

SENATE BILL 543

K4

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By: **Senators Jones, Britt, Conway, Currie, Exum, Gladden, McFadden, Muse, Pugh, and ~~Rosapepe~~ Rosapepe, Garagiola, Brochin, Frosh, and Madaleno**

Introduced and read first time: February 2, 2007
Assigned to: Budget and Taxation

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 24, 2007

CHAPTER _____

1 AN ACT concerning

2 **2007 Darfur Protection Act – Divestiture from the Republic of Sudan**

3 FOR the purpose of requiring the Board of Trustees for the State Retirement and
4 Pension System to ~~identify and create a list of certain companies within a~~
5 ~~certain period of time who meet certain criteria;~~ review certain investment
6 holdings; requiring the Board of Trustees to ~~use certain resources to identify~~
7 ~~certain companies~~ encourage certain companies to take certain actions;
8 requiring the Board of Trustees to provide written notice to certain companies;
9 ~~requiring the Board of Trustees to notify certain companies that they may be~~
10 ~~subject to divestment under certain circumstances;~~ requiring authorizing the
11 Board of Trustees to divest under certain circumstances from certain companies
12 following a certain schedule; take divestment action with regard to certain
13 investments; prohibiting the Board of Trustees from acquiring certain
14 securities; ~~exempting certain companies from the provisions of this Act;~~
15 requiring the Board of Trustees to take certain issues into account prior to
16 taking certain actions; requiring the Board of Trustees to ~~submit~~ publish certain
17 reports containing certain information ~~to the Chairman of the Joint Committee~~
18 ~~on Pensions and the United States Presidential Special Envoy to Sudan, by on~~
19 or before a certain date; ~~providing for the expiration of this Act under certain~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~circumstances; providing for the termination of this Act under certain~~
2 ~~circumstances; defining certain terms; and generally relating to sanctions~~
3 ~~against the Republic of Sudan.~~

4 BY adding to

5 Article – State Personnel and Pensions

6 Section ~~21-1A-01 through 21-1A-08 to be under the new subtitle “Subtitle 1A-~~
7 ~~Divestment from the Republic of Sudan” 21-123.1~~

8 Annotated Code of Maryland

9 (2004 Replacement Volume and 2006 Supplement)

10 Preamble

11 ~~WHEREAS, On July 23, 2004, the United States Congress declared that “the~~
12 ~~atrocities unfolding in Darfur, Sudan, are genocide”; and~~

13 WHEREAS, On September 9, 2004, Secretary of State Colin L. Powell told the
14 United States Senate Foreign Relations Committee that “genocide has occurred and
15 may still be occurring in Darfur” and “the Government of Sudan and the Janjaweed
16 bear responsibility”; and

17 WHEREAS, On September 21, 2004, addressing the United Nations General
18 Assembly, President George W. Bush affirmed the Secretary of State’s finding and
19 stated, “at this hour, the world is witnessing terrible suffering and horrible crimes in
20 the Darfur region of Sudan, crimes my government has concluded are genocide”; and

21 ~~WHEREAS, On December 7, 2004, the United States Congress noted that the~~
22 ~~genocidal policy in Darfur has led to reports of “systematic rape of thousands of~~
23 ~~women and girls, the abduction of women and children, and the destruction of~~
24 ~~hundreds of ethnically African villages, including the poisoning of their wells and the~~
25 ~~plunder of their crops and cattle upon which the people of such villages sustain~~
26 ~~themselves”; and~~

27 ~~WHEREAS, Also on December 7, 2004, the United States Congress found that~~
28 ~~“the Government of Sudan has restricted access by humanitarian and human rights~~
29 ~~workers to the Darfur area through intimidation by military and security forces, and~~
30 ~~through bureaucratic and administrative obstruction, in an attempt to inflict the most~~
31 ~~devastating harm on those individuals displaced from their villages and homes~~
32 ~~without any means of sustenance or shelter”; and~~

33 WHEREAS, On September 25, 2006, the United States Congress reaffirmed
34 that “the genocide unfolding in the Darfur region of Sudan is characterized by acts of
35 terrorism and atrocities directed against civilians, including mass murder, rape, and

1 sexual violence committed by the Janjaweed and associated militias with the
2 complicity and support of the National Congress Party–led faction of the Government
3 of Sudan”; and

4 WHEREAS, On September 26, 2006, the United States Congress stated that “an
5 estimated 300,000 to 400,000 people have been killed by the Government of Sudan and
6 its Janjaweed allies since the Darfur crisis began in 2003, more than 2,000,000 people
7 have been displaced from their homes, and more than 250,000 people from Darfur
8 remain in refugee camps in Chad”; and

9 WHEREAS, The Darfur crisis represents the first time the United States
10 Government has labeled ongoing atrocities a genocide; and

11 WHEREAS, The federal government has imposed sanctions against the
12 Government of Sudan since 1997, that are monitored through the United States
13 Treasury Department’s Office of Foreign Assets Control (OFAC); and

14 WHEREAS, According to a former chair of the United States Securities and
15 Exchange Commission (SEC), “the fact that a foreign company is doing material
16 business with a country, government, or entity on OFAC’s sanctions list is, in the SEC
17 staff’s view, substantially likely to be significant to a reasonable investor’s decision
18 about whether to invest in that company”; and

