

BY: Budget and Taxation Committee

AMENDMENTS TO SENATE BILL 543
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and Rosapepe” and substitute “Rosapepe, Garagiola, Brochin, Frosh, and Madaleno”; strike beginning with “identify” in line 4 down through the semicolon in line 5 and substitute “review certain investment holdings”; in line 6, strike “use certain resources to identify certain companies” and substitute “encourage certain companies to take certain actions”; strike beginning with “requiring” in line 7 down through “requiring” in line 9 and substitute “authorizing”; strike beginning with “divest” in line 9 down through the semicolon in line 10 and substitute “take divestment action with regard to certain investments”; strike beginning with “exempting” in line 11 down through the semicolon in line 12 and substitute “requiring the Board of Trustees to take certain issues into account prior to taking certain actions”; in line 13, strike “submit” and substitute “publish”; strike beginning with the second “to” in line 13 down through “by” in line 15 and substitute “on or before”; strike beginning with “providing” in line 15 down through the first semicolon in line 16 and substitute “providing for the termination of this Act under certain circumstances”; and strike beginning with “21-1A-01” in line 20 down through “Sudan” in line 21 and substitute “21-123.1”.

AMENDMENT NO. 2

On page 2, strike in their entirety lines 2 and 3; and strike in their entirety lines 12 through 23, inclusive.

On page 3, strike in their entirety lines 11 through 20, inclusive; strike in their entirety lines 25 and 26; after line 26, insert:

“WHEREAS, Despite significant pressure from the United States government, the Republic of Sudan fails to take necessary actions to disassociate itself from its ties to terrorism and genocide; and”;

(Over)

in line 27, strike “facing such widespread divestment” and substitute “supporting such ties with terrorism and genocide”; and in line 28, after “investors” insert “of these companies”.

On page 4, in line 8, strike “mandatory”.

AMENDMENT NO. 3

On pages 4 through 15, strike in their entirety the lines beginning with line 15 on page 4 through line 5 on page 15 and substitute:

“21-123.1.

(A) (1) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “COMPANY” MEANS ANY CORPORATION, UTILITY, PARTNERSHIP, JOINT VENTURE, FRANCHISOR, FRANCHISEE, TRUST, ENTITY INVESTMENT VEHICLE, FINANCIAL INSTITUTION OR ITS WHOLLY OWNED SUBSIDIARY.

(3) (I) “ACTIVELY MANAGED SEPARATE ACCOUNTS” MEANS THE ACCOUNTS OF THE SEVERAL SYSTEMS THAT ARE ACTIVELY MANAGED AT THE DIRECTION OF THE BOARD OF TRUSTEES AND HELD IN SEPARATE ACCOUNTS.

(II) “ACTIVELY MANAGED SEPARATE ACCOUNTS” DOES NOT MEAN INDEXED FUNDS, PRIVATE EQUITY FUNDS, REAL ESTATE FUNDS, OR OTHER COMMINGLED OR PASSIVELY MANAGED FUNDS.

(4) “DIVESTMENT ACTION” MEANS SELLING, REDEEMING, TRANSFERRING, EXCHANGING, OTHERWISE DISPOSING OF, OR REFRAINING FROM FURTHER INVESTMENT IN CERTAIN INVESTMENTS.

(5) “DOING BUSINESS IN SUDAN” MEANS MAINTAINING EQUIPMENT, FACILITIES, PERSONNEL, OR OTHER APPARATUS OF BUSINESS OR COMMERCE IN SUDAN, INCLUDING OWNERSHIP OF REAL OR PERSONAL PROPERTY IN SUDAN OR ENGAGING IN ANY BUSINESS ACTIVITY WITH THE GOVERNMENT OF SUDAN;

(6) “ELIGIBLE ACCOUNTS” MEANS ACTIVELY MANAGED SEPARATE ACCOUNTS CONTAINING FUNDS OF THE SEVERAL SYSTEMS.

(7) “INVESTMENT” MEANS THE COMMITMENT OF FUNDS OR OTHER ASSETS TO A COMPANY, INCLUDING:

(I) THE OWNERSHIP OR CONTROL OF A SHARE OR INTEREST IN THE COMPANY; OR

(II) THE OWNERSHIP OR CONTROL OF A BOND OR OTHER DEBT INSTRUMENT BY A COMPANY.

(8) (I) “SUDAN” MEANS THE GOVERNMENT IN KHARTOUM, SUDAN, THAT 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 ON IN THE COMPREHENSIVE PEACE AGREEMENT FOR SUDAN.

(II) “SUDAN” DOES NOT MEAN THE REGIONAL GOVERNMENT OF SOUTHERN SUDAN.

(B) THE BOARD OF TRUSTEES SHALL REVIEW THE INVESTMENT HOLDINGS IN ELIGIBLE ACCOUNTS FOR THE PURPOSE OF DETERMINING THE EXTENT TO WHICH FUNDS IN ELIGIBLE ACCOUNTS ARE INVESTED IN COMPANIES DOING BUSINESS IN SUDAN.

