

SENATE, No. 2217

AN ACT RELATIVE TO PENSION DIVESTMENT

*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: Definitions

2 As used in this Act, the following definitions shall apply:

3 (a) “Active Business Operations” means all Business Operations that are not Inactive Business
4 Operations.

5 (b) “Business Operations” means engaging in commerce in any form in Sudan, including by
6 acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating
7 equipment, facilities, personnel, products, services, personal property, real property, or any
8 other apparatus of business or commerce.

9 (c) “Company” means any sole proprietorship, organization, association, corporation,
10 partnership, joint venture, limited partnership, limited liability partnership, limited liability
11 company, or other entity or business association, including all wholly-owned subsidiaries,
12 majority-owned subsidiaries, parent companies, or affiliates of such entities or business
13 associations that exist for profit-making purposes.

14 (d) “Complicit” means taking actions during any preceding twenty (20) month period which
15 have directly supported or promoted the genocidal campaign in Darfur, including, but not
16 limited to, preventing Darfur’s victimized population from communicating with each other,
17 encouraging Sudanese citizens to speak out against an internationally approved security force
18 for Darfur, actively working to deny, cover up, or alter the record on human rights abuses in
19 Darfur, or other similar actions.

20 (e) “Direct Holdings” in a Company means all securities of that Company held directly by the
21 Public Fund or in an account or fund in which the Public Fund owns all shares or interests.

22 (f) “Government of Sudan” means the government in Khartoum, Sudan, which is led by the
23 National Congress Party (formerly known as the National Islamic Front) or any successor
24 government formed on or after October 13, 2006 (including the coalition National Unity
25 Government agreed upon in the Comprehensive Peace Agreement for Sudan) and does not
26 include the regional government of southern Sudan.

27 (g) “Inactive Business Operations” means the mere continued holding or renewal of rights to
28 property previously operated for the purpose of generating revenues but not presently deployed
29 for such purpose.

30 (h) “Indirect Holdings” in a Company means all securities of that Company held in an account
31 or fund, such as a mutual fund, managed by one or more persons not employed by the Public
32 Fund, in which the Public Fund owns shares or interests together with other investors not
33 subject to the provisions of this Act.

34 (i) “Marginalized Populations Of Sudan” include, but are not limited to, the portion of the
35 population in the Darfur region that has been genocidally victimized; the portion of the
36 population of southern Sudan victimized by Sudan’s North-South civil war; the Beja, Rashidiya,
37 and other similarly underserved groups of eastern Sudan; the Nubian and other similarly
38 underserved groups in Sudan’s Abyei, Southern Blue Nile, and Nuba Mountain regions; and the
39 Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

40 (j) “Military Equipment” means weapons, arms, military supplies, and equipment that readily
41 may be used for military purposes, including, but not limited to, radar systems or military-grade
42 transport vehicles; or supplies or services sold or provided directly or indirectly to any force
43 actively participating in armed conflict in Sudan.

44 (k) “Mineral Extraction Activities” include exploring, extracting, processing, transporting, or
45 wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore),
46 including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium,
47 and zinc, as well as facilitating such activities, including by providing supplies or services in
48 support of such activities.

49 (l) “Oil-Related Activities” include, but are not limited to, owning rights to oil blocks;
50 exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or
51 trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field
52 infrastructure; and facilitating such activities, including by providing supplies or services in
53 support of such activities, provided that the mere retail sale of gasoline and related consumer
54 products shall not be considered Oil-Related Activities.

55 (m) “Power Production Activities” means any Business Operation that involves a project
56 commissioned by the National Electricity Corporation (NEC) of Sudan or other similar
57 Government of Sudan entity whose purpose is to facilitate power generation and delivery,
58 including, but not limited to, establishing power-generating plants or hydroelectric dams, selling
59 or installing components for the project, providing service contracts related to the installation or
60 maintenance of the project, as well as facilitating such activities, including by providing
61 supplies or services in support of such activities.

62 (n) “Public Fund” means Pension Reserves Investment Trust or the Pension Reserves
63 Investment Management Board in charge of managing the pooled investment fund consisting of
64 the assets of the State Employees’ and Teachers’ Retirement Systems as well as the assets of
65 local participating and purchasing retirement systems.