19 ~~WHEREAS, Since 1993, the United States Secretary of State has determined~~
20 ~~that Sudan is a country the government of which has repeatedly provided support for~~
21 ~~acts of international terrorism, thereby restricting United States assistance, defense~~
22 ~~exports and sales, and financial and other transactions with the Government of~~
23 ~~Sudan; and~~

24 ~~WHEREAS, A 2006 United States Congressional report states that “a~~
25 ~~company’s association with sponsors of terrorism and human rights abuses, no matter~~
26 ~~how large or small, can have a materially adverse result on a public company’s~~
27 ~~operations, financial condition, earnings, and stock prices, all of which can negatively~~
28 ~~affect the value of an investment”; and~~

29 WHEREAS, In response to the financial risk posed by investments in companies
30 doing business with a terrorist–sponsoring state, the SEC established its Office of
31 Global Security Risk to provide for enhanced disclosure of material information
32 regarding such companies; and

33 ~~WHEREAS, The current Sudan divestment movement encompasses nearly 100~~
34 ~~universities, cities, states, and private pension plans; and~~

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

4 WHEREAS, Companies ~~faciing such widespread divestment~~ supporting such ties
 5 with terrorism and genocide present further material risk to remaining investors of
 6 these companies; and

7 WHEREAS, It is a fundamental responsibility of the State to decide where, how,
 8 and by whom financial resources in its control should be invested, taking into account
 9 numerous pertinent factors; and

10 WHEREAS, It is the prerogative and desire of the State, in respect to
 11 investment resources in its control and to the extent reasonable, with due
 12 consideration for, among other things, return on investment, on behalf of itself and its
 13 investment beneficiaries, not to participate in an ownership or capital-providing
 14 capacity with entities that provide significant practical support for genocide, including
 15 certain international companies presently doing business in Sudan; and

16 WHEREAS, It is the judgment of the General Assembly that this Act should
 17 remain in effect only insofar as it continues to be consistent with, and does not unduly
 18 interfere with, the foreign policy of the United States as determined by the federal
 19 government; and

20 WHEREAS, It is the judgment of the General Assembly that ~~mandatory~~
 21 divestment of public funds from certain companies is a measure that should be
 22 employed sparingly and judiciously – a United States Congressional and Presidential
 23 declaration of genocide satisfying this high threshold; now, therefore,

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article – State Personnel and Pensions**

27 ~~**SUBTITLE 1A. DIVESTMENT FROM THE REPUBLIC OF SUDAN.**~~

28 ~~**21-1A-01.**~~

29 ~~**(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**~~
 30 ~~**INDICATED.**~~

1 ~~(B) “ACTIVE BUSINESS OPERATIONS” MEANS ALL BUSINESS~~
2 ~~OPERATIONS THAT ARE NOT INACTIVE BUSINESS OPERATIONS.~~

3 ~~(C) “BUSINESS OPERATIONS” MEANS ENGAGING IN COMMERCE IN ANY~~
4 ~~FORM IN SUDAN, INCLUDING ACQUIRING, DEVELOPING, MAINTAINING, OWNING,~~
5 ~~SELLING, POSSESSING, LEASING, OR OPERATING EQUIPMENT, FACILITIES,~~
6 ~~PERSONNEL, PRODUCTS, SERVICES, PERSONAL PROPERTY, REAL PROPERTY, OR~~
7 ~~ANY OTHER APPARATUS OF BUSINESS OR COMMERCE.~~

8 ~~(D) “COMPANY” MEANS ANY SOLE PROPRIETORSHIP, ORGANIZATION,~~
9 ~~ASSOCIATION, CORPORATION, PARTNERSHIP, JOINT VENTURE, LIMITED~~
10 ~~PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, LIMITED LIABILITY~~
11 ~~COMPANY, OR OTHER ENTITY OR BUSINESS ASSOCIATION, INCLUDING ALL~~
12 ~~WHOLLY OWNED SUBSIDIARIES, MAJORITY OWNED SUBSIDIARIES, PARENT~~
13 ~~COMPANIES, OR AFFILIATES OF SUCH ENTITIES OR BUSINESS ASSOCIATIONS,~~
14 ~~THAT EXIST FOR PROFIT-MAKING PURPOSES.~~

15 ~~(E) “COMPLICIT” MEANS TAKING ACTIONS DURING ANY PRECEDING~~
16 ~~20-MONTH PERIOD BEGINNING JULY 1, 2007, THAT HAVE DIRECTLY~~
17 ~~SUPPORTED OR PROMOTED THE GENOCIDAL CAMPAIGN IN DARFUR,~~
18 ~~INCLUDING:~~

19 ~~(1) PREVENTING DARFUR’S VICTIMIZED POPULATION FROM~~
20 ~~COMMUNICATING WITH EACH OTHER;~~

21 ~~(2) ENCOURAGING SUDANESE CITIZENS TO SPEAK OUT AGAINST~~
22 ~~AN INTERNATIONALLY APPROVED SECURITY FORCE FOR DARFUR; OR~~

