoum,
2 14 Sudan, which is led by the National Congress Party or any
2 15 successor government formed on or after October 13, 2006,
2 16 including the coalition National Unity Government agreed upon
2 17 in the Comprehensive Peace Agreement for Sudan and does not

2 18 include the regional government of southern Sudan.
2 19 7. "Inactive business operations" means the mere continued
2 20 holding or renewal of rights to property previously operated
2 21 for the purpose of generating revenues but not presently
2 22 deployed for such purpose.
2 23 8. "Indirect holdings" in a company means all securities
2 24 of that company held in an account or fund managed by one or
2 25 more persons not employed by the public fund, in which the
2 26 public fund owns shares or interests together with other
2 27 investors not subject to the provisions of this chapter.
2 28 Indirect holdings include but are not limited to mutual funds,
2 29 fund of funds, private equity funds, hedge funds, and real
2 30 estate funds.
2 31 9. "Marginalized populations of Sudan" include but are not
2 32 limited to the portion of the population in the Darfur region
2 33 that has been genocidally victimized; the portion of the
2 34 population of southern Sudan victimized by Sudan's north=south
2 35 civil war; the Beja, Rashidiya, and other similarly
3 1 underserved groups of eastern Sudan; the Nubian and other
3 2 similarly underserved groups in Sudan's Abyei, Southern Blue
3 3 Nile, and Nuba Mountain regions; and the Amri, Hamadab,
3 4 Manasir, and other similarly underserved groups of northern
3 5 Sudan.
3 6 10. "Military equipment" means weapons, arms, military
3 7 supplies, and equipment that readily may be used for military
3 8 purposes, including but not limited to radar systems or
3 9 military=grade transport vehicles, or supplies or services
3 10 sold or provided directly or indirectly to any force actively
3 11 participating in armed conflict in Sudan.
3 12 11. "Mineral extraction activities" include exploring,
3 13 extracting, processing, transporting, or wholesale selling or
3 14 trading of elemental minerals or associated metal alloys or
3 15 oxides, including gold, copper, chromium, chromite, diamonds,
3 16 iron, iron ore, silver, tungsten, uranium, and zinc, as well
3 17 as facilitating such activities, including by providing
3 18 supplies or services in support of such activities.
3 19 12. "Oil=related activities" include but are not limited
3 20 to owning rights to oil blocks; exporting, extracting,
3 21 producing, refining, processing, exploring for, transporting,
3 22 selling, or trading of oil; constructing, maintaining, or
3 23 operating a pipeline, refinery, or other oil field
3 24 infrastructure; and facilitating such activities, including by
3 25 providing supplies or services in support of such activities,
3 26 provided that the mere retail sale of gasoline and related
3 27 consumer products shall not be considered oil=related
3 28 activities.
3 29 13. "Power production activities" means any business
3 30 operation that involves a project commissioned by the National
3 31 Electricity Corporation of Sudan or other similar government
3 32 of Sudan entity whose purpose is to facilitate power
3 33 generation and delivery, including but not limited to
3 34 establishing power generating plants or hydroelectric dams,
3 35 selling or installing components for the project, providing
4 1 service contracts related to the installation or maintenance
4 2 of the project, as well as facilitating such activities,
4 3 including by providing supplies or services in support of such
4 4 activities.
4 5 14. "Public fund" means the treasurer of state, the state
4 6 board of regents, the public safety peace officers' retirement
4 7 system created in chapter 97A, the Iowa public employees'
4 8 retirement system created in chapter 97B, the statewide fire
4 9 and police retirement system created in chapter 411, or the
4 10 judicial retirement system created in chapter 602.
4 11 15. "Scrutinized company" means any company that is not a
4 12 social development company that meets any of the following
4 13 criteria:
4 14 a. The company has business operations that involve
4 15 contracts with or provision of supplies or services to the
4 16 government of Sudan, companies in which the government of
4 17 Sudan has any direct or indirect equity share, government of
4 18 Sudan=commissioned consortiums or projects, or companies
4 19 involved in government of Sudan=commissioned consortiums or
4 20 projects; and meets any of the additional following criteria:
4 21 (1) More than ten percent of the company's revenues or
4 22 assets linked to Sudan involve oil=related activities or
4 23 mineral extraction activities, less than seventy=five percent
4 24 of the company's revenues or assets linked to Sudan involve
4 25 contracts with or provision of oil=related or mineral
4 26 extracting products or services to the regional government of
4 27 southern Sudan or a project or consortium created exclusively
4 28 by that regional government, and the company has failed to

4 29 take substantial action.

