

STATE OF OKLAHOMA

2nd Session of the 51st Legislature (2008)

SENATE BILL 2146

By: Johnson (Constance)

AS INTRODUCED

An Act relating to public finance; creating the Targeted Sudan Divestment Act; providing short title; stating legislative intent; defining terms; requiring the public fund to identify certain companies and to assemble a list of such companies; specifying procedures for a public fund to follow in the case of companies on the scrutinized companies list; requiring the public fund to submit certain report; specifying information to be included in such report; exempting a public fund from certain conflicting provisions; providing procedures for a public fund to cease divesting in certain companies under certain conditions; requiring public fund to provide certain report when ceasing divestment; directing the Attorney General or designee to enforce certain laws; providing for codification; providing for noncodification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4001 of Title 62, unless there is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Targeted Sudan
2 Divestment Act".

3 SECTION 2. NEW LAW A new section of law not to be
4 codified in the Oklahoma Statutes reads as follows:

5 A. On July 23, 2004, the United States Congress declared that
6 "the atrocities unfolding in Darfur, Sudan, are genocide."

7 B. On September 9, 2004, Secretary of State Colin L. Powell told
8 the U.S. Senate Foreign Relations Committee that "genocide has
9 occurred and may still be occurring in Darfur" and "the Government
10 of Sudan and the Janjaweed bear responsibility."

11 C. On September 21, 2004, addressing the United Nations General
12 Assembly, President George W. Bush affirmed the Secretary of State's
13 finding and stated, "At this hour, the world is witnessing terrible
14 suffering and horrible crimes in the Darfur region of Sudan, crimes
15 my government has concluded are genocide."

16 D. On December 7, 2004, the U.S. Congress noted that the
17 genocidal policy in Darfur has led to reports of "systematic rape of
18 thousands of women and girls, the abduction of women and children,
19 and the destruction of hundreds of ethnically African villages,
20 including the poisoning of their wells and the plunder of their
21 crops and cattle upon which the people of such villages sustain
22 themselves."

23 E. Also on December 7, 2004, Congress found that "the
24 Government of Sudan has restricted access by humanitarian and human

1 rights workers to the Darfur area through intimidation by military
2 and security forces, and through bureaucratic and administrative
3 obstruction, in an attempt to inflict the most devastating harm on
4 those individuals displaced from their villages and homes without
5 any means of sustenance or shelter."

6 F. On September 25, 2006, Congress reaffirmed that "the
7 genocide unfolding in the Darfur region of Sudan is characterized by
8 acts of terrorism and atrocities directed against civilians,
9 including mass murder, rape and sexual violence committed by the
10 Janjaweed and associated militias with the complicity and support of
11 the National Congress Party-led faction of the Government of Sudan."

12 G. On September 26, 2006, the U.S. House of Representatives
13 stated that "an estimated 300,000 to 400,000 people have been killed
14 by the Government of Sudan and its Janjaweed allies since the Darfur
15 crisis began in 2003, more than two million people have been
16 displaced from their homes, and more than two hundred fifty thousand
17 people from Darfur remain in refugee camps in Chad."

18 H. The Darfur crisis represents the first time the United
19 States Government has labeled ongoing atrocities genocide.

20 I. The Federal Government has imposed sanctions against the
21 Government of Sudan since 1997. These sanctions are monitored
22 through the U.S. Treasury Department's Office of Foreign Assets
23 Control (OFAC).

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1 J. According to a former chair of the U.S. Securities and
2 Exchange Commission (SEC), "the fact that a foreign company is doing
3 material business with a country, government, or entity or OFAC's
4 sanctions list is, in the SEC staff's view, substantially likely to
5 be significant to a reasonable investor's decision about whether to
6 invest in that company."

7 K. Since 1993, the U.S. Secretary of State has determined that
8 Sudan is a country the government of which has repeatedly provided
9 support for acts of international terrorism, thereby restricting
10 United States assistance, defense exports and sales, and financial
11 and other transactions with the government of Sudan.

12 L. A 2006 U.S. House of Representatives report states that "a
13 company's association with sponsors of terrorism and human rights
14 abuses, no matter how large or small, can have a materially adverse
15 result on a public company's operations, financial condition,
16 earnings, and stock prices, all of which can negatively affect the
17 value of an investment."