23 ~~(3) ACTIVELY WORKING TO DENY, COVER UP, OR ALTER THE~~
24 ~~RECORD ON HUMAN RIGHTS ABUSES IN DARFUR, OR OTHER SIMILAR ACTIONS.~~

25 ~~(F) “DIRECT HOLDINGS” MEANS ALL SECURITIES OF A COMPANY THAT~~
26 ~~ARE HELD DIRECTLY BY THE BOARD OF TRUSTEES ON BEHALF OF THE SEVERAL~~
27 ~~SYSTEMS IN AN ACCOUNT OR FUND IN WHICH THE BOARD OF TRUSTEES OWNS~~
28 ~~ALL SHARES OR INTEREST.~~

29 ~~(G) (1) “GOVERNMENT OF SUDAN” MEANS THE GOVERNMENT IN~~
30 ~~KHARTOUM, SUDAN, THAT IS LED BY THE NATIONAL CONGRESS PARTY~~
31 ~~(FORMERLY KNOWN AS THE NATIONAL ISLAMIC FRONT) OR ANY SUCCESSOR~~
32 ~~GOVERNMENT FORMED ON OR AFTER OCTOBER 13, 2006, INCLUDING THE~~

1 ~~COALITION NATIONAL UNITY GOVERNMENT AGREED ON IN THE~~
2 ~~COMPREHENSIVE PEACE AGREEMENT FOR SUDAN.~~

3 ~~(2) "GOVERNMENT OF SUDAN" DOES NOT MEAN THE REGIONAL~~
4 ~~GOVERNMENT OF SOUTHERN SUDAN.~~

5 ~~(H) "INDIRECT HOLDINGS" MEANS ALL SECURITIES OF A COMPANY~~
6 ~~HELD IN AN ACCOUNT OR FUND AND MANAGED BY ONE OR MORE PERSONS NOT~~
7 ~~EMPLOYED BY THE BOARD OF TRUSTEES, BUT INCLUDES SHARES OR~~
8 ~~INTERESTS OWNED BY THE BOARD OF TRUSTEES ON BEHALF OF THE SEVERAL~~
9 ~~SYSTEMS AND OTHER INVESTORS NOT AFFILIATED WITH THE SEVERAL~~
10 ~~SYSTEMS.~~

11 ~~(I) "MARGINALIZED POPULATION OF SUDAN" MEANS:~~

12 ~~(1) THE PORTION OF THE POPULATION IN THE DARFUR REGION~~
13 ~~THAT HAS BEEN GENOCIDALLY VICTIMIZED;~~

14 ~~(2) THE PORTION OF THE POPULATION OF SOUTHERN SUDAN~~
15 ~~VICTIMIZED BY SUDAN'S NORTH-SOUTH CIVIL WAR;~~

16 ~~(3) THE BEJA, RASHIDIYA, AND OTHER SIMILARLY~~
17 ~~UNDERSERVED GROUPS OF EASTERN SUDAN;~~

18 ~~(4) THE NUBIAN AND OTHER SIMILARLY UNDERSERVED GROUPS~~
19 ~~IN SUDAN'S ABYEL, SOUTHERN BLUE NILE, AND NUBA MOUNTAIN REGIONS;~~
20 ~~AND~~

21 ~~(5) THE AMRI, HAMADAB, MANSIR, AND OTHER SIMILARLY~~
22 ~~UNDERSERVED GROUPS OF NORTHERN SUDAN.~~

23 ~~(J) "MILITARY EQUIPMENT" MEANS WEAPONS, ARMS, MILITARY~~
24 ~~SUPPLIES, AND EQUIPMENT THAT READILY MAY BE USED FOR MILITARY~~
25 ~~PURPOSES, INCLUDING:~~

26 ~~(1) RADAR SYSTEMS OR MILITARY-GRADE TRANSPORT VEHICLES;~~
27 ~~AND~~

1 ~~(2) SUPPLIES OR SERVICES SOLD OR PROVIDED DIRECTLY OR~~
2 ~~INDIRECTLY TO ANY FORCE ACTIVELY PARTICIPATING IN ARMED CONFLICT IN~~
3 ~~SUDAN.~~

4 ~~(K) "MINERAL EXTRACTION ACTIVITIES" MEANS EXPLORING,~~
5 ~~EXTRACTING, PROCESSING, TRANSPORTING, OR WHOLESALE SELLING OR~~
6 ~~TRADING OF ELEMENTAL MINERALS OR ASSOCIATED METAL ALLOYS OR OXIDES~~
7 ~~(ORE), INCLUDING GOLD, COPPER, CHROMIUM, CHROMITE, DIAMONDS, IRON,~~
8 ~~IRON ORE, SILVER, TUNGSTEN, URANIUM, AND ZINC.~~

9 ~~(L) (1) "OIL RELATED ACTIVITIES" MEANS:~~

10 ~~(I) OWNING RIGHTS TO OIL BLOCKS; AND~~

11 ~~(H) EXPORTING, EXTRACTING, PRODUCING, REFINING,~~
12 ~~PROCESSING, EXPLORING FOR, TRANSPORTING, SELLING, OR TRADING OF OIL.~~