4 30 (2) More than ten percent of the company's revenues or
4 31 assets linked to Sudan involve power production activities,
4 32 less than seventy-five percent of the company's power
4 33 production activities include projects whose intent is to
4 34 provide power or electricity to the marginalized populations
4 35 of Sudan, and the company has failed to take substantial

5 1 action.

5 2 b. The company is complicit in the Darfur genocide.

5 3 c. The company supplies military equipment within Sudan,
5 4 unless it clearly shows that the military equipment cannot be
5 5 used to facilitate offensive military actions in Sudan or the
5 6 company implements rigorous and verifiable safeguards to
5 7 prevent use of that equipment by forces actively participating
5 8 in armed conflict, for example, through post-sale tracking of
5 9 such equipment by the company, certification from a reputable
5 10 and objective third party that such equipment is not being
5 11 used by a party participating in armed conflict in Sudan, or
5 12 sale of such equipment solely to the regional government of
5 13 southern Sudan or any internationally recognized peacekeeping
5 14 force or humanitarian organization.

5 15 16. "Social development company" means a company that is
5 16 not complicit in the Darfur genocide whose primary purpose in
5 17 Sudan is to provide humanitarian goods or services, including
5 18 medicine or medical equipment, agricultural supplies or
5 19 infrastructure, educational opportunities, journalism-related
5 20 activities, information or information materials,
5 21 spiritual-related activities, services of a purely clerical or
5 22 reporting nature, food, clothing, or general consumer goods
5 23 that are unrelated to oil-related activities, mineral
5 24 extraction activities, or power production activities.

5 25 17. "Substantial action" means adopting, publicizing, and
5 26 implementing a formal plan to cease scrutinized business
5 27 operations within one year and to refrain from any such new
5 28 business operations; undertaking significant humanitarian
5 29 efforts on behalf of one or more marginalized populations of
5 30 Sudan; or through engagement with the government of Sudan,
5 31 materially improving conditions for the genocidally victimized
5 32 population in Darfur.

5 33 Sec. 3. NEW SECTION. 12A.3 IDENTIFICATION OF COMPANIES

5 34 == NOTICE.

5 35 1. a. By July 1, 2007, the public fund shall make its
6 1 best efforts to identify all scrutinized companies in which
6 2 the public fund has direct or indirect holdings or could
6 3 possibly have such holdings in the future and shall create and
6 4 make available to the public a scrutinized companies list for
6 5 that public fund. The list shall further identify whether the
6 6 company has inactive business operations or active business
6 7 operations. The public fund shall review and update, if
6 8 necessary, the scrutinized companies list and the
6 9 determination of whether a company has inactive or active
6 10 business operations on a quarterly basis thereafter.

6 11 b. In making its best efforts to identify scrutinized
6 12 companies and companies with inactive business operations or
6 13 active business operations, the public fund may review and
6 14 rely, in the best judgment of the public fund, on publicly
6 15 available information regarding companies with business
6 16 operations in Sudan, such as information provided by the Sudan
6 17 divestment task force, and including other information that
6 18 may be provided by nonprofit organizations, research firms,
6 19 international organizations, and government entities. The
6 20 public fund may also contact asset managers and institutional
6 21 investors for the public fund to identify scrutinized
6 22 companies based upon industry recognized lists of such
6 23 companies that the public fund may have indirect holdings in.

