

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 992

Introduced by Avery, 28.

Read first time January 16, 2008

Committee: Nebraska Retirement Systems

A BILL

1 FOR AN ACT relating to state funds; to amend section 72-1260,
2 Reissue Revised Statutes of Nebraska, and section
3 84-1309.01, Revised Statutes Cumulative Supplement, 2006;
4 to provide duties and responsibilities relating to public
5 funds invested in Sudan-related companies; to harmonize
6 provisions; and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Legislature finds and declares that:

2 (1) On July 23, 2004, the United States Congress declared
3 that "the atrocities unfolding in Darfur, Sudan, are genocide";

4 (2) On September 9, 2004, the United States Secretary of
5 State told the United States Senate Foreign Relations Committee
6 that "genocide has occurred and may still be occurring in
7 Darfur" and "the Government of Sudan and the Janjaweed bear
8 responsibility";

9 (3) On September 21, 2004, addressing the United Nations
10 General Assembly, the President of the United States affirmed the
11 Secretary of State's finding and stated, "[A]t this hour, the world
12 is witnessing terrible suffering and horrible crimes in the Darfur
13 region of Sudan, crimes my government has concluded are genocide";

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

21 (5) Also on December 7, 2004, the Congress found that
22 "the Government of Sudan has restricted access by humanitarian
23 and human rights workers to the Darfur area through intimidation
24 by military and security forces, and through bureaucratic and
25 administrative obstruction, in an attempt to inflict the most

1 devastating harm on those individuals displaced from their villages
2 and homes without any means of sustenance or shelter";

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

10 (7) On September 26, 2006, the United States House of
11 Representatives stated that "an estimated 300,000 to 400,000 people
12 have been killed by the Government of Sudan and its Janjaweed
13 allies since the [Darfur] crisis began in 2003, more than 2,000,000
14 people have been displaced from their homes, and more than 250,000
15 people from Darfur remain in refugee camps in Chad";

16 (8) The Darfur crisis represents the first time the
17 United States Government has labeled ongoing atrocities a genocide;

18 (9) The United States Government has imposed sanctions
19 against the Government of Sudan since 1997. These sanctions are
20 monitored through the United States Treasury Department's Office of
21 Foreign Assets Control (OFAC);

22 (10) According to a former chair of the United States
23 Securities and Exchange Commission (SEC), "the fact that a foreign
24 company is doing material business with a country, government,
25 or entity on OFAC's sanctions list is, in the SEC staff's view,

1 substantially likely to be significant to a reasonable investor's
2 decision about whether to invest in that company";

3 (11) Since 1993, the Secretary of State has determined
4 that Sudan is a country the government of which has repeatedly
5 provided support for acts of international terrorism, thereby
6 restricting United States assistance, defense exports and sales,
7 and financial and other transactions with the Government of Sudan;

8 (12) A 2006 House of Representatives report states
9 that "a company's association with sponsors of terrorism and
10 human rights abuses, no matter how large or small, can have
11 a materially adverse result on a public company's operations,
12 financial condition, earnings, and stock prices, all of which can
13 negatively affect the value of an investment";

14 (13) In response to the financial risk posed by
15 investments in companies doing business with a terrorist-sponsoring
16 state, the Securities and Exchange Commission established its
17 Office of Global Security Risk to provide for enhanced disclosure
18 of material information regarding such companies;

19 (14) The current Sudan divestment movement encompasses
20 nearly one hundred universities, cities, states, and private
21 pension plans;

22 (15) Companies facing such widespread divestment present
23 further material risk to remaining investors;

24 (16) It is a fundamental responsibility of the State of
25 Nebraska to decide where, how, and by whom financial resources

1 in its control should be invested, taking into account numerous
2 pertinent factors;

3 (17) It is the prerogative and desire of the State
4 of Nebraska, in respect to investment resources in its control
5 and to the extent reasonable, with due consideration for, among
6 other things, return on investment, on behalf of itself and its
7 investment beneficiaries, not to participate in an ownership or
8 capital-providing capacity with entities that provide significant
9 practical support for genocide, including non-United States
10 companies doing business in Sudan;

11 (18) It is the judgment of the Legislature that sections
12 1 to 25 of this act should remain in effect only insofar as they
13 continue to be consistent with, and do not unduly interfere with,
14 the foreign policy of the United States as determined by the United
15 States Government; and

16 (19) It is the judgment of the Legislature that mandatory
17 divestment of state funds from certain companies is a measure that
18 should be employed sparingly and judiciously. A congressional and
19 presidential declaration of genocide satisfies this high threshold.