13 ~~(2) "OIL RELATED ACTIVITIES" DOES NOT MEAN THE RETAIL~~
14 ~~SALE OF GASOLINE AND RELATED CONSUMER PRODUCTS.~~

15 ~~(M) "POWER PRODUCTION ACTIVITIES" MEANS ANY BUSINESS~~
16 ~~OPERATION THAT INVOLVES A PROJECT COMMISSIONED BY THE NATIONAL~~
17 ~~ELECTRICITY CORPORATION OF SUDAN OR OTHER SIMILAR GOVERNMENT OF~~
18 ~~SUDAN ENTITY WHOSE PURPOSE IS TO FACILITATE POWER GENERATION AND~~
19 ~~DELIVERY, INCLUDING:~~

20 ~~(1) ESTABLISHING POWER GENERATING PLANTS OR~~
21 ~~HYDROELECTRIC DAMS;~~

22 ~~(2) SELLING OR INSTALLING COMPONENTS FOR THE PROJECT; OR~~

23 ~~(3) PROVIDING SERVICE CONTRACTS RELATED TO THE~~
24 ~~INSTALLATION OR MAINTENANCE OF THE PROJECT.~~

25 ~~(N) (1) "SCRUTINIZED COMPANY" MEANS ANY COMPANY THAT MEETS~~
26 ~~THE CRITERIA OF § 21-1A-02 OF THIS SUBTITLE.~~

27 ~~(2) "SCRUTINIZED COMPANY" DOES NOT MEAN A SOCIAL~~
28 ~~DEVELOPMENT COMPANY THAT IS NOT COMPLICIT IN THE DARFUR GENOCIDE.~~

1 ~~(O) "SOCIAL DEVELOPMENT COMPANY" MEANS A COMPANY WHOSE~~
 2 ~~PRIMARY PURPOSE IS TO PROVIDE HUMANITARIAN GOODS OR SERVICES,~~
 3 ~~INCLUDING MEDICINE OR MEDICAL EQUIPMENT, AGRICULTURAL SUPPLIES OR~~
 4 ~~INFRASTRUCTURE, EDUCATIONAL OPPORTUNITIES, JOURNALISM-RELATED~~
 5 ~~ACTIVITIES, INFORMATION OR INFORMATIONAL MATERIALS,~~
 6 ~~SPIRITUAL-RELATED ACTIVITIES, SERVICES OF A PURELY CLERICAL OR~~
 7 ~~REPORTING NATURE, OR FOOD, CLOTHING, OR GENERAL CONSUMER GOODS~~
 8 ~~THAT ARE UNRELATED TO OIL-RELATED ACTIVITIES, MINERAL EXTRACTION~~
 9 ~~ACTIVITIES, OR POWER PRODUCTION ACTIVITIES.~~

10 ~~(P) "SUBSTANTIAL ACTION" MEANS:~~

11 ~~(1) ADOPTING, PUBLICIZING, AND IMPLEMENTING A FORMAL~~
 12 ~~PLAN TO CEASE SCRUTINIZED BUSINESS OPERATIONS BY JULY 1, 2008, AND TO~~
 13 ~~REFRAIN FROM ANY SUCH NEW BUSINESS OPERATIONS;~~

14 ~~(2) UNDERTAKING SIGNIFICANT HUMANITARIAN EFFORTS ON~~
 15 ~~BEHALF OF ONE OR MORE MARGINALIZED POPULATIONS OF SUDAN; OR~~

16 ~~(3) THROUGH ENGAGEMENT WITH THE GOVERNMENT OF SUDAN,~~
 17 ~~MATERIALLY IMPROVING CONDITIONS FOR THE GENOCIDALLY VICTIMIZED~~
 18 ~~POPULATION IN DARFUR.~~

19 ~~21-1A-02.~~

20 ~~(A) A COMPANY IS A SCRUTINIZED COMPANY IF IT:~~

21 ~~(1) (I) HAS BUSINESS OPERATIONS THAT INVOLVE CONTRACTS~~
 22 ~~FOR SUPPLIES OR SERVICES TO:~~

23 ~~1. THE GOVERNMENT OF SUDAN;~~

24 ~~2. COMPANIES IN WHICH THE GOVERNMENT OF~~
 25 ~~SUDAN HAS A DIRECT OR INDIRECT EQUITY SHARE;~~

26 ~~3. THE GOVERNMENT OF SUDAN COMMISSIONED~~
 27 ~~CONSORTIUMS OR PROJECTS; OR~~

28 ~~4. COMPANIES INVOLVED IN THE GOVERNMENT OF~~
 29 ~~SUDAN COMMISSIONED CONSORTIUMS OR PROJECTS;~~

1 ~~(H) HAS ASSETS LINKED TO SUDAN THAT INVOLVE:~~

2 ~~1. A. OIL RELATED ACTIVITIES GREATER THAN~~
3 ~~10% OF THE COMPANY'S TOTAL ASSETS; AND~~

4 ~~B. OIL RELATED OR MINERAL EXTRACTING~~
5 ~~PRODUCTS OR SERVICES TO THE REGIONAL GOVERNMENT OF SUDAN OR A~~
6 ~~PROJECT OR CONSORTIUM CREATED EXCLUSIVELY BY THAT REGIONAL~~
7 ~~GOVERNMENT THAT IS LESS THAN 75% OF THE COMPANY'S TOTAL ASSETS; OR~~