6 24 2. a. For each company on the scrutinized companies list
6 25 with only inactive business operations in which the public
6 26 fund has direct or indirect holdings, the public fund shall
6 27 send a written notice informing the company of the
6 28 requirements of this chapter and encouraging it to continue to
6 29 refrain from initiating active business operations in Sudan
6 30 until it is able to avoid scrutinized business operations.
6 31 The public fund shall continue to provide such written notice
6 32 on an annual basis if the company remains a scrutinized
6 33 company with inactive business operations.

6 34 b. For each company on the scrutinized companies list with
6 35 active business operations in which the public fund has direct
7 1 or indirect holdings, the public fund shall send a written
7 2 notice informing the company of its status as a scrutinized
7 3 company with active business operations and that it may become
7 4 subject to divestment and restrictions on investing in the

7 5 company by the public fund. The notice shall offer the
7 6 company the opportunity to clarify its Sudan-related
7 7 activities and shall encourage the company to either cease its
7 8 scrutinized business operations or convert such operations to
7 9 inactive business operations in order to avoid becoming
7 10 subject to divestment and restrictions on investment in the
7 11 company by the public fund. The public fund shall continue to
7 12 provide such written notice on an annual basis if the company
7 13 remains a scrutinized company with active business operations.

7 14 Sec. 4. NEW SECTION. 12A.4 PROHIBITED INVESTMENTS ==
7 15 DIVESTMENT.

7 16 1. The public fund shall not acquire publicly traded
7 17 securities of a company on the public fund's most recent
7 18 scrutinized companies list with active business operations so
7 19 long as such company remains on the public funds scrutinized
7 20 companies list as a company with active business operations as
7 21 provided in this section.

7 22 2. a. The public fund shall sell, redeem, divest, or
7 23 withdraw all publicly traded securities of a company on the
7 24 public fund's list of scrutinized companies with active
7 25 business operations, so long as the company remains on that
7 26 list, no sooner than ninety days, but no later than three
7 27 years, following the first written notice sent to the
7 28 scrutinized company with active business operations as
7 29 required by section 12A.3.

7 30 b. This subsection shall not be construed to require the
7 31 premature or otherwise imprudent sale, redemption, divestment,
7 32 or withdrawal of an investment, but such sale, redemption,
7 33 divestment, or withdrawal shall be completed as provided by
7 34 this subsection.

7 35 3. The requirements of this section shall not apply to the
8 1 following:

8 2 a. A company which the United States government
8 3 affirmatively declares to be excluded from its present or any
8 4 future federal sanctions regime relating to Sudan.

8 5 b. Indirect holdings of a scrutinized company with active
8 6 business operations. The public fund shall, however, submit
8 7 letters to the managers of such investment funds containing
8 8 companies with scrutinized active business operations
8 9 requesting that they consider removing such companies from the
8 10 fund or create a similar fund with indirect holdings devoid of
8 11 such companies. If the manager creates a similar fund, the
8 12 public fund is encouraged to replace all applicable
8 13 investments with investments in the similar fund consistent
8 14 with prudent investing standards.

8 15 Sec. 5. NEW SECTION. 12A.5 REPORTS.

8 16 1. SCRUTINIZED COMPANIES LIST. Each public fund shall,
8 17 within thirty days after the scrutinized companies list is
8 18 created or updated as required by section 12A.3, make the list
8 19 available to the public.

8 20 2. ANNUAL REPORT. On October 1, 2008, and each October 1
8 21 thereafter, each public fund shall make available to the
8 22 public, and file with the general assembly, an annual report
8 23 covering the prior fiscal year that includes the following:

8 24 a. The scrutinized companies list as of the end of the
8 25 fiscal year.

8 26 b. A summary of all written notices sent as required by
8 27 section 12A.3 during the fiscal year.

8 28 c. All investments sold, redeemed, divested, or withdrawn
8 29 as provided in section 12A.4 during the fiscal year.

8 30 Sec. 6. NEW SECTION. 12A.6 LEGAL OBLIGATIONS.

