

Senate Study Bill 1106

SENATE FILE _____
BY (PROPOSED COMMITTEE ON STATE
GOVERNMENT BILL BY
CHAIRPERSON CONNOLLY)

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, the Iowa
3 public employees' retirement system, and the state board of
4 regents.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 1150SC 82
7 ec/cf/24

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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, shall not be invested in
1 12 companies doing business in Sudan, given the ongoing genocide
1 13 in that country, the previous atrocities perpetrated by the
1 14 government of Sudan, and the abysmal human rights situation in
1 15 that country.
1 16 Sec. 2. NEW SECTION. 12A.2 DEFINITIONS.
1 17 As used in this chapter, unless the context otherwise
1 18 requires:
1 19 1. "Active business operations" means all business
1 20 operations that are not inactive business operations.
1 21 2. "Business operations" means engaging in commerce in any
1 22 form in Sudan, including by acquiring, developing,
1 23 maintaining, owning, selling, possessing, leasing, or
1 24 operating equipment, facilities, personnel, products,
1 25 services, personal property, real property, or any other
1 26 apparatus of business or commerce.
1 27 3. "Company" means any sole proprietorship, organization,
1 28 association, corporation, partnership, joint venture, limited
1 29 partnership, limited liability partnership, limited liability
1 30 company, or other entity or business association, including
1 31 all wholly-owned subsidiaries, majority-owned subsidiaries,
1 32 parent companies, or affiliates of such entities or business
1 33 associations, that exists for profit-making purposes.
1 34 4. "Complicit" means taking actions during any preceding
1 35 twenty-month period which have directly supported or promoted
2 1 the genocidal campaign in Darfur, including but not limited to
2 2 preventing Darfur's victimized population from communicating
2 3 with each other; encouraging Sudanese citizens to speak out
2 4 against an internationally approved security force for Darfur;
2 5 actively working to deny, cover up, or alter the record on
2 6 human rights abuses in Darfur; or other similar actions.
2 7 5. "Direct holdings" in a company means all securities of
2 8 that company held directly by the public fund or in an account
2 9 or fund in which the public fund owns all shares or interests.
2 10 6. "Government of Sudan" means the government in Khartoum,
2 11 Sudan, which is led by the National Congress Party or any
2 12 successor government formed on or after October 13, 2006,
2 13 including the coalition National Unity Government agreed upon
2 14 in the Comprehensive Peace Agreement for Sudan and does not
2 15 include the regional government of southern Sudan.
2 16 7. "Inactive business operations" means the mere continued

2 17 holding or renewal of rights to property previously operated
2 18 for the purpose of generating revenues but not presently
2 19 deployed for such purpose.

2 20 8. "Indirect holdings" in a company means all securities
2 21 of that company held in an account or fund, such as a mutual
2 22 fund, managed by one or more persons not employed by the
2 23 public fund, in which the public fund owns shares or interests
2 24 together with other investors not subject to the provisions of
2 25 this chapter.

2 26 9. "Marginalized populations of Sudan" include but are not
2 27 limited to the portion of the population in the Darfur region
2 28 that has been genocidally victimized; the portion of the
2 29 population of southern Sudan victimized by Sudan's north=south
2 30 civil war; the Beja, Rashidiya, and other similarly
2 31 underserved groups of eastern Sudan; the Nubian and other
2 32 similarly underserved groups in Sudan's Abyei, Southern Blue
2 33 Nile, and Nuba Mountain regions; and the Amri, Hamadab,
2 34 Manasir, and other similarly underserved groups of northern
2 35 Sudan.

3 1 10. "Military equipment" means weapons, arms, military
3 2 supplies, and equipment that readily may be used for military
3 3 purposes, including but not limited to radar systems or
3 4 military=grade transport vehicles, or supplies or services
3 5 sold or provided directly or indirectly to any force actively
3 6 participating in armed conflict in Sudan.

3 7 11. "Mineral extraction activities" include exploring,
3 8 extracting, processing, transporting, or wholesale selling or
3 9 trading of elemental minerals or associated metal alloys or
3 10 oxides, including gold, copper, chromium, chromite, diamonds,
3 11 iron, iron ore, silver, tungsten, uranium, and zinc, as well
3 12 as facilitating such activities, including by providing
3 13 supplies or services in support of such activities.