8 ~~2. A. POWER PRODUCTION ACTIVITIES GREATER~~
9 ~~THAN 10% OF THE COMPANY'S TOTAL ASSETS;~~

10 ~~B. LESS THAN 75% OF ALL POWER PRODUCTION~~
11 ~~ACTIVITIES THAT PROVIDE POWER OR ELECTRICITY TO THE MARGINALIZED~~
12 ~~POPULATIONS OF SUDAN; AND~~

13 ~~C. FAILURE TO TAKE SUBSTANTIAL ACTION;~~

14 ~~(2) IS COMPLICIT IN THE DARFUR GENOCIDE; OR~~

15 ~~(3) SUPPLIES MILITARY EQUIPMENT TO SUDAN.~~

16 ~~(B) FOR PURPOSES OF SUBSECTION (A)(3) OF THIS SECTION, A~~
17 ~~COMPANY IS NOT CONSIDERED TO SUPPLY MILITARY EQUIPMENT TO SUDAN IF~~
18 ~~THE COMPANY:~~

19 ~~(1) SUPPLIES MILITARY EQUIPMENT THAT CANNOT BE USED TO~~
20 ~~FACILITATE OFFENSIVE MILITARY ACTIONS IN SUDAN; OR~~

21 ~~(2) IMPLEMENTS SAFEGUARDS TO PREVENT USE OF MILITARY~~
22 ~~EQUIPMENT BY FORCES ACTIVELY PARTICIPATING IN ARMED CONFLICT.~~

23 ~~21-1A-03.~~

24 ~~(A) (1) AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, ON OR~~
25 ~~BEFORE OCTOBER 1, 2007, THE BOARD OF TRUSTEES SHALL IDENTIFY ALL~~
26 ~~SCRUTINIZED COMPANIES IN WHICH THE BOARD OF TRUSTEES HAS DIRECT OR~~
27 ~~INDIRECT HOLDINGS.~~

1 ~~(2) TO IDENTIFY SCRUTINIZED COMPANIES AS REQUIRED UNDER~~
2 ~~PARAGRAPH (1) OF THIS SUBSECTION, THE BOARD OF TRUSTEES SHALL:~~

3 ~~(I) REVIEW AND RELY ON PUBLICLY AVAILABLE~~
4 ~~INFORMATION REGARDING COMPANIES WITH BUSINESS OPERATIONS IN SUDAN,~~
5 ~~INCLUDING INFORMATION PROVIDED BY NONPROFIT ORGANIZATIONS,~~
6 ~~RESEARCH FIRMS, INTERNATIONAL ORGANIZATIONS, AND GOVERNMENT~~
7 ~~ENTITIES;~~

8 ~~(II) CONTACT ASSET MANAGERS CONTRACTED BY THE~~
9 ~~BOARD OF TRUSTEES ON BEHALF OF THE SEVERAL SYSTEMS, WITH BUSINESS~~
10 ~~OPPORTUNITIES IN SUDAN; AND~~

11 ~~(III) CONTACT OTHER INSTITUTIONAL INVESTORS THAT~~
12 ~~HAVE DIVESTED FROM OR ENGAGED WITH COMPANIES THAT HAVE BUSINESS~~
13 ~~OPERATIONS IN SUDAN.~~

14 ~~(B) ON OR BEFORE NOVEMBER 1, 2007, THE BOARD OF TRUSTEES~~
15 ~~SHALL PREPARE A LIST OF ALL SCRUTINIZED COMPANIES IDENTIFIED UNDER~~
16 ~~SUBSECTION (A) OF THIS SECTION.~~

17 ~~(C) THE BOARD OF TRUSTEES SHALL UPDATE THE LIST PREPARED~~
18 ~~UNDER SUBSECTION (B) OF THIS SECTION ON A QUARTERLY BASIS.~~

19 ~~21-1A-04.~~

20 ~~(A) FOR PURPOSES OF THIS SECTION, ACTIVELY MANAGED~~
21 ~~INVESTMENT FUNDS INCLUDE PRIVATE EQUITY FUNDS.~~

22 ~~(B) (1) (I) FOR EACH COMPANY IDENTIFIED IN § 21-1A-03 OF~~
23 ~~THIS SUBTITLE WITH ONLY INACTIVE BUSINESS OPERATIONS, THE BOARD OF~~
24 ~~TRUSTEES SHALL:~~

25 ~~1. SEND A WRITTEN NOTICE INFORMING THE~~
26 ~~COMPANY OF THE PROVISIONS INCLUDED IN THIS SUBTITLE; AND~~

27 ~~2. ENCOURAGE THE COMPANY TO CONTINUE TO~~
28 ~~REFRAIN FROM INITIATING ACTIVE BUSINESS OPERATIONS IN SUDAN UNTIL IT~~
29 ~~IS ABLE TO AVOID ALL SCRUTINIZED BUSINESS OPERATIONS.~~