66 (o) “Scrutinized” Company means any Company that meets the criteria in paragraph (1),
67 paragraph (2), or paragraph (3) below: (1) The Company has Business Operations that involve
68 contracts with and/or provision of supplies or services to (A) the Government of Sudan, (B)
69 Companies in which the Government of Sudan has any direct or indirect equity share, (C)
70 Government of Sudan-commissioned consortiums or projects, or (D) Companies involved in
71 Government of Sudan-commissioned consortiums or projects; and (i) More than ten percent
72 (10%) of the Company’s revenues or assets linked to Sudan involve Oil-Related Activities or
73 Mineral Extraction Activities; less than seventy-five percent (75%) of the Company’s revenues
74 or assets linked to Sudan involve contracts with and/or provision of Oil-Related or Mineral
75 Extracting products or services to the regional government of southern Sudan or a project or
76 consortium created exclusively by that regional government; and the Company has failed to take

77 Substantial Action; or (ii) More than ten percent (10%) of the Company's revenues or assets
78 linked to Sudan involve Power Production Activities; less than seventy-five percent (75%) of
79 the Company's Power Production Activities include projects whose intent is to provide power
80 or electricity to the Marginalized Populations Of Sudan; and the Company has failed to take
81 Substantial Action. (2) The Company is Complicit in the Darfur genocide. (3) The Company
82 supplies Military Equipment within Sudan, unless it clearly shows that the Military Equipment
83 cannot be used to facilitate offensive military actions in Sudan or the Company implements
84 rigorous and verifiable safeguards to prevent use of that equipment by forces actively
85 participating in armed conflict, for example, through post-sale tracking of such equipment by
86 the Company, certification from a reputable and objective third party that such equipment is not
87 being used by a party participating in armed conflict in Sudan, or sale of such equipment solely
88 to the regional government of southern Sudan or any internationally recognized peacekeeping
89 force or humanitarian organization. Notwithstanding anything herein to the contrary, a Social
90 Development Company which is not Complicit in the Darfur genocide shall not be considered a
91 Scrutinized Company.

92 (p) "Social Development Company" means a Company whose primary purpose in Sudan is to
93 provide humanitarian goods or services, including medicine or medical equipment, agricultural
94 supplies or infrastructure, educational opportunities, journalism-related activities, information or
95 information materials, spiritual-related activities, services of a purely clerical or reporting
96 nature, food, clothing, or general consumer goods that are unrelated to Oil-Related Activities,
97 Mineral Extraction Activities, or Power Production Activities.

98 (q) “Substantial Action” means adopting, publicizing, and implementing a formal plan to cease
99 Scrutinized Business Operations within one year and to refrain from any such new Business
100 Operations; undertaking humanitarian efforts in conjunction with an international
101 organization, the government of Sudan, the regional government of southern Sudan, or a non-
102 profit entity; and evaluated and certified by an independent third party to be substantial in
103 relationship to the company’s Sudan business operations and of benefit to one or more
104 marginalized populations of Sudan; or through engagement with the Government of Sudan,
105 materially improving conditions for the genocidally victimized population in Darfur.

106

107 Section 2: Identification of Companies

108 Within 90 days following passage of this Act, the Public Fund shall make its best efforts to
109 identify all Scrutinized Companies in which the Public Fund has Direct or Indirect Holdings or
110 could possibly have such holdings in the future. The identification of Scrutinized Companies
111 shall be the responsibility of an independent, third-party research firm, as identified by the
112 Public Fund, and based on the criteria outlined herein. (a) By the first meeting of the Public
113 Fund following the 90-day period described in subsection (b), the Public Fund shall assemble all
114 Scrutinized Companies identified into a Scrutinized Companies List. (c) The Public Fund shall
115 update the Scrutinized Companies List on a quarterly basis based on evolving information from
116 the aforementioned independent, third-party research firm.

117 Section 3: Required Actions

118 The Public Fund shall adhere to the following procedure for Companies on the Scrutinized
119 Companies List:

120 (a) Divestment

121 (1)The Public Fund shall immediately determine the Companies on the Scrutinized Companies
122 List in which the Public Fund owns direct or indirect holdings.

123 (2) If, and only while such Company continues to have Scrutinized Active Business Operations,
124 the Public Fund shall sell, redeem, divest, or withdraw all publicly-traded securities of each
125 Company identified in paragraph (1) with Active Business Operations, except as provided
126 below, according to the following schedule: (i) At least 50% of such assets shall be removed
127 from the Public Fund's assets under management by 6 months after the Company's most recent
128 appearance on the Scrutinized Companies List. (ii) 100% of such assets shall be removed from
129 the Public Fund's assets under management within 12 months after the Company's most recent
130 appearance on the Scrutinized Companies List.

131 (3) During the time period outlined in paragraph (2), the Public Fund may, but is not required to
132 sign onto engagement letters or participate in shareholder resolutions regarding the Scrutinized
133 Business Operations of companies identified in paragraph (1) with Active or Inactive Business
134 Operations in which the Public Fund still owns Direct or Indirect Holdings.

135 (4)If a Company identified in paragraph (1) with only Inactive Business Operations Converts ,
136 such operations to Active Business Operations, paragraph (2) will immediately apply. The
137 Company shall also be immediately reintroduced onto the Scrutinized Companies List.

138 (b) Prohibition: At no time shall the Public Fund acquire securities of Companies on the
139 Scrutinized Companies List that have Active Business Operations, except as provided below.

140 (c) Exemption: No Company which the United States Government affirmatively declares to be
141 excluded from its present or any future federal sanctions regime relating to Sudan shall be
142 subject to divestment or investment prohibition pursuant to subsections (a) and (b).