3 14 12. "Oil=related activities" include but are not limited
3 15 to owning rights to oil blocks; exporting, extracting,
3 16 producing, refining, processing, exploring for, transporting,
3 17 selling, or trading of oil; constructing, maintaining, or
3 18 operating a pipeline, refinery, or other oil field
3 19 infrastructure; and facilitating such activities, including by
3 20 providing supplies or services in support of such activities,
3 21 provided that the mere retail sale of gasoline and related
3 22 consumer products shall not be considered oil=related
3 23 activities.

3 24 13. "Power production activities" means any business
3 25 operation that involves a project commissioned by the National
3 26 Electricity Corporation of Sudan or other similar government
3 27 of Sudan entity whose purpose is to facilitate power
3 28 generation and delivery, including but not limited to
3 29 establishing power generating plants or hydroelectric dams,
3 30 selling or installing components for the project, providing
3 31 service contracts related to the installation or maintenance
3 32 of the project, as well as facilitating such activities,
3 33 including by providing supplies or services in support of such
3 34 activities.

3 35 14. "Public fund" means the treasurer of state, the state
4 1 board of regents, or the Iowa public employees' retirement
4 2 system created in chapter 97B.

4 3 15. "Scrutinized company" means any company that is not a
4 4 social development company that meets any of the following
4 5 criteria:

4 6 a. The company has business operations that involve
4 7 contracts with or provision of supplies or services to the
4 8 government of Sudan, companies in which the government of
4 9 Sudan has any direct or indirect equity share, government of
4 10 Sudan=commissioned consortiums or projects, or companies
4 11 involved in government of Sudan=commissioned consortiums or
4 12 projects; and meets any of the additional following criteria:

4 13 (1) More than ten percent of the company's revenues or
4 14 assets linked to Sudan involve oil=related activities or
4 15 mineral extraction activities, less than seventy=five percent
4 16 of the company's revenues or assets linked to Sudan involve
4 17 contracts with or provision of oil=related or mineral
4 18 extracting products or services to the regional government of
4 19 southern Sudan or a project or consortium created exclusively
4 20 by that regional government, and the company has failed to
4 21 take substantial action.

4 22 (2) More than ten percent of the company's revenues or
4 23 assets linked to Sudan involve power production activities,
4 24 less than seventy=five percent of the company's power
4 25 production activities include projects whose intent is to
4 26 provide power or electricity to the marginalized populations
4 27 of Sudan, and the company has failed to take substantial

4 28 action.
4 29 b. The company is complicit in the Darfur genocide.
4 30 c. The company supplies military equipment within Sudan,
4 31 unless it clearly shows that the military equipment cannot be
4 32 used to facilitate offensive military actions in Sudan or the
4 33 company implements rigorous and verifiable safeguards to
4 34 prevent use of that equipment by forces actively participating
4 35 in armed conflict, for example, through post-sale tracking of
5 1 such equipment by the company, certification from a reputable
5 2 and objective third party that such equipment is not being
5 3 used by a party participating in armed conflict in Sudan, or
5 4 sale of such equipment solely to the regional government of
5 5 southern Sudan or any internationally recognized peacekeeping
5 6 force or humanitarian organization.

5 7 16. "Social development company" means a company that is
5 8 not complicit in the Darfur genocide whose primary purpose in
5 9 Sudan is to provide humanitarian goods or services, including
5 10 medicine or medical equipment, agricultural supplies or
5 11 infrastructure, educational opportunities, journalism-related
5 12 activities, information or information materials,
5 13 spiritual-related activities, services of a purely clerical or
5 14 reporting nature, food, clothing, or general consumer goods
5 15 that are unrelated to oil-related activities, mineral
5 16 extraction activities, or power production activities.

5 17 17. "Substantial action" means adopting, publicizing, and
5 18 implementing a formal plan to cease scrutinized business
5 19 operations within one year and to refrain from any such new
5 20 business operations; undertaking significant humanitarian
5 21 efforts on behalf of one or more marginalized populations of
5 22 Sudan; or through engagement with the government of Sudan,
5 23 materially improving conditions for the genocidally victimized
5 24 population in Darfur.