1 ~~(H) THE BOARD OF TRUSTEES SHALL SEND~~
2 ~~CORRESPONDENCE DESCRIBED UNDER SUBPARAGRAPH (I) OF THIS~~
3 ~~PARAGRAPH EVERY 6 MONTHS.~~

4 ~~(2) (I) FOR EACH COMPANY IDENTIFIED IN § 21-1A-03 OF~~
5 ~~THIS SUBTITLE WITH ACTIVE BUSINESS OPERATIONS, THE BOARD OF TRUSTEES~~
6 ~~SHALL SEND A WRITTEN NOTICE INFORMING THE COMPANY:~~

7 ~~1. OF ITS SCRUTINIZED COMPANY STATUS; AND~~
8 ~~2. THAT IT MAY BECOME SUBJECT TO DIVESTMENT~~
9 ~~BY THE BOARD OF TRUSTEES.~~

10 ~~(H) THE NOTICE SHALL OFFER THE COMPANY THE~~
11 ~~OPPORTUNITY TO CLARIFY ITS SUDAN-RELATED ACTIVITIES AND SHALL~~
12 ~~ENCOURAGE THE COMPANY, WITHIN 90 DAYS OF RECEIPT OF THE~~
13 ~~CORRESPONDENCE, TO EITHER CEASE ITS SCRUTINIZED BUSINESS OPERATIONS~~
14 ~~OR CONVERT SUCH OPERATIONS TO INACTIVE BUSINESS OPERATIONS IN ORDER~~
15 ~~TO AVOID QUALIFYING FOR DIVESTMENT BY THE BOARD OF TRUSTEES.~~

16 ~~(3) (I) IF WITHIN 90 DAYS OF RECEIPT OF THE~~
17 ~~CORRESPONDENCE DESCRIBED IN PARAGRAPH (2)(I) OF THIS SUBSECTION, A~~
18 ~~COMPANY CEASES SCRUTINIZED BUSINESS OPERATIONS, THE COMPANY SHALL~~
19 ~~BE REMOVED FROM THE BOARD OF TRUSTEES' LIST OF SCRUTINIZED~~
20 ~~COMPANIES AND THE PROVISIONS OF THIS SUBTITLE SHALL CEASE TO APPLY~~
21 ~~TO IT UNLESS IT RESUMES SCRUTINIZED BUSINESS OPERATIONS.~~

22 ~~(H) IF WITHIN 90 DAYS OF RECEIPT OF THE~~
23 ~~CORRESPONDENCE DESCRIBED IN PARAGRAPH (2)(I) OF THIS SUBSECTION, A~~
24 ~~COMPANY CONVERTS ITS SCRUTINIZED ACTIVE BUSINESS OPERATIONS TO~~
25 ~~INACTIVE BUSINESS OPERATIONS, THE COMPANY SHALL BE SUBJECT TO ALL~~
26 ~~PROVISIONS IN THIS SUBTITLE AS THEY RELATE TO SCRUTINIZED COMPANIES.~~

27 ~~(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS~~
28 ~~SUBSECTION, IF, ON THE 91ST DAY OF RECEIPT OF THE CORRESPONDENCE~~
29 ~~DESCRIBED UNDER SUBSECTION (B)(2)(I) OF THIS SECTION, THE COMPANY~~
30 ~~CONTINUES TO HAVE SCRUTINIZED ACTIVE BUSINESS OPERATIONS, THE BOARD~~
31 ~~OF TRUSTEES SHALL SELL, REDEEM, DIVEST, OR WITHDRAW ALL PUBLICLY~~

1 ~~TRADED SECURITIES OF THE COMPANY ACCORDING TO THE FOLLOWING~~
2 ~~SCHEDULE:~~

3 ~~(I) AT LEAST 50% OF ALL ASSETS HELD IN THE COMPANY~~
4 ~~BY THE BOARD OF TRUSTEES SHALL BE REMOVED AS ASSETS UNDER~~
5 ~~MANAGEMENT WITHIN 9 MONTHS AFTER THE COMPANY'S MOST RECENT~~
6 ~~APPEARANCE ON THE BOARD OF TRUSTEES' LIST OF SCRUTINIZED COMPANIES;~~
7 ~~AND~~

8 ~~(II) 100% OF ALL ASSETS HELD IN THE COMPANY BY THE~~
9 ~~BOARD OF TRUSTEES SHALL BE REMOVED AS ASSETS UNDER MANAGEMENT~~
10 ~~WITHIN 15 MONTHS AFTER THE COMPANY'S MOST RECENT APPEARANCE ON THE~~
11 ~~BOARD OF TRUSTEES' LIST OF SCRUTINIZED COMPANIES.~~

12 ~~(2) (I) IF A COMPANY THAT CEASED SCRUTINIZED ACTIVE~~
13 ~~BUSINESS OPERATIONS FOLLOWING RECEIPT OF CORRESPONDENCE UNDER~~
14 ~~SUBSECTION (B)(2)(I) OF THIS SECTION RESUMES SCRUTINIZED ACTIVE~~
15 ~~BUSINESS OPERATIONS, PARAGRAPH (1) OF THIS SUBSECTION SHALL APPLY~~
16 ~~IMMEDIATELY.~~