8 31 With respect to actions taken in compliance with this
8 32 chapter, including all good faith determinations regarding
8 33 companies as required by this chapter, the public fund shall
8 34 be exempt from any conflicting statutory or common law
8 35 obligations, including any such obligations in respect to
9 1 choice of asset managers, investment funds, or investments for
9 2 the public fund's securities portfolios.

9 3 Sec. 7. NEW SECTION. 12A.7 APPLICABILITY.

9 4 The requirements of section 12A.3, 12A.4, and 12A.5 of this
9 5 chapter shall not apply upon the occurrence of any of the
9 6 following:

9 7 1. The Congress or president of the United States declares
9 8 that the Darfur genocide has been halted for at least twelve
9 9 months.

9 10 2. The United States revokes all sanctions imposed against
9 11 the government of Sudan.

9 12 3. The Congress or president of the United States, through
9 13 legislation or executive order, declares that mandatory
9 14 divestment of the type provided for in this chapter interferes
9 15 with the conduct of United States foreign policy.

9 16 4. A controlling circuit or district court of the United
9 17 States issues an opinion that declares the mandatory
9 18 divestment of the type provided for in this chapter or similar
9 19 statutes of other states is preempted by the federal law of
9 20 the United States.

9 21 Sec. 8. Section 12.8, unnumbered paragraph 1, Code 2007,
9 22 is amended to read as follows:

9 23 The treasurer of state shall invest or deposit, subject to
9 24 chapter 12A and as provided by law, any of the public funds
9 25 not currently needed for operating expenses and shall do so
9 26 upon receipt of monthly notice from the director of the
9 27 department of administrative services of the amount not so
9 28 needed. In the event of loss on redemption or sale of
9 29 securities invested as prescribed by law, and if the
9 30 transaction is reported to the executive council, neither the
9 31 treasurer nor director of the department of administrative
9 32 services is personally liable but the loss shall be charged
9 33 against the funds which would have received the profits or
9 34 interest of the investment and there is appropriated from the
9 35 funds the amount so required.

10 1 Sec. 9. Section 97A.7, subsection 1, Code 2007, is amended
10 2 to read as follows:

10 3 1. The board of trustees shall be the trustees of the
10 4 several funds created by this chapter as provided in section
10 5 97A.8 and shall have full power to invest and reinvest such
10 6 funds subject to the terms, conditions, limitations, and
10 7 restrictions imposed by subsection 2 of this section and
10 8 chapter 12A, and subject to like terms, conditions,
10 9 limitations, and restrictions said trustees shall have full
10 10 power to hold, purchase, sell, assign, transfer, or dispose of
10 11 any of the securities and investments in which any of the
10 12 funds created herein shall have been invested, as well as of
10 13 the proceeds of said investments and any moneys belonging to
10 14 said funds. The board of trustees may authorize the treasurer
10 15 of state to exercise any of the duties of this section. When
10 16 so authorized the treasurer of state shall report any
10 17 transactions to the board of trustees at its next monthly
10 18 meeting.

10 19 Sec. 10. Section 97B.4, subsection 5, Code 2007, is
10 20 amended to read as follows:

10 21 5. INVESTMENTS. The system, through the chief investment
10 22 officer, shall invest, subject to chapter 12A and in
10 23 accordance with the investment policy and goal statement
10 24 established by the board, the portion of the retirement fund
10 25 which, in the judgment of the system, is not needed for
10 26 current payment of benefits under this chapter subject to the
10 27 requirements of section 97B.7A.

10 28 Sec. 11. Section 262.14, unnumbered paragraph 1, Code
10 29 2007, is amended to read as follows:

10 30 The board may invest funds belonging to the institutions,
10 31 subject to chapter 12A and the following regulations:

10 32 Sec. 12. Section 411.7, subsection 1, Code 2007, is
10 33 amended to read as follows:

10 34 1. The board of trustees is the trustee of the fire and
10 35 police retirement fund created in section 411.8 and shall
11 1 annually establish an investment policy to govern the
11 2 investment and reinvestment of the moneys in the fund, subject
11 3 to the terms, conditions, limitations, and restrictions
11 4 imposed by subsection 2 and chapter 12A. Subject to like
11 5 terms, conditions, limitations, and restrictions the system
11 6 has full power to hold, purchase, sell, assign, transfer, or
11 7 dispose of any of the securities and investments in which the
11 8 fund has been invested, as well as of the proceeds of the
11 9 investments and any moneys belonging to the fund.