5 25 Sec. 3. NEW SECTION. 12A.3 IDENTIFICATION OF COMPANIES
5 26 == NOTICE.

5 27 1. a. By October 1, 2007, the public fund shall make its
5 28 best efforts to identify all scrutinized companies in which
5 29 the public fund has direct or indirect holdings or could
5 30 possibly have such holdings in the future and shall, by
5 31 December 1, 2007, create and make available to the public a
5 32 scrutinized companies list for that public fund. The list
5 33 shall further identify whether the company has inactive
5 34 business operations or active business operations. The public
5 35 fund shall review and update the scrutinized companies list
6 1 and the determination of whether a company has inactive or
6 2 active business operations on a quarterly basis.

6 3 b. In making its best efforts to identify scrutinized
6 4 companies and companies with inactive business operations or
6 5 active business operations, the public fund may do any of the
6 6 following:

6 7 (1) Review and rely, in the best judgment of the public
6 8 fund, on publicly available information regarding companies
6 9 with business operations in Sudan, including information
6 10 provided by nonprofit organizations, research firms,
6 11 international organizations, and government entities.

6 12 (2) Contact asset managers contracted by the public fund
6 13 that invest in companies with business operations in Sudan.

6 14 (3) Contact other institutional investors that have
6 15 divested from or are engaged with companies that have business
6 16 operations in Sudan.

6 17 2. a. For each company on the scrutinized companies list
6 18 with only inactive business operations in which the public
6 19 fund has direct or indirect holdings, the public fund shall
6 20 send a written notice informing the company of the
6 21 requirements of this chapter and encouraging it to continue to
6 22 refrain from initiating active business operations in Sudan
6 23 until it is able to avoid scrutinized business operations.
6 24 The public fund shall continue to provide such written notice
6 25 on a semiannual basis if the company remains a scrutinized
6 26 company with inactive business operations.

6 27 b. For each company on the scrutinized companies list with
6 28 active business operations in which the public fund has direct
6 29 or indirect holdings, the public fund shall send a written
6 30 notice informing the company of its status as a scrutinized
6 31 company with active business operations and that it may become
6 32 subject to divestment by the public fund. The notice shall
6 33 offer the company the opportunity to clarify its Sudan-related
6 34 activities and shall encourage the company, within ninety
6 35 days, to either cease its scrutinized business operations or
7 1 convert such operations to inactive business operations in
7 2 order to avoid qualifying for divestment by the public fund.

7 3 Sec. 4. NEW SECTION. 12A.4 PROHIBITED INVESTMENTS ==

7 4 DIVESTMENT.

7 5 1. The public fund shall not acquire and shall sell,
7 6 redeem, divest, or withdraw all publicly traded securities of
7 7 a company on the scrutinized company list with active business
7 8 operations so long as such company remains on the scrutinized
7 9 companies list as a company with active business operations as
7 10 provided in this section.

7 11 2. The public fund shall sell, redeem, divest, or withdraw
7 12 all publicly traded securities of a company on the scrutinized
7 13 company list no sooner than ninety days following the first
7 14 written notice sent to the scrutinized company as required by
7 15 section 12A.3 according to the following schedule:

7 16 a. At least fifty percent of the assets shall be removed
7 17 from the public fund's assets under management within nine
7 18 months after the company's most recent appearance on the
7 19 scrutinized companies list.

7 20 b. All of such assets shall be removed from the public
7 21 fund's assets under management within fifteen months after the
7 22 company's most recent appearance on the scrutinized companies
7 23 list.

7 24 3. The requirements of this section shall not apply to the
7 25 following:

7 26 a. A company which the United States government
7 27 affirmatively declares to be excluded from its present or any
7 28 future federal sanctions regime relating to Sudan.

