

CS FOR SENATE BILL NO. 37(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 4/9/09

Referred: Finance

Sponsor(s): SENATORS FRENCH, Ellis, Thomas

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to certain investments of the Alaska permanent fund, the state's**
2 **retirement systems, the State of Alaska Supplemental Annuity Plan, and the deferred**
3 **compensation program for state employees in companies that do business in Sudan, and**
4 **restricting those investments; and providing for an effective date."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 FINDINGS. The legislature finds that

9 (1) since 1997, the federal government has imposed fiscal sanctions against
10 the Government of Sudan for acts of terrorism and atrocities directed against civilians in the
11 Darfur region of Sudan;

12 (2) the fiscal sanctions described in (1) of this section are monitored through
13 the United States Department of the Treasury, Office of Foreign Assets Control;

14 (3) the State of Alaska controls significant financial assets through

1 investments in the Alaska permanent fund and funding of the State of Alaska retirement
2 systems, supplemental annuity plans, and deferred compensation, among other funds;

3 (4) it is a fundamental responsibility of the State of Alaska to decide where,
4 how, and by whom financial resources in the state's control are invested, taking into account
5 numerous pertinent factors; and

6 (5) the investment of financial resources in business firms and financial
7 institutions with ties to the repressive regime in the Sudan is inconsistent with the moral and
8 political values of the people of Alaska.

9 * **Sec. 2.** AS 37.10 is amended by adding new sections to read:

10 **Sec. 37.10.072. Sudan divestment.** (a) The commissioner or a fiduciary of a
11 fund subject to this title may not invest in and shall cause the fund to divest ownership,
12 if any, in the publicly traded securities of a company that the commissioner places on
13 a list of companies that conduct or have direct investments in business operations in
14 Sudan. Divestment of an ownership interest in a company shall occur within 90 days
15 after it is placed on the list created and updated under (c) of this section if the
16 investment is managed by the commissioner or fiduciary. On or before January 31 of
17 each year, if a fund has investments managed by an outside investment manager, the
18 fiduciary shall direct the investment manager not to invest in and to divest, within 90
19 days after receiving the direction, ownership, if any, in the publicly traded securities of
20 a company that the commissioner places on a list of companies that conduct or have
21 direct investments in business operations in Sudan.

22 (b) If an investment in a fund under (a) of this section is managed as a
23 commingled investment or other business structure in which the fund is not the sole
24 owner of the investment interest or if the investment is an index fund, the provisions
25 of (a) of this section do not apply. The commissioner shall require that, on or before
26 January 31 of each year, the fiduciary submit letters to the managers of commingled
27 investments requesting the managers to consider removing from the commingled
28 investment any company on the list of companies that conduct or have direct
29 investments in business operations in Sudan.

30 (c) The commissioner shall create and update annually on or before
31 December 31 a list of companies that conduct or have direct investments in business

1 operations in Sudan.

2 (d) The commissioner shall make reasonable efforts to investigate all publicly
3 traded companies to determine whether the company conducts or has direct
4 investments in business operations in Sudan. In conducting the investigation, the
5 commissioner may use the following:

6 (1) credible publicly available information regarding companies with
7 active business operations compiled by nonprofit organizations, research firms,
8 international organizations, and government entities;

9 (2) information supplied by institutional investors that have divested
10 from companies that conduct or have direct investments in business operations in
11 Sudan.

12 (e) The commissioner shall provide written notice and an opportunity to
13 comment in writing to each company identified as a company that conducts or has
14 direct investments in business operations in Sudan under (d) of this section.

15 (f) The commissioner shall add a company identified under (d) of this section
16 to the list of companies that conduct or have direct investments in business operations
17 in Sudan not earlier than 90 days after providing written notice under (e) of this
18 section, unless the company demonstrates to the commissioner that it does not conduct
19 or have direct investments in business operations in Sudan.

20 (g) The commissioner shall make every effort to avoid erroneously adding a
21 company to the list of companies that conduct or have direct investments in business
22 operations in Sudan. The commissioner shall verify that the company conducts or has
23 direct investments in business operations in Sudan before adding it to the list of
24 companies that conduct or have direct investments in business operations in Sudan.

25 (h) Annually, on or before January 31, the commissioner shall advise the
26 president of the senate, the speaker of the house of representatives, and the United
27 States presidential special envoy for Sudan of the companies on the list of companies
28 that conduct or have direct investments in business operations in Sudan.

29 (i) The commissioner may adopt regulations under AS 44.62 to carry out the
30 purposes of the section.