20 Sec. 2. For purposes of sections 1 to 25 of this act, the
21 definitions in sections 3 to 18 of this act apply.

22 Sec. 3. Active business operations means all business
23 operations that are not inactive business operations.

24 Sec. 4. Business operations means engaging in commerce in
25 any form in Sudan, including by acquiring, developing, maintaining,

1 owning, selling, possessing, leasing, or operating equipment,
2 facilities, personnel, products, services, personal property, real
3 property, or any other apparatus of business or commerce.

4 Sec. 5. Company means any sole proprietorship,
5 organization, association, corporation, partnership, joint venture,
6 limited partnership, limited liability partnership, limited
7 liability company, or other entity or business association,
8 including all wholly-owned subsidiaries, majority-owned
9 subsidiaries, parent companies, or affiliates of such entities or
10 business associations, that exists for profit-making purposes.

11 Sec. 6. Complicit means taking actions during any
12 preceding twenty-month period which have supported or promoted
13 the genocidal campaign in Darfur, including, but not limited to,
14 preventing Darfur's victimized population from communicating with
15 each other, encouraging Sudanese citizens to speak out against
16 an internationally approved security force for Darfur, actively
17 working to deny, cover up, or alter the record on human rights
18 abuses in Darfur, or other similar actions.

19 Sec. 7. Direct holdings in a company means all securities
20 of that company held directly by the state.

21 Sec. 8. Government of Sudan means the government in
22 Khartoum, Sudan, which is led by the National Congress Party,
23 formerly known as the National Islamic Front, or any successor
24 government formed on or after October 13, 2006, including
25 the coalition National Unity Government agreed upon in the

1 Comprehensive Peace Agreement for Sudan, and does not include the
2 regional government of southern Sudan.

3 Sec. 9. Inactive business operations means the mere
4 continued holding or renewal of rights to property previously
5 operated for the purpose of generating revenue but not presently
6 deployed for such purpose.

7 Sec. 10. Indirect holdings in a company means all
8 securities of that company held in an account or fund, such
9 as a mutual fund, managed by one or more persons not employed by
10 the state, in which the state owns shares or interests together
11 with other investors not subject to the provisions of sections 1 to
12 25 of this act.

13 Sec. 11. Marginalized populations of Sudan include, but
14 are not limited to: The portion of the population in the Darfur
15 region that has been genocidally victimized; the portion of the
16 population of southern Sudan victimized by Sudan's North-South
17 civil war; the Beja, Rashidiya, and other similarly underserved
18 groups of eastern Sudan; the Nubian and other similarly underserved
19 groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain
20 regions; and the Amri, Hamadab, Manasir, and other similarly
21 underserved groups of northern Sudan.

22 Sec. 12. Military equipment means weapons, arms, military
23 supplies, and equipment that readily may be used for military
24 purposes, including, but not limited to, radar systems or
25 military-grade transport vehicles, or supplies or services sold or

1 provided directly or indirectly to any force actively participating
2 in armed conflict in Sudan.

3 Sec. 13. Mineral extraction activities include exploring,
4 extracting, processing, transporting, or wholesale selling or
5 trading of elemental minerals or associated metal alloys or oxides,
6 including gold, copper, chromium, chromite, diamonds, iron, iron
7 ore, silver, tungsten, uranium, and zinc, as well as facilitating
8 such activities, including by providing supplies or services in
9 support of such activities.

10 Sec. 14. Oil-related activities include, but are not
11 limited to: Owning rights to oil blocks; exporting, extracting,
12 producing, refining, processing, exploring for, transporting,
13 selling, or trading of oil; constructing, maintaining, or operating
14 a pipeline, refinery, or other oil-field infrastructure; and
15 facilitating such activities, including by providing supplies or
16 services in support of such activities, except that the retail sale
17 of gasoline and related consumer products shall not be considered
18 oil-related activities.