11 10 Sec. 13. Section 602.9111, subsection 1, Code 2007, is
11 11 amended to read as follows:

11 12 1. So much of the judicial retirement fund as may not be
11 13 necessary to be kept on hand for the making of disbursements
11 14 under this article shall be invested by the treasurer of state
11 15 in any investments authorized for the Iowa public employees'
11 16 retirement system in section 97B.7A and subject to the
11 17 requirements of chapter 12A, and the earnings therefrom shall
11 18 be credited to the fund. The treasurer of state may execute
11 19 contracts and agreements with investment advisors,
11 20 consultants, and investment management and benefit consultant
11 21 firms in the administration of the judicial retirement fund.

11 22 EXPLANATION

11 23 This bill restricts the treasurer of state, the state board
11 24 of regents, the Iowa public employees' retirement system
11 25 (IPERS), the public safety peace officers' retirement system,
11 26 the statewide fire and police retirement system, and the

11 27 judicial retirement system, defined as public funds, from
11 28 directly investing in certain companies with active business
11 29 operations in Sudan. The bill also adds notice requirements
11 30 as to the public funds relative to companies with inactive
11 31 business operations in Sudan.

11 32 The bill requires each public fund to develop and maintain
11 33 a list of scrutinized companies with active and inactive
11 34 business operations in Sudan that the fund has direct or
11 35 indirect holdings in or in which the fund may invest in the
12 1 future. Each public fund shall determine this list by July 1,
12 2 2007, and update it on a quarterly basis. The bill defines
12 3 scrutinized companies as those companies that have contracts
12 4 with the government of Sudan and involve some oil-related or
12 5 power production activities, are complicit in the Darfur
12 6 genocide, or supply military equipment to Sudan. Once a
12 7 company is listed on the scrutinized companies list of a
12 8 public fund, the bill requires the public fund to send a
12 9 notice to that company relative to the requirements of the
12 10 bill. If the company has inactive business operations, the
12 11 notice shall describe the requirements of the bill and
12 12 encourage the company not to engage in active business
12 13 operations. If the company has active business operations,
12 14 the notice shall provide that the company may qualify for
12 15 divestment and other investment restrictions by the public
12 16 fund.

12 17 New Code section 12A.4 requires that a public fund not
12 18 invest in, and shall divest from, holdings in a scrutinized
12 19 company with active business operations. If the public fund
12 20 has direct holdings in the company, the public fund shall
12 21 proceed to divest all assets with that company in three years
12 22 so long as the company continues active business operations in
12 23 Sudan. The bill provides that a public fund shall not be
12 24 required to divest or refrain from investing in a company if
12 25 the federal government so provides or the public fund has
12 26 indirect holdings, and not direct holdings, in that company.
12 27 However, public funds are encouraged to move their indirect
12 28 holdings to funds that do not include scrutinized companies
12 29 with active business operations. The bill defines indirect
12 30 holdings to include shares in an account or fund managed by
12 31 persons not employed by the public fund, including mutual
12 32 funds, private equity funds, and other similar funds.

12 33 The bill further requires each public fund to prepare and
12 34 make available to the public, and file with the general
12 35 assembly, an annual report, beginning October 1, 2008,
13 1 concerning actions taken by the public fund relative to the
13 2 requirements of this new Code chapter in the previous fiscal
13 3 year.

13 4 The bill provides that the requirements of the bill cease
13 5 to be applicable if Congress or the president of the United
13 6 States declares that the Darfur genocide has been halted,
13 7 declares that mandatory divestment is contrary to United
13 8 States foreign policy, the United States revokes all sanctions
13 9 imposed against Sudan, or a controlling federal court declares
13 10 the divestment requirements of this bill or similar statutes
13 11 from other states is preempted by federal law.

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