18 M. In response to the financial risk posed by investments in
19 companies doing business with a terrorist-sponsoring state, the SEC
20 established its Office of Global Security Risk to provide for
21 enhanced disclosure of material information regarding such
22 companies.

1 N. The current Sudan divestment movement encompasses nearly one
2 hundred (100) universities, cities, states, and private pension
3 plans.

4 O. Companies facing such widespread divestment present further
5 material risk to remaining investors.

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

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

17 R. It is the judgment of the Oklahoma Legislature that the
18 Targeted Sudan Divestment Act should remain in effect only insofar
19 as it continues to be consistent with, and does not unduly interfere
20 with, the foreign policy of the United States as determined by the
21 Federal Government.

22 S. It is the judgment of the Oklahoma Legislature that
23 mandatory divestment of public funds from certain companies is a
24 measure that should be employed sparingly and judiciously. A

1 Congressional and Presidential declaration of genocide satisfies
2 this high threshold.

3 T. The Targeted Sudan Divestment Act is not intended to
4 interfere with the performance of the fiduciary duties of a manager
5 of funds subject to the Targeted Sudan Divestment Act.

6 U. It is the intent of the Oklahoma Legislature that the
7 Targeted Sudan Divestment Act shall no longer be effective upon the
8 occurrence of:

9 1. The Congress or President of the United States declares that
10 the Darfur genocide has been halted for at least twelve (12) months;

11 2. The United States revokes all sanctions imposed against the
12 Government of Sudan;

13 3. The Congress or President of the United States declares that
14 the Government of Sudan has honored its commitments to cease attacks
15 on civilians, demobilize and demilitarize the Janjaweed and
16 associated militias, grant free and unfettered access for deliveries
17 of humanitarian assistance and allow for the safe and voluntary
18 return of refugees and internally displaced persons; or

19 4. The Congress or President of the United States, through
20 legislation or executive order, declares that mandatory divestment
21 of the type provided for in the Targeted Sudan Divestment Act
22 interferes with the conduct of United States foreign policy.

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1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 4002 of Title 62, unless there
3 is created a duplication in numbering, reads as follows:

4 As used in the Targeted Sudan Divestment Act:

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

7 2. "Business operations" means engaging in commerce in any form
8 in Sudan, including by acquiring, developing, maintaining, owning,
9 selling, possessing, leasing, or operating equipment, facilities,
10 personnel, products, services, personal property, real property, or
11 any other apparatus of business or commerce;

12 3. "Company" means any sole proprietorship, organization,
13 association, corporation, partnership, joint venture, limited
14 partnership, limited liability partnership, limited liability
15 company, or other entity or business association, including all
16 wholly-owned subsidiaries, majority-owned subsidiaries, parent
17 companies, or affiliates of such entities of business associations,
18 that exists for profit-making purposes;

19 4. "Complicit" means taking actions during any preceding
20 twenty-month period which have supported or promoted the genocidal
21 campaign in Darfur, including, but not limited to, preventing
22 Darfur's victimized population from communicating with each other,
23 encouraging Sudanese citizens to speak out against an
24 internationally approved security force for Darfur, actively working

1 to deny, cover up, or alter the record on human rights abuses in
2 Darfur, or other similar actions;

3 5. "Direct holdings in a company" means all securities of that
4 company held directly by the public fund or in an account or fund in
5 which the public fund owns all shares or interests;

6 6. "Government of Sudan" means the government in Khartoum,
7 Sudan, which is led by the National Congress party (formerly known
8 as the National Islamic Front) or any successor government formed on
9 or after October 13, 2006, (including the coalition National Unity
10 Government agreed upon in the Comprehensive Peace Agreement for
11 Sudan) and does not include the regional government of southern
12 Sudan;

13 7. "Inactive business operations" means the mere continued
14 holding or renewal of rights to property previously operated for the
15 purpose of generating revenues but not presently deployed for such
16 purpose;

17 8. "Indirect holdings in a company" means all securities of
18 that company held in an account or fund, such as a mutual fund,
19 managed by one or more persons not employed by the public fund, in
20 which the public fund owns shares or interests together with other
21 investors not subject to the provisions of the Targeted Sudan
22 Divestment Act;

23 9. "Marginalized populations of Sudan" means including, but not
24 limited to:

- 1 a. the portion of the population in the Darfur region
2 that has been genocidally victimized,
- 3 b. the portion of the population of southern Sudan
4 victimized by Sudan's North-South civil war,
- 5 c. the Beja, Rashidiya, and other similarly underserved
6 groups of eastern Sudan,
- 7 d. the Nubian and other similarly underserved groups in
8 Sudan's Abyei, Southern Blue Nile, and Nuba Mountain
9 regions, and
- 10 e. the Amri, Hamadab, Manasir, and other similarly
11 underserved groups of northern Sudan;

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

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

1 12. "Oil-related activities" means:

- 2 a. owning rights to oil blocks,
3 b. exporting, extracting, producing, refining,
4 processing, exploring for, transporting, selling, or
5 trading of oil,
6 c. constructing, maintaining, or operating a pipeline,
7 refinery, or other oil-field infrastructure, and
8 d. facilitating such activities, including, by providing
9 supplies or services in support of such activities.

10 The mere retail sale of gasoline and related consumer products
11 shall not be considered oil-related activities;

12 13. "Power production activities" means any business operation
13 that involves a project commissioned by the National Electricity
14 Corporation (NEC) of Sudan or other similar Government of Sudan
15 entity whose purpose is to facilitate power generation and delivery,
16 including, but not limited to, establishing power-generating plants
17 or hydroelectric dams, selling or installing components for the
18 project, providing service contracts related to the installation or
19 maintenance of the project, as well as facilitating such activities,
20 including by providing supplies or services in support of such
21 activities;

22 14. "Public fund" means the Board of Trustees of the Oklahoma
23 Firefighters Pension and Retirement System, the Board of Trustees of
24 the Oklahoma Police Pension and Retirement System, the Board of

1 Trustees of the Uniform Retirement System for Justices and Judges,
2 the Oklahoma Law Enforcement Retirement Board, the Board of Trustees
3 of the Teachers' Retirement System of Oklahoma and the Board of
4 Trustees of the Oklahoma Public Employees Retirement System;

5 15. "Scrutinized company" means any company that meets the
6 criteria in subparagraphs a, b or c of this paragraph:

7 a. the company has business operations that involve
8 contracts with and/or provision of supplies or
9 services to the Government of Sudan, companies in
10 which the Government of Sudan has any direct or
11 indirect equity share, Government of Sudan-
12 commissioned consortiums or projects, or companies
13 involved in Government of Sudan-commissioned
14 consortiums or projects, and

15 (1) more than ten percent (10%) of the company's
16 revenues or assets linked to Sudan involve oil-
17 related activities or mineral extraction
18 activities, less than seventy-five percent (75%)
19 of the company's revenues or assets linked to
20 Sudan involve contracts with and/or provision of
21 oil-related or mineral extracting products or
22 services to the regional government of southern
23 Sudan or a project or consortium created

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1 exclusively by that regional government, and the
2 company has failed to take substantial action, or
3 (2) more than ten percent (10%) of the company's
4 revenues or assets linked to Sudan involve power
5 production activities, less than seventy-five
6 percent (75%) of the company's power production
7 activities include projects whose intent is to
8 provide power or electricity to the marginalized
9 populations of Sudan, and the company has failed
10 to take substantial action,

11 b. the company is complicit in the Darfur genocide, or

12 c. the company supplies military equipment with Sudan,
13 unless it clearly shows that the military equipment
14 cannot be used to facilitate offensive military
15 actions in Sudan or the company implements rigorous
16 and verifiable safeguards to prevent use of that
17 equipment by forces actively participating in armed
18 conflict, such as through post-sale tracking of such
19 equipment by the company, certification from a
20 reputable and objective third party that such
21 equipment is not being used by a party participating
22 in armed conflict in Sudan, or sale of such equipment
23 solely to the regional government of southern Sudan or
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1 any internationally recognized peacekeeping force or
2 humanitarian organization.