17 ~~(II) THE BOARD OF TRUSTEES SHALL SEND WRITTEN~~
18 ~~NOTICE TO A COMPANY DESCRIBED UNDER SUBPARAGRAPH (I) OF THIS~~
19 ~~PARAGRAPH THAT THE COMPANY HAS BEEN PLACED ON THE BOARD OF~~
20 ~~TRUSTEES' LIST OF SCRUTINIZED COMPANIES AND THE BOARD OF TRUSTEES~~
21 ~~WILL BEGIN DIVESTMENT PROCEDURES AS PROVIDED UNDER PARAGRAPH (1)~~
22 ~~OF THIS SUBSECTION.~~

23 ~~(3) THIS SUBSECTION APPLIES ONLY TO A COMPANY WHILE IT~~
24 ~~CONTINUES TO HAVE SCRUTINIZED ACTIVE BUSINESS OPERATIONS.~~

25 ~~(D) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, THE~~
26 ~~BOARD OF TRUSTEES MAY NOT ACQUIRE SECURITIES OF COMPANIES ON ITS~~
27 ~~LIST OF SCRUTINIZED COMPANIES THAT HAVE ACTIVE BUSINESS OPERATIONS.~~

28 ~~(E) A COMPANY THAT THE FEDERAL GOVERNMENT AFFIRMATIVELY~~
29 ~~DECLARES TO BE EXCLUDED FROM ITS PRESENT OR ANY FUTURE FEDERAL~~
30 ~~SANCTIONS REGIME RELATING TO SUDAN MAY NOT BE SUBJECT TO~~
31 ~~DIVESTMENT OR INVESTMENT PROHIBITION UNDER SUBSECTIONS (C) AND (D)~~
32 ~~OF THIS SECTION.~~

1 ~~(F) (1) SUBSECTIONS (C) AND (D) OF THIS SECTION DO NOT APPLY TO~~
2 ~~INDIRECT HOLDINGS IN ACTIVELY MANAGED INVESTMENT FUNDS.~~

3 ~~(2) THE BOARD OF TRUSTEES SHALL SEND LETTERS TO ANY~~
4 ~~MANAGER WHO IS RESPONSIBLE FOR INVESTMENT FUNDS CONTAINING~~
5 ~~COMPANIES WITH SCRUTINIZED ACTIVE BUSINESS OPERATIONS AND REQUEST~~
6 ~~THAT THE MANAGER CONSIDER REMOVING SUCH COMPANIES FROM THE FUND~~
7 ~~OR CREATE A SIMILAR ACTIVELY MANAGED FUND WITH INDIRECT HOLDINGS~~
8 ~~DEVOID OF SUCH COMPANIES.~~

9 ~~(3) IF THE MANAGER CREATES A SIMILAR FUND, THE BOARD OF~~
10 ~~TRUSTEES SHALL REPLACE ALL APPLICABLE INVESTMENTS WITH~~
11 ~~INVESTMENTS IN THE SIMILAR FUND IN AN EXPEDITED TIME FRAME~~
12 ~~CONSISTENT WITH PRUDENT INVESTING STANDARDS.~~

13 ~~21-1A-05.~~

14 ~~(A) WITHIN 30 DAYS OF CREATING A LIST OF SCRUTINIZED COMPANIES~~
15 ~~UNDER § 21-1A-03 OF THIS SUBTITLE, THE BOARD OF TRUSTEES SHALL~~
16 ~~SUBMIT TO THE CHAIR OF THE JOINT COMMITTEE ON PENSIONS A COPY OF~~
17 ~~THE LIST OF SCRUTINIZED COMPANIES.~~

18 ~~(B) BEGINNING SEPTEMBER 1, 2008, AND EVERY YEAR THEREAFTER,~~
19 ~~THE BOARD OF TRUSTEES SHALL SUBMIT TO THE CHAIRMAN OF THE JOINT~~
20 ~~COMMITTEE AND THE UNITED STATES PRESIDENTIAL SPECIAL ENVOY TO~~
21 ~~SUDAN A REPORT INCLUDING:~~

22 ~~(1) A SUMMARY OF CORRESPONDENCE WITH COMPANIES~~
23 ~~ENGAGED BY THE BOARD OF TRUSTEES UNDER § 21-1A-04(B) OF THIS~~
24 ~~SUBTITLE;~~

25 ~~(2) ALL INVESTMENTS SOLD, REDEEMED, DIVESTED, OR~~
26 ~~WITHDRAWN IN COMPLIANCE WITH § 21-1A-04(C) OF THIS SUBTITLE;~~

27 ~~(3) ALL PROHIBITED INVESTMENTS UNDER § 21-1A-04(D) OF~~
28 ~~THIS SUBTITLE; AND~~

29 ~~(4) ANY PROGRESS MADE UNDER § 21-1A-04(F) OF THIS~~
30 ~~SUBTITLE SINCE SUBMITTING THE PREVIOUS REPORT.~~

1 ~~21-1A-06.~~

2 ~~THE PROVISIONS OF THIS SUBTITLE SHALL EXPIRE IF THE UNITED~~
3 ~~STATES CONGRESS OR THE PRESIDENT OF THE UNITED STATES:~~