19 Sec. 15. Power production activities means any business
20 operation that involves a project commissioned by the National
21 Electricity Corporation of Sudan or other similar Government of
22 Sudan entity whose purpose is to facilitate power generation
23 and delivery, including, but not limited to, establishing
24 power-generating plants or hydroelectric dams, selling or
25 installing components for the project, providing service contracts

1 related to the installation or maintenance of the project, as well
2 as facilitating such activities, including by providing supplies or
3 services in support of such activities.

4 Sec. 16. Scrutinized company means any company:

5 (1) That has business operations that involve contracts
6 with or the provision of supplies or services to (a) the
7 Government of Sudan, (b) companies in which the Government of
8 Sudan has any direct or indirect equity share, (c) Government
9 of Sudan-commissioned consortiums or projects, or (d) companies
10 involved in Government of Sudan-commissioned consortiums or
11 projects; and

12 (i) Of which more than ten percent of its revenue or
13 assets linked to Sudan involve oil-related activities or mineral
14 extraction activities, of which less than seventy-five percent of
15 the company's revenue or assets linked to Sudan involve contracts
16 with or provision of oil-related or mineral extracting products or
17 services to the regional government of southern Sudan or a project
18 or consortium created exclusively by that regional government, and
19 which has failed to take substantial action; or

20 (ii) Of which more than ten percent of its revenue
21 or assets linked to Sudan involve power production activities,
22 of which less than seventy-five percent of the company's power
23 production activities include projects whose intent is to provide
24 power or electricity to the marginalized populations of Sudan, and
25 which has failed to take substantial action;

1 (2) That is complicit in the Darfur genocide; or
2 (3) That supplies military equipment within Sudan, unless
3 it clearly shows that the military equipment cannot be used to
4 facilitate offensive military actions in Sudan or the company
5 implements rigorous and verifiable safeguards to prevent use of
6 that equipment by forces actively participating in armed conflict,
7 for example, through post-sale tracking of military equipment
8 by the company, certification from a reputable and objective
9 third party that military equipment is not being used by a party
10 participating in armed conflict in Sudan, or sale of military
11 equipment solely to the regional government of southern Sudan or
12 any internationally recognized peacekeeping force or humanitarian
13 organization.

14 A social development company which is not complicit in
15 the Darfur genocide shall not be considered a scrutinized company.

16 Sec. 17. Social development company means a company
17 whose primary purpose in Sudan is to provide humanitarian
18 goods or services, including medicine or medical equipment,
19 agricultural supplies or infrastructure, educational opportunities,
20 journalism-related activities, information or information
21 materials, spiritual-related activities, services of a purely
22 clerical or reporting nature, food, clothing, or general consumer
23 goods that are unrelated to oil-related activities, mineral
24 extraction activities, or power production activities.

25 Sec. 18. Substantial action means (1) adopting,

1 publicizing, and implementing a formal plan to cease scrutinized
2 business operations within one year and to refrain from any such
3 new business operations, (2) undertaking significant humanitarian
4 efforts, in conjunction with an international organization, the
5 Government of Sudan, the regional government of southern Sudan, or
6 a nonprofit entity, evaluated and certified by an independent third
7 party to be substantial in relationship to the company's Sudan
8 business operations and of benefit to one or more marginalized
9 populations of Sudan, or (3) through engagement with the Government
10 of Sudan, materially improving conditions for the genocidally
11 victimized population in Darfur.

12 Sec. 19. (1) Within ninety days after the effective date
13 of this act, the state investment officer shall make his or her
14 best efforts to identify all scrutinized companies in which the
15 state has direct holdings or indirect holdings or could possibly
16 have such holdings in the future. Such efforts shall include, as
17 appropriate:

18 (a) Reviewing and relying on publicly available
19 information regarding companies with business operations in Sudan,
20 including information provided by nonprofit organizations, research
21 firms, international organizations, an government entities;

22 (b) Contacting asset managers that invest in companies
23 with business operations in Sudan; and

24 (c) Contacting other institutional investors that have
25 divested from or engaged with companies that have business

1 operations in Sudan.

2 (2) The state investment officer shall assemble all
3 scrutinized companies identified into a scrutinized companies list.

4 (3) The state investment officer shall update the
5 scrutinized companies list on a quarterly basis based on evolving
6 information from, among other sources, those listed in subsection
7 (1) of this section.