7 29 b. Indirect holdings of a scrutinized company with active
7 30 business operations in actively managed investment funds. The
7 31 public fund shall, however, submit letters to the managers of
7 32 such investment funds containing companies with scrutinized
7 33 active business operations requesting that they consider
7 34 removing such companies from the fund or create a similar
7 35 actively managed fund with indirect holdings devoid of such
8 1 companies. If the manager creates a similar fund, the public
8 2 fund shall replace all applicable investments with investments
8 3 in the similar fund in an expedited timeframe consistent with
8 4 prudent investing standards. For purposes of this section,
8 5 private equity funds shall be deemed to be "actively managed
8 6 investment funds".

8 7 4. Notwithstanding any provision of this section to the
8 8 contrary, the public fund shall be permitted to cease
8 9 divesting from certain scrutinized companies pursuant to this
8 10 section or reinvest in certain scrutinized companies from
8 11 which it divested pursuant to this section if clear and
8 12 convincing evidence shows that the value for all assets under
8 13 management by the public fund becomes equal to or less than
8 14 ninety-nine and one-half percent of the hypothetical value of
8 15 all assets under management by the public fund assuming no
8 16 divestment for any company had occurred under this section.
8 17 Cessation of divestment, reinvestment, or any subsequent
8 18 ongoing investment authorized by this subsection shall be
8 19 strictly limited to the minimum steps necessary to avoid the
8 20 contingency set forth in this subsection. For any cessation
8 21 of divestment, reinvestment, or subsequent ongoing investment
8 22 authorized by this subsection, the public fund shall provide a
8 23 written report to the general assembly and attorney general in
8 24 advance of initial reinvestment, updated semiannually
8 25 thereafter as applicable, setting forth the reasons and
8 26 justification, supported by clear and convincing evidence, for
8 27 its decisions to cease divestment, reinvest, or remain
8 28 invested in companies with scrutinized active business
8 29 operations. This subsection shall not apply to reinvestment
8 30 in companies on the ground that they have ceased to have
8 31 scrutinized active business operations.

8 32 Sec. 5. NEW SECTION. 12A.5 REPORTS.

8 33 1. SCRUTINIZED COMPANIES LIST. Each public fund shall,
8 34 within thirty days after the scrutinized companies list is
8 35 created or updated as required by section 12A.3, make the list
9 1 available to the public and file a copy of the list with the
9 2 general assembly and the attorney general.

9 3 2. ANNUAL REPORT. On October 1, 2008, and each October 1
9 4 thereafter, each public fund shall make available to the
9 5 public, and file with the general assembly and the attorney
9 6 general, an annual report covering the prior fiscal year that
9 7 includes the following:

9 8 a. The scrutinized companies list as of the end of the
9 9 fiscal year.

9 10 b. A summary of all written notices sent as required by
9 11 section 12A.3 during the fiscal year.

9 12 c. All investments sold, redeemed, divested, or withdrawn
9 13 in compliance with section 12A.4 during the fiscal year.

9 14 d. Any progress made under section 12A.4, subsection 3,

9 15 paragraph "b", during the fiscal year.

9 16 Sec. 6. NEW SECTION. 12A.6 LEGAL OBLIGATIONS.

9 17 With respect to actions taken in compliance with this
9 18 chapter, including all good faith determinations regarding
9 19 companies as required by this chapter, the public fund shall
9 20 be exempt from any conflicting statutory or common law
9 21 obligations, including any such obligations in respect to
9 22 choice of asset managers, investment funds, or investments for
9 23 the public fund's securities portfolios.

9 24 Sec. 7. NEW SECTION. 12A.7 APPLICABILITY.

9 25 The requirements of this chapter shall not apply upon the
9 26 occurrence of any of the following:

9 27 1. The Congress or president of the United States declares
9 28 that the Darfur genocide has been halted for at least twelve
9 29 months.

9 30 2. The United States revokes all sanctions imposed against
9 31 the government of Sudan.

9 32 3. The Congress or president of the United States, through
9 33 legislation or executive order, declares that mandatory
9 34 divestment of the type provided for in this chapter interferes
9 35 with the conduct of United States foreign policy.