143 (d) Excluded Securities Notwithstanding anything herein to the contrary, subsections (a) and (b)
144 shall not apply to Indirect Holdings in actively managed investment funds. The Public Fund
145 shall, however, submit letters to the managers of such investment funds containing Companies
146 with Scrutinized Active Business Operations requesting that they consider removing such
147 Companies from the fund or create a similar actively managed fund with Indirect Holdings
148 devoid of such Companies. If the manager creates a similar fund, the Public Fund shall replace
149 all applicable investments with investments in the similar fund in an expedited timeframe
150 consistent with prudent investing standards. For the purposes of this Section, “private equity”
151 funds shall be deemed to be actively managed investment funds.

152 Section 4: Reporting

153 (a) The Public Fund shall file a publicly-available report to the [State Legislature and Attorney
154 General] that includes the Scrutinized Companies List within 30 days after the list is created.

155 (b) Annually thereafter, the Public Fund shall file a publicly-available report to the [State
156 Legislature and Attorney General] and send a copy of that report to the United States
157 Presidential Special Envoy to Sudan (or an appropriate designee or successor) that includes: (1)

158 All investments sold, redeemed, divested, or withdrawn in compliance with Section 3(a); (2) All
159 prohibited investments under Section 3(b); and (3) Any progress made under Section 3(d).

160 Section 5: Provisions for Expiration of Act

161 This Act shall expire upon the occurrence of any of the following:

162 (a) The Congress or President of the United States declares that the Darfur genocide has been
163 halted for at least 12 months; or

164 (b) The United States revokes all sanctions imposed against the Government of Sudan; or

165 (c) The Congress or President of the United States declares that the Government of Sudan has
166 honored its commitments to cease attacks on civilians, demobilize and demilitarize the
167 Janjaweed and associated militias, grant free and unfettered access for deliveries of
168 humanitarian assistance, and allow for the safe and voluntary return of refugees and internally
169 displaced persons; or

170

171 (d) The Congress or President of the United States, through legislation or executive order,
172 declares that mandatory divestment of the type provided for in this Act interferes with the
173 conduct of United States foreign policy.

174 Section 6: Other Legal Obligations

175 With respect to actions taken in compliance with this Act, including all good faith
176 determinations regarding Companies as required by this Act, the Public Fund shall be exempt

177 from any conflicting statutory or common law obligations, including any such obligations in
178 respect to choice of asset managers, investment funds, or investments for the Public Fund's
179 securities portfolios.

180 Section 7: Reinvestment in Certain Companies with Scrutinized Active Business

181 Operations

182 Notwithstanding anything herein to the contrary, the Public Fund shall be permitted to cease
183 divesting from certain Scrutinized Companies pursuant to Section 3(a) and/or reinvest in certain
184 Scrutinized Companies from which it divested pursuant to Section 3(a) if clear and convincing
185 evidence shows that the value for all assets under management by the Public Fund becomes
186 equal to or less than 99.50% (50 basis points) of the hypothetical value of all assets under
187 management by the Public Fund assuming no divestment for any company had occurred under
188 Section 3(a). Cessation of divestment, reinvestment, and/or any subsequent ongoing investment
189 authorized by this section shall be strictly limited to the minimum steps necessary to avoid the
190 contingency set forth in the preceding sentence. For any cessation of divestment, reinvestment,
191 and/or subsequent ongoing investment authorized by this section, the Public Fund shall provide
192 a written report to the attorney general, the senate and house committees on ways and means
193 and the joint committee on public service in advance of initial reinvestment, updated semi-
194 annually thereafter as applicable, setting forth the reasons and justification, supported by clear
195 and convincing evidence, for its decisions to cease divestment, reinvest, and/or remain invested
196 in Companies with Scrutinized Active Business Operations. This section has no application to
197 reinvestment in Companies on the ground that they have ceased to have Scrutinized Active
198 Business Operations.

199 Section 8: Enforcement

200 The Attorney General is charged with enforcing the provisions of this Act and, through any
201 lawful designee, may bring such actions in court as are necessary to do so.

202 Section 9: Severability

203 If any one or more provision, section, subsection, sentence, clause, phrase, or word of this
204 legislation or the application thereof to any person or circumstance is found to be invalid,
205 illegal, unenforceable or unconstitutional, the same is hereby declared to be severable and the
206 balance of this legislation shall remain effective and functional notwithstanding such invalidity,
207 illegality, unenforceability or unconstitutionality. The general court hereby declares that it
208 would have passed this legislation, and each provision, section, subsection, sentence, clause,
209 phrase or word thereof, irrespective of the fact that any one or more provision, section,
210 subsection, sentence, clause, phrase, or word be declared invalid, illegal, unenforceable or
211 unconstitutional, including, but not limited to, each of the engagement, divestment, and
212 prohibition provisions of this legislation.