3 A social development company which is not complicit in the
4 Darfur genocide shall not be considered a scrutinized company;

5 16. "Social development company" means a company whose primary
6 purpose in Sudan is to provide humanitarian goods or services,
7 including medicine or medical equipment, agricultural supplies or
8 infrastructure, educational opportunities, journalism-related
9 activities, information or information materials, spiritual-related
10 activities, services of a purely clerical or reporting nature, food,
11 clothing, or general consumer goods that are unrelated to oil-
12 related activities, mineral extraction activities, or power
13 production activities; and

14 17. "Substantial action" means adopting, publicizing and
15 implementing a formal plan to cease scrutinized business operations
16 within one year of the effective date of the Targeted Sudan
17 Divestment Act and to refrain from any such new business operations
18 or undertaking significant humanitarian efforts in conjunction with
19 an international organization, the Government of Sudan, the regional
20 government of southern Sudan, or a nonprofit entity and evaluated
21 and certified by an independent third party to be substantial in
22 relationship to the company's Sudan business operations and of
23 benefit to one or more marginalized populations of Sudan or through
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1 engagement with the Government of Sudan, materially improving
2 conditions for the genocidally victimized population in Darfur.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 4003 of Title 62, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Within ninety (90) days after the effective date of the
7 Targeted Sudan Divestment Act, the public fund shall make its best
8 efforts to identify all scrutinized companies in which the public
9 fund has direct or indirect holdings or could possibly have such
10 holdings in the future. Such efforts shall include, as appropriate:

11 1. Reviewing and relying upon publicly available information
12 regarding companies with business operations in Sudan, including
13 information provided by nonprofit organizations, research firms,
14 international organizations, and government entities;

15 2. Contacting asset managers contracted by the public fund that
16 invest in companies with business operations in Sudan; or

17 3. Contacting other institutional investors that have divested
18 from and/or engaged with companies that have business operations in
19 Sudan.

20 B. The public fund shall assemble all scrutinized companies
21 identified into a scrutinized companies list no later than the first
22 meeting of the public fund held after ninety (90) days after the
23 effective date of the Targeted Sudan Divestment Act.

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1 C. The public fund shall update the scrutinized companies list
2 every six (6) months, based on evolving information from those
3 sources specified in subsection A of this section.

4 SECTION 5. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 4004 of Title 62, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The public fund shall adhere to the following procedures for
8 companies on the scrutinized companies list:

9 1. The Executive Director or the Executive Secretary of the
10 public fund shall, within thirty (30) days after the assembling or
11 updating of the scrutinized companies list, determine the companies
12 on the scrutinized companies list in which the public fund owns
13 direct or indirect holdings;

14 2. For each company identified in paragraph 1 of this
15 subsection with only inactive business operations, the public fund
16 shall send a written notice informing the company of the Targeted
17 Sudan Divestment Act and encouraging it to continue to refrain from
18 initiating active business operations in Sudan until it is able to
19 avoid scrutinized business operations. The public fund shall
20 continue such correspondence on a semiannual basis;

21 3. For each company newly identified in paragraph 1 of this
22 subsection with active business operations, the public fund shall
23 send a written notice informing the company of its scrutinized
24 company status and that it may become subject to divestment by the

1 public fund. The notice shall offer the company the opportunity to
2 clarify its Sudan-related activities and shall encourage the
3 company, within ninety (90) days, to either cease its scrutinized
4 business operations or convert such operations to inactive business
5 operations in order to avoid qualifying for divestment by the public
6 fund; and

7 4. If, within ninety (90) days following the public fund's
8 first engagement with a company pursuant to paragraph 3 of this
9 subsection, that company ceases scrutinized business operations, the
10 company shall be removed from the scrutinized companies list and the
11 provisions of this section shall cease to apply to it unless it
12 resumes scrutinized business operations. If, within ninety (90)
13 days following the public fund's first engagement, the company
14 converts its scrutinized active business operations to inactive
15 business operations, the company shall be subject to all provisions
16 in this section.

17 B. 1. If, after ninety (90) days following the public fund's
18 first engagement with a company pursuant to paragraph 3 of
19 subsection A of this Section, the company continues to have
20 scrutinized active business operations, and only while such company
21 continues to have scrutinized active business operations, the public
22 fund shall sell, redeem, divest, or withdraw all publicly-traded
23 securities of the company, except as provided in subsection D of
24 this Section, according to the following schedule:

1 a. at least fifty percent (50%) of such assets shall be
2 removed from the public fund's assets under management
3 by nine (9) months after the company's most recent
4 appearance on the scrutinized list, and

5 b. one hundred percent (100%) of such assets shall be
6 removed from the public fund's assets under management
7 within fifteen (15) months after the company's most
8 recent appearance on the scrutinized companies list.