10 1 Sec. 8. Section 12.8, unnumbered paragraph 1, Code 2007,
10 2 is amended to read as follows:

10 3 The treasurer of state shall invest or deposit, subject to
10 4 chapter 12A and as provided by law, any of the public funds
10 5 not currently needed for operating expenses and shall do so
10 6 upon receipt of monthly notice from the director of the
10 7 department of administrative services of the amount not so
10 8 needed. In the event of loss on redemption or sale of
10 9 securities invested as prescribed by law, and if the
10 10 transaction is reported to the executive council, neither the
10 11 treasurer nor director of the department of administrative
10 12 services is personally liable but the loss shall be charged
10 13 against the funds which would have received the profits or
10 14 interest of the investment and there is appropriated from the
10 15 funds the amount so required.

10 16 Sec. 9. Section 97B.4, subsection 5, Code 2007, is amended
10 17 to read as follows:

10 18 5. INVESTMENTS. The system, through the chief investment
10 19 officer, shall invest, subject to chapter 12A and in
10 20 accordance with the investment policy and goal statement
10 21 established by the board, the portion of the retirement fund
10 22 which, in the judgment of the system, is not needed for
10 23 current payment of benefits under this chapter subject to the
10 24 requirements of section 97B.7A.

10 25 Sec. 10. Section 262.14, unnumbered paragraph 1, Code
10 26 2007, is amended to read as follows:

10 27 The board may invest funds belonging to the institutions,
10 28 subject to chapter 12A and the following regulations:

10 29 EXPLANATION

10 30 This bill restricts the treasurer of state, the state board
10 31 of regents, and the Iowa public employees' retirement system
10 32 (IPERS) from investing in certain companies with active
10 33 business operations in Sudan. The bill also adds notice
10 34 requirements as to the treasurer of state, regents, and IPERS
10 35 relative to companies with inactive business operations in
11 1 Sudan.

11 2 The bill requires each public fund, defined to include the
11 3 treasurer of state, the state board of regents, and IPERS, to
11 4 develop and maintain a list of scrutinized companies with
11 5 active and inactive business operations in Sudan that the fund
11 6 has direct or indirect holdings in or may invest in the
11 7 future. Each public fund shall determine this list by October
11 8 1, 2007, and update it on a quarterly basis. The bill defines
11 9 scrutinized companies as those companies that have contracts
11 10 with the government of Sudan and involve some oil-related or
11 11 power production activities, are complicit in the Darfur
11 12 genocide, or supply military equipment to Sudan. Once a
11 13 company is listed on the scrutinized companies list of a
11 14 public fund, the bill requires the public fund to send a
11 15 notice to that company relative to the requirements of the
11 16 bill. If the company has inactive business operations, the
11 17 notice shall describe the requirements of the bill and
11 18 encourage the company not to engage in active business
11 19 operations. If the company has active business operations,
11 20 the notice shall provide that the company may qualify for
11 21 divestment by the public fund.

11 22 New Code section 12A.4 requires that a public fund not
11 23 invest in, and shall divest from, holdings in a scrutinized
11 24 company with active business operations. If the public fund
11 25 has direct holdings in the company, the public fund shall

11 26 proceed to divest all assets with that company in 15 months so
11 27 long as the company continues active business operations in
11 28 Sudan. The bill provides that a public fund shall not be
11 29 required to divest or refrain from investing in a company if
11 30 the federal government so provides or the public fund has
11 31 indirect holdings, and not direct holdings, in that company.
11 32 The bill further authorizes a public fund to stop divesting if
11 33 the assets of the fund after starting to divest becomes equal
11 34 to 99.5 percent of the assets before divestment started. The
11 35 bill defines indirect holdings to include shares in an account
12 1 or fund managed by persons not employed by the public fund.
12 2 The bill further requires each public fund to prepare and
12 3 make available to the public, and file with the general
12 4 assembly and the attorney general, an annual report, beginning
12 5 October 1, 2008, concerning actions taken by the public fund
12 6 relative to the requirements of this new Code chapter in the
12 7 previous fiscal year.
12 8 The bill provides that the requirements of the bill cease
12 9 to be applicable if the Congress or president of the United
12 10 States declares that the Darfur genocide has been halted or
12 11 declares that mandatory divestment is contrary to United
12 12 States foreign policy or the United States revokes all
12 13 sanctions imposed against Sudan.
12 14 LSB 1150SC 82
12 15 ec:nh/cf/24.1