

SENATE NO. 1437

AN ACT PROVIDING FOR THE DIVESTMENT OF PUBLIC PENSION FUNDS FROM COMPANIES DOING BUSINESS IN SUDAN

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. Chapter 32 section 2A of the General Laws is hereby amended by adding the following
2 new subsection (k)

3 (a) The assets of any pension or annuity fund under the jurisdiction of the treasurer and receiver
4 general of the commonwealth shall not be invested in companies (“targeted companies”) which either
5 directly or through an affiliated instrumentality meet the following criteria:

6 i) Provide revenues to the Sudanese government through business with the government,
7 government-owned companies or government-controlled consortiums.

8 ii) Offer little substantive benefit to those outside of the Sudanese government or its affiliated
9 supporters in Khartoum, Northern Sudan and the Nile River Valley; this “outside” population
10 specifically includes the country’s disaffected Eastern, Southern, and Western regions.

11 iii) Have either demonstrated complicity in the Darfur genocide or have not taken any
12 substantial action to halt the genocide. Substantial action shall include but is not limited to

13 curtailment of operations or public pressure on the Sudanese government. Simple company
14 statements shall not constitute evidence of substantial action.

15 (b) Companies providing military equipment, arms, or defense supplies to any domestic party in
16 Sudan, including the Sudanese government and rebels, shall automatically be targeted for divestment.
17 A strong presumption shall also be made against any company providing any domestic party in Sudan
18 with equipment that may be readily co-opted for military use, including radar systems and military-
19 grade transport vehicles, unless that company has implemented safeguards against such co-option.

20 (c) Companies which, either directly or through an affiliated instrumentality, provide services clearly
21 dedicated to social development for the whole country shall be excluded from divestment. Such
22 entities include, but are not limited to those providing medicine and medical equipment, agricultural
23 supplies and agricultural infrastructure, educational opportunities, journalism-related activities, and
24 general consumer goods.

25 (d) Companies whose operations in Sudan are dormant but who do have an equity share in or with the
26 country shall be engaged in an ongoing dialogue of concern with the fiduciaries. Such companies shall
27 not be targeted for divestment until such time as their operations become active and they fulfill the
28 criteria in subsections (a)-(c).

29 (e) The following types of investments shall be subject to divestment:

30 i) Direct holdings of public equity, corporate bonds, and Sudanese government-issued bonds.

31 a. Direct investments shall be defined as holdings directly managed by the
32 fiduciaries mentioned in this bill and all holdings administered by a contracted manager
33 in separately managed accounts, including both actively-managed and passively-
34 managed/indexed funds.

35 ii) Holdings of public equity, corporate bonds, and Sudanese-government-issued bonds in
36 commingled accounts that are passively-managed/indexed. Actively-managed, commingled
37 accounts, for both public equity and qualified fixed-income investments, will be excluded from
38 immediate divestment. Such accounts are still covered under section 1f of this bill.

39 iii) Private equity holdings with readily identifiable ties to Sudan

40 a. “Readily identifiable” is left to the good faith judgment of the fiduciaries
41 mentioned in this bill.

42 (f) The Treasurer, or his designates, shall submit letters to contracted managers of actively-managed,
43 commingled accounts requesting that the manager consider creating an actively-managed, commingled
44 account devoid of companies targeted as a result of this bill. In the event of such an introduction, the
45 fiduciaries shall transfer all assets in actively-managed, commingled accounts into the newly available,
46 Sudan-free accounts in an expedited timeframe still consistent with the fiduciaries’ prudent investor
47 obligations.

48 (g) The list of targeted companies shall be determined by submitting the criteria in section 1a-d to a
49 reputable and non-biased third-party research firm, such as, but not limited to, the Institutional
50 Shareholder Services, Inc. or KLD Research & Analytics. Such a list may require modifications as
51 circumstances in Sudan evolve.

52 (h) Research attained through the process outlined in section 1g must, when possible, be supplemented
53 by publicly available research, communication with potentially targeted companies, and
54 communication with states and institutions that have already divested.

55 (i) Reasons for eliminating or adding a company to a preliminary list of identified companies based on
56 the process outlined in section 1g must be justified in writing and supported by available research.

57 (j) The treasurer or his designates, shall take appropriate action to sell, redeem, divest or withdraw any
58 investment held in violation of this act within one year of the effective date of the act.

59 (k) Annually the treasurer shall report on all investments sold, redeemed, divested or withdrawn in
60 compliance with this section as well as any companies that the fiduciary is engaged with under
61 subsection (d).

62 (l) If it is determined by the treasurer or his designates, that a company, which had previously been a
63 targeted company, has ceased business operations with Sudan or its instrumentalities, then subsection
64 (j) shall no longer apply to that company. Reasons for addition or subtraction of a company from
65 divestment or engagement shall be made clear in the report described in subsection (k).

66 (m) In the event that the government of Sudan sufficiently halts the ongoing genocide in Darfur for at
67 least 12 months, as determined jointly by the State Department and Congress of the United States , the
68 provisions of this bill shall expire.

69 (n) In the event that the United States revokes its current sanctions on the Sudan , the provisions of this
70 bill shall expire.

71 SECTION 2. Nothing in this act shall alter or diminish existing fiduciary or statutory obligations and
72 other terms, conditions, and limitations on the investment of retirement system assets for the exclusive
73 interest and benefit of participants and beneficiaries of a retirement system.