8 Sec. 20. The state investment officer shall adhere to
9 the following procedure for companies on the scrutinized companies
10 list:

11 (1) The state investment officer shall immediately
12 determine the companies on the scrutinized companies list in which
13 the state has direct holdings or indirect holdings;

14 (2) For each company identified in subdivision (1) of
15 this section with only inactive business operations, the state
16 investment officer shall send a written notice informing the
17 company of the provisions of sections 1 to 25 of this act and
18 encouraging it to continue to refrain from initiating active
19 business operations in Sudan until it is able to avoid scrutinized
20 business operations. The state investment officer shall continue
21 such correspondence on a semiannual basis;

22 (3) For each company newly identified in subdivision
23 (1) of this section with active business operations, the state
24 investment officer shall send a written notice informing the
25 company of its scrutinized company status and that it may

1 become subject to divestment by the state. The notice shall
2 offer the company the opportunity to clarify its Sudan-related
3 activities and shall encourage the company, within ninety days
4 after the date notice was sent, to either cease its scrutinized
5 business operations or convert such operations to inactive business
6 operations in order to avoid qualifying for divestment;

7 (4) If, within ninety days after the state investment
8 officer's first engagement with a company pursuant to subdivision
9 (3) of this section, the company ceases scrutinized business
10 operations, the company shall be removed from the scrutinized
11 companies list and the provisions of this section shall cease to
12 apply to it unless it resumes scrutinized business operations.
13 If, within ninety days after the state investment officer's
14 first engagement under such subdivision, the company converts
15 its scrutinized active business operations to inactive business
16 operations, the company shall be subject to all provisions relating
17 to such operations;

18 (5) If the company continues to have scrutinized
19 active business operations ninety days after the state investment
20 officer's first engagement with a company pursuant to subdivision
21 (3) of this section, and only while such company continues to
22 have scrutinized active business operations, the state investment
23 officer shall sell, redeem, divest, or withdraw all publicly traded
24 securities of the company, except as provided in this section,
25 according to the following schedule:

1 (i) At least fifty percent of such securities shall
2 be removed within nine months after the company's most-recent
3 appearance on the scrutinized companies list; and

4 (ii) One hundred percent of such securities shall be
5 removed within fifteen months after the company's most-recent
6 appearance on the scrutinized companies list; and

7 (6) If a company that ceased scrutinized active business
8 operations after engagement pursuant to subdivision (3) of this
9 section resumes such operations, subdivision (1) of this section
10 shall immediately apply, and the state investment officer shall
11 send a written notice to the company. The company shall also be
12 immediately reintroduced onto the scrutinized companies list.

13 At no time shall the state acquire securities of
14 companies on the scrutinized companies list that have active
15 business operations except as provided in this section.

16 No company which the United States Government
17 affirmatively declares to be excluded from its present or future
18 sanctions relating to Sudan shall be subject to divestment or
19 investment prohibition pursuant to this section.

20 This section does not apply to indirect holdings in
21 actively managed investment funds. The state investment officer
22 shall submit letters to the managers of such investment funds
23 containing companies with scrutinized active business operations
24 requesting that they consider removing such companies from the
25 fund or create a similar actively managed fund with indirect

1 holdings devoid of such companies. If the manager creates a similar
2 fund, the state investment officer 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 shall be deemed to be
6 actively managed investment funds.

7 Sec. 21. (1) The state investment officer shall file
8 a publicly available report with the Clerk of the Legislature
9 and Attorney General that includes the scrutinized companies list
10 within thirty days after the list is initially created.

11 (2) Annually thereafter, the state investment officer
12 shall file a publicly available report with the Clerk of the
13 Legislature and Attorney General and send a copy of the report
14 to the United States Presidential Special Envoy to Sudan, or an
15 appropriate designee or successor, that includes;

16 (a) A summary of correspondence with companies engaged by
17 the state investment officer under section 20 of this act;

18 (b) All investments sold, redeemed, divested, or
19 withdrawn in compliance with section 20 of this act;

20 (c) All prohibited investments under section 20 of this
21 act; and

22 (d) Progress made under section 20 of this act.