9 2. If a company that ceased scrutinized active business
10 operations following engagement pursuant to paragraph 3 of
11 subsection A of this Section resumes such operations, paragraph 1 of
12 this subsection shall immediately apply and the public fund shall
13 send a written notice to the company. The company shall also be
14 immediately reintroduced onto the scrutinized companies list.

15 C. At no time shall the public fund acquire securities of
16 companies on the scrutinized companies list that have active
17 business operations except as provided in subsection E of this
18 section.

19 D. The provisions of subsections B and C of this section shall
20 not apply to indirect holdings in actively managed investment funds.
21 The public fund shall submit letters to the managers of such
22 investment funds containing companies with scrutinized active
23 business operations requesting that they consider removing such
24 companies from the fund or create a similar actively managed fund

1 with indirect holdings devoid of such companies. If the manager
2 creates a similar fund, the public fund shall replace all applicable
3 investments with investments in the similar fund in an expedited
4 timeframe consistent with prudent investing standards. For purposes
5 of this section, "private equity funds" means funds that are
6 actively managed investment funds.

7 E. No company which the United State Government affirmatively
8 declares to be excluded from its present or any future federal
9 sanctions regime relating to Sudan shall be subject to the
10 divestment or investment prohibition pursuant to subsections B and C
11 of this section and the public fund may treat such companies as any
12 other company for purposes of investment.

13 SECTION 6. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 4005 of Title 62, unless there
15 is created a duplication in numbering, reads as follows:

16 No later than December 31 of each year, the public fund shall
17 submit a publicly available report to the Speaker Pro Tempore of the
18 Senate, the Speaker of the House of Representatives, the Attorney
19 General of the United States and the United States Presidential
20 Special Envoy to Sudan, that includes:

21 1. All investments sold, redeemed, divested or withdrawn in
22 compliance with subsection B of Section 5 of this act;

23 2. All prohibited investments under subsection C of Section 5
24 of this act ; and

1 3. Any progress made under subsection D of Section 5 of this
2 act.

3 SECTION 7. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 4006 of Title 62, unless there
5 is created a duplication in numbering, reads as follows:

6 With respect to actions taken in compliance with the Targeted
7 Sudan Divestment Act, including all good faith determinations
8 regarding companies as required by the Targeted Sudan Divestment
9 Act, the public fund shall be exempt from any state law to the
10 contrary, including any such obligations in respect to choice of
11 asset managers, investment funds or investments for the public
12 fund's securities portfolios.

13 SECTION 8. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 4007 of Title 62, unless there
15 is created a duplication in numbering, reads as follows:

16 The public fund shall be permitted to cease divesting from
17 certain scrutinized companies pursuant to subsection B of Section 5
18 of this act and/or reinvest in certain scrutinized companies from
19 which it divested pursuant to subsection B of Section 5 of this act
20 if clear and convincing evidence as determined by the public fund
21 shows that the value for all assets under management by the public
22 fund becomes equal to or less than ninety-nine and one-half percent
23 (99 1/2%) of the hypothetical value of all assets under management
24 by the public fund assuming no divestment for any company had

1 occurred under subsection B of Section 5 of this act. Cessation of
2 divestment, reinvestment and/or any subsequent ongoing investment
3 authorized by this section shall be strictly limited to the minimum
4 steps necessary to avoid the contingency set forth in this section.
5 For any cessation of divestment, reinvestment and/or subsequent
6 ongoing investment authorized by this section, the public fund shall
7 provide a written report to the President Pro Tempore of the Senate,
8 the Speaker of the House of Representatives and the Attorney General
9 of the United States in advance of initial reinvestment, updated
10 semiannually thereafter as applicable, setting forth the reasons and
11 justification, supported by clear and convincing evidence, for its
12 decision to cease divestment, reinvest and/or remain invested in
13 companies with scrutinized active business operations. This section
14 has no application to reinvestment in companies on the ground that
15 they have ceased to have scrutinized active business operations.

16 SECTION 9. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 4008 of Title 62, unless there
18 is created a duplication in numbering, reads as follows:

19 The Attorney General is charged with enforcing the provisions of
20 the Targeted Sudan Divestment Act and through any lawful designee,
21 may bring such actions in court as are necessary to do so.

22 SECTION 10. This act shall become effective July 1, 2008.

23 SECTION 11. It being immediately necessary for the preservation
24 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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