4 ~~(1) DECLARES THAT THE DARFUR GENOCIDE HAS BEEN HALTED~~
5 ~~FOR AT LEAST 12 CONSECUTIVE MONTHS;~~

6 ~~(2) REVOKES ALL SANCTIONS IMPOSED AGAINST THE~~
7 ~~GOVERNMENT OF SUDAN; OR~~

8 ~~(3) THROUGH LEGISLATION OR EXECUTIVE ORDER, DECLARES~~
9 ~~THAT MANDATORY DIVESTMENT OF THE TYPE PROVIDED FOR UNDER THIS~~
10 ~~SUBTITLE INTERFERES WITH THE CONDUCT OF UNITED STATES FOREIGN~~
11 ~~POLICY.~~

12 ~~21-1A-07.~~

13 ~~WITH RESPECT TO ANY ACTION TAKEN IN COMPLIANCE WITH THE~~
14 ~~PROVISIONS OF THIS SUBTITLE, INCLUDING ALL GOOD FAITH DETERMINATIONS~~
15 ~~REGARDING COMPANIES AS REQUIRED BY THE PROVISIONS OF THIS SUBTITLE,~~
16 ~~THE BOARD OF TRUSTEES SHALL BE EXEMPT FROM ANY CONFLICTING~~
17 ~~STATUTORY OR COMMON LAW OBLIGATIONS, INCLUDING ANY SUCH~~
18 ~~OBLIGATIONS REGARDING CHOICE OF ASSET MANAGERS, INVESTMENT FUNDS,~~
19 ~~OR INVESTMENTS FOR THE SECURITIES PORTFOLIOS OF THE BOARD OF~~
20 ~~TRUSTEES.~~

21 ~~21-1A-08.~~

22 ~~(A) THIS SECTION DOES NOT APPLY TO ANY COMPANY THAT HAS~~
23 ~~CEASED SCRUTINIZED ACTIVE BUSINESS OPERATIONS.~~

24 ~~(B) THE BOARD OF TRUSTEES MAY CEASE DIVESTING FROM~~
25 ~~SCRUTINIZED COMPANIES AND BEGIN REINVESTING IN THESE COMPANIES ONLY~~
26 ~~IF CLEAR AND CONVINCING EVIDENCE SHOWS THAT THE VALUE FOR ALL~~
27 ~~ASSETS UNDER MANAGEMENT BY THE BOARD OF TRUSTEES BECOMES EQUAL~~
28 ~~TO OR LESS THAN 99.50% OF THE VALUE OF ALL ASSETS UNDER MANAGEMENT~~
29 ~~BY THE BOARD OF TRUSTEES, ASSUMING NO DIVESTMENT FOR ANY COMPANY~~
30 ~~HAS OCCURRED.~~

~~(c) (1) FOR ANY CESSATION OF DIVESTMENT, REINVESTMENT, AND SUBSEQUENT ONGOING INVESTMENT AUTHORIZED BY THIS SECTION, THE BOARD OF TRUSTEES SHALL SUBMIT A REPORT TO THE CHAIR OF THE JOINT COMMITTEE ON PENSIONS IN ADVANCE OF INITIAL REINVESTMENT, THE REASONS AND JUSTIFICATION, SUPPORTED BY CLEAR AND CONVINCING EVIDENCE, FOR ITS DECISIONS TO CEASE DIVESTMENT, REINVEST, OR REMAIN INVESTED IN COMPANIES WITH SCRUTINIZED ACTIVE BUSINESS OPERATIONS.~~

~~(2) THE REPORT SUBMITTED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE UPDATED EVERY 6 MONTHS.~~

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.

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

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

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

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

9 **(8) (I) “SUDAN” MEANS THE GOVERNMENT IN KHARTOUM,**
10 **SUDAN, THAT IS LED BY THE NATIONAL CONGRESS PARTY (FORMERLY KNOWN**
11 **AS THE NATIONAL ISLAMIC FRONT) OR ANY SUCCESSOR GOVERNMENT FORMED**
12 **ON OR AFTER OCTOBER 13, 2006, INCLUDING THE COALITION NATIONAL UNITY**
13 **GOVERNMENT AGREED ON IN THE COMPREHENSIVE PEACE AGREEMENT FOR**
14 **SUDAN.**

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

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

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

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

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

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

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

2 AND

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **(F) ON OR BEFORE OCTOBER 1 OF EACH YEAR, AND EVERY 3 MONTHS**
10 **THEREAFTER, THE BOARD OF TRUSTEES SHALL SUBMIT A REPORT IN**
11 **ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE TO THE**
12 **SENATE BUDGET AND TAXATION COMMITTEE, THE HOUSE APPROPRIATIONS**
13 **COMMITTEE, AND THE JOINT COMMITTEE ON PENSIONS THAT PROVIDES:**

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

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

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

21 **(4) OTHER DEVELOPMENTS RELEVANT TO INVESTMENT IN**
22 **COMPANIES DOING BUSINESS IN SUDAN.**

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

30 **SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That, subject to the**
31 **provisions of Section 2 of this Act, this Act shall take effect July 1, 2007.**