(C) CONSISTENT WITH THE FIDUCIARY DUTIES OF THE BOARD OF TRUSTEES UNDER SUBTITLE 2 OF THIS TITLE AND THE PROVISIONS OF SUBSECTION (D) OF THIS SECTION, THE BOARD OF TRUSTEES:

(1) SHALL ENCOURAGE COMPANIES IN WHICH ELIGIBLE ACCOUNTS ARE INVESTED AND THAT ARE DOING BUSINESS IN SUDAN TO ACT RESPONSIBLY AND AVOID ACTIONS THAT PROMOTE OR OTHERWISE ENABLE HUMAN RIGHTS VIOLATIONS IN SUDAN;

(2) MAY TAKE DIVESTMENT ACTION IN ELIGIBLE ACCOUNTS WITH REGARD TO CURRENT INVESTMENTS:

(I) IN ANY COMPANY DOING BUSINESS IN SUDAN; OR

(II) IN ANY SECURITY OR INSTRUMENT ISSUED BY SUDAN; AND

(3) MAY NOT MAKE ANY NEW INVESTMENTS FROM NET NEW FUNDS IN AN ELIGIBLE ACCOUNT IN ANY COMPANY THAT IS DOING BUSINESS IN SUDAN.

(D) IN DETERMINING WHETHER TO TAKE ANY ACTION UNDER SUBSECTION (C) OF THIS SECTION WITH REGARD TO THE INVESTMENT OF FUNDS IN ELIGIBLE ACCOUNTS IN A COMPANY DOING BUSINESS IN SUDAN, THE BOARD OF TRUSTEES SHALL CONSIDER THE FOLLOWING:

(1) REVENUES PAID BY A COMPANY DIRECTLY TO THE GOVERNMENT OF SUDAN;

(2) WHETHER A COMPANY SUPPLIES INFRASTRUCTURE OR RESOURCES USED BY THE GOVERNMENT OF SUDAN TO IMPLEMENT ITS POLICIES OF GENOCIDE IN DARFUR OR OTHER REGIONS OF SUDAN;

(3) WHETHER A COMPANY KNOWINGLY OBSTRUCTS LAWFUL INQUIRIES INTO ITS OPERATIONS AND INVESTMENTS IN SUDAN;

(4) WHETHER A COMPANY ATTEMPTS TO CIRCUMVENT ANY APPLICABLE SANCTIONS OF THE UNITED STATES;

(5) THE EXTENT OF ANY HUMANITARIAN ACTIVITIES UNDERTAKEN BY A COMPANY IN SUDAN;

(6) WHETHER A COMPANY IS ENGAGED SOLELY IN THE PROVISION OF GOODS AND SERVICES INTENDED TO RELIEVE HUMAN SUFFERING OR TO PROMOTE WELFARE, HEALTH, EDUCATION, RELIGIOUS, OR SPIRITUAL ACTIVITIES;

(7) WHETHER A COMPANY IS AUTHORIZED BY THE FEDERAL GOVERNMENT OF THE UNITED STATES TO DO BUSINESS IN SUDAN;

(8) EVIDENCE THAT A COMPANY HAS ENGAGED THE GOVERNMENT OF SUDAN TO CEASE ITS ABUSES IN DARFUR OR OTHER REGIONS IN SUDAN;

(9) WHETHER A COMPANY IS ENGAGED SOLELY IN JOURNALISTIC ACTIVITIES; AND

(10) ANY OTHER FACTOR THAT THE BOARD OF TRUSTEES DEEMS PRUDENT.

(E) IF THE BOARD OF TRUSTEES TAKES DIVESTMENT ACTION UNDER SUBSECTION (C) OF THIS SECTION, WITH RESPECT TO INVESTMENTS IN A COMPANY, THE BOARD OF TRUSTEES SHALL PROVIDE THE COMPANY WITH WRITTEN NOTICE OF ITS DECISION AND REASONS FOR THE DECISION.

(F) ON OR BEFORE OCTOBER 1 OF EACH YEAR, AND EVERY 3 MONTHS THEREAFTER, THE BOARD OF TRUSTEES SHALL SUBMIT A REPORT IN ACCORDANCE

(Over)

WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE TO THE SENATE BUDGET AND TAXATION COMMITTEE, THE HOUSE APPROPRIATIONS COMMITTEE, AND THE JOINT COMMITTEE ON PENSIONS THAT PROVIDES:

(1) A SUMMARY OF CORRESPONDENCE WITH COMPANIES ENGAGED BY THE BOARD OF TRUSTEES UNDER THIS SECTION;

(2) ALL DIVESTMENT ACTIONS TAKEN BY THE BOARD OF TRUSTEES IN ACCORDANCE WITH THIS SECTION;

(3) A LIST OF COMPANIES DOING BUSINESS IN SUDAN WHICH THE BOARD OF TRUSTEES HAS DETERMINED TO BE INELIGIBLE FOR INVESTMENTS OF NET NEW FUNDS UNDER SUBSECTION (C)(3) OF THIS SECTION; AND

(4) OTHER DEVELOPMENTS RELEVANT TO INVESTMENT IN COMPANIES DOING BUSINESS IN SUDAN.”.

AMENDMENT NO. 4

On page 15, after line 5, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That if the President of the United States rescinds or repeals Executive Order 13067, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect. Within 5 working days of the President of the United States rescinding or repealing Executive Order 13067, the Board of Trustees for the State Retirement and Pension System shall notify the Department of Legislative Services in writing of the rescission or repeal at 90 State Circle, Annapolis, Maryland 21401.”;

in line 6, strike “2.” and substitute “3.”; and in the same line, after “That” insert “, subject to the provisions of Section 2 of this Act.”.