23 Sec. 22. Sections 1 to 25 of this act shall terminate
24 upon the occurrence of:

25 (1) The United States Congress or the President of the

1 United States declaring that the Darfur genocide has been halted
2 for at least twelve months;

3 (2) The United States revoking all sanctions imposed
4 against the Government of Sudan;

5 (3) Congress or the President declaring that the
6 Government of Sudan has honored its commitments to cease attacks
7 on civilians, demobilized and demilitarized the Janjaweed and
8 associated militias, granted free and unfettered access for
9 deliveries of humanitarian assistance, and allowed for the safe and
10 voluntary return of refugees and internally displaced persons; or

11 (4) Congress or the President, through legislation or
12 executive order, declaring that mandatory divestment of the type
13 provided for in such sections interferes with the conduct of United
14 States foreign policy.

15 Sec. 23. Sections 1 to 25 of this act apply to state
16 funds administered by the State of Nebraska and invested by
17 the Nebraska Investment Council and the state investment officer
18 pursuant to the Nebraska State Funds Investment Act except for:

19 (1) Those funds in which investment and asset allocation
20 decisions are made by the plan participant, rather than by the
21 Nebraska Investment Council, including assets of (a) the Nebraska
22 educational savings plan trust created pursuant to sections 85-1801
23 to 85-1814 and (b) the retirement systems administered by the
24 Public Employees Retirement Board; and

25 (2) The assets of the University Trust Fund created

1 pursuant to section 85-123.01.

2 With respect to actions taken in compliance with sections
3 1 to 25 of this act, including all good-faith determinations
4 regarding companies as required by such sections, the state
5 investment officer shall be exempt from any conflicting statutory
6 or common-law obligations, including any such obligations in
7 respect to choice of asset managers, investment funds, or
8 investments for state funds.

9 Sec. 24. The state investment officer shall be permitted
10 to cease divesting from scrutinized companies or reinvest in
11 scrutinized companies from which he or she divested if clear and
12 convincing evidence shows that the value for all assets under
13 management by the state investment officer becomes equal to or
14 less than 99.50 percent of the hypothetical value of all assets
15 under management by the state investment officer assuming no
16 divestment for any company had occurred. Cessation of divestment,
17 reinvestment, or any subsequent ongoing investment authorized by
18 this section shall be strictly limited to the minimum steps
19 necessary to avoid the contingency set forth in this section. For
20 any cessation of divestment, reinvestment, or subsequent ongoing
21 investment authorized by this section, the state investment officer
22 shall provide a written report to the Clerk of the Legislature
23 and Attorney General in advance of initial reinvestment, updated
24 semiannually thereafter as applicable, setting forth the reasons
25 and justification, supported by clear and convincing evidence, for

1 its decisions to cease divestment, reinvest, or remain invested in
2 companies with scrutinized active business operations. This section
3 has no application to reinvestment in companies on the ground that
4 they have ceased to have scrutinized active business operations.

5 Sec. 25. The Attorney General shall enforce the
6 provisions of sections 1 to 25 of this act and may bring such
7 actions in court as are necessary to do so.

8 Sec. 26. Section 72-1260, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 72-1260 Sections 72-1237 to 72-1260 and sections 1 to 25
11 of this act shall be known and may be cited as the Nebraska State
12 Funds Investment Act.

13 Sec. 27. Section 84-1309.01, Revised Statutes Cumulative
14 Supplement, 2006, is amended to read:

15 84-1309.01 The board shall provide benefit liability
16 information and other assistance to the Nebraska Investment Council
17 for the establishment of policy portfolio objectives for the
18 investing and reinvesting of the assets of the retirement system.
19 The board shall verify that the investments of the assets of the
20 retirement system by the council and the state investment officer
21 are invested and reinvested for the exclusive purposes of providing
22 benefits to members and members' beneficiaries and that the assets
23 of the retirement system are not invested with the sole or primary
24 investment objective of economic development or social purposes or
25 objectives except as provided in sections 1 to 25 of this act.

1 Such verification shall be included in the written plan of action
2 pursuant to subsection (3) of section 84-1503.

3 Sec. 28. Original section 72-1260, Reissue Revised
4 Statutes of Nebraska, and section 84-1309.01, Revised Statutes
5 Cumulative Supplement, 2006, are repealed.