31 (j) In this section,

1 (1) "business operations"

2 (A) means power production activities, mineral extraction
3 activities, oil-related activities, or the production of military equipment;

4 (B) does not include operations that the company can
5 demonstrate

6 (i) are conducted under contract directly and
7 exclusively with the regional government of southern Sudan;

8 (ii) are conducted under a license from the United
9 States Department of the Treasury, Office of Foreign Assets Control, or
10 are expressly exempted from licensure under federal law;

11 (iii) consist of providing goods or services to
12 marginalized populations of Sudan;

13 (iv) consist of providing goods or services to an
14 internationally recognized peacekeeping force or humanitarian
15 organization;

16 (v) consist of providing goods or services that are used
17 only to promote health or education; or

18 (vi) have been voluntarily suspended;

19 (2) "commissioner" means the commissioner of revenue;

20 (3) "Government of Sudan"

21 (A) means the government in Khartoum, Sudan, that is led by
22 the National Congress Party, formerly known as the National Islamic Front, or
23 any successor government formed on or after October 13, 2006;

24 (B) includes the coalition Government of National Unity
25 agreed upon in the Comprehensive Peace Agreement for Sudan;

26 (C) does not include the regional government of southern
27 Sudan;

28 (4) "marginalized populations of Sudan" means adversely affected
29 groups in regions authorized to receive assistance under sec. 8(c), P.L. 109-344
30 (Darfur Peace and Accountability Act of 2006) and marginalized areas in northern
31 Sudan described in sec. 4(9), P.L. 109-344;

1 (5) "military equipment"

2 (A) means weapons, arms, military supplies, and equipment
3 that readily may be used for military purposes;

4 (B) includes radar systems or military-grade transport vehicles,
5 supplies, or services sold or provided directly to a force actively participating
6 in armed conflict in Sudan;

7 (6) "mineral extraction activities"

8 (A) means exploring, extracting, processing, transporting, or
9 wholesale selling or trading of elemental minerals, associated metal alloys,
10 oxides, or ore;

11 (B) includes activities involving gold, copper, chromium,
12 chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc;

13 (7) "oil-related activities" means

14 (A) exporting, extracting, producing, refining, processing,
15 exploring for, transporting, selling, or trading oil; and

16 (B) constructing, maintaining, or operating a pipeline, refinery,
17 or other oil field infrastructure;

18 (8) "power production activities"

19 (A) means a business operation that involves a project
20 commissioned by the National Electricity Corporation of Sudan or other
21 similar entity of the Government of Sudan whose purpose is to facilitate power
22 generation and delivery;

23 (B) includes establishing power-generating plants or
24 hydroelectric dams, selling or installing components for the project, or
25 providing service contracts related to the installation or maintenance of the
26 project.

27 **Sec. 37.10.073. Divestment exemptions, immunity, and indemnification.**

28 For actions taken, or inaction done in good faith, in compliance with AS 37.10.072,
29 the commissioner of revenue, a fiduciary, an agent, attorney, trustee, officer,
30 employee, staff, custodian, research firm, or investment manager under contract of the
31 commissioner of revenue or the fiduciary, and board members complying with

1 AS 37.10.220 or AS 37.13.120 are

2 (1) exempt from a conflicting state statutory or common law
3 obligation, including an obligation with respect to choice of an asset manager,
4 investment fund, or investment for the securities portfolio of the public fund;

5 (2) immune from liability under state or local law;

6 (3) indemnified and held harmless by the State of Alaska from claims,
7 demands, suits, actions, damages, judgments, costs, charges, and expenses, including
8 costs and attorney fees, and against all liability, losses, and damages of any nature that
9 the commissioner of revenue, the fiduciary, the agent, attorney, trustee, officer,
10 employee, staff, custodian, research firm, or investment manager under contract of the
11 commissioner of revenue or the fiduciary, or the board member may, at any time,
12 sustain because of a decision to restrict, reduce, or eliminate an investment made in
13 compliance with AS 37.10.072; and

14 (4) immune from adverse licensing actions under AS 08.

15 * **Sec. 3.** AS 37.10.220 is amended by adding a new subsection to read:

16 (d) The board shall comply with AS 37.10.072.

17 * **Sec. 4.** AS 37.13.120 is amended by adding a new subsection to read:

18 (f) The board shall comply with AS 37.10.072.

19 * **Sec. 5.** REPEAL. Section 1 of this Act; AS 37.10.072, 37.10.220(d); and AS 37.13.120(f),
20 are repealed on the earliest of the day after

21 (1) the commissioner of revenue gives written notice to the revisor of statutes
22 and the lieutenant governor that the President of the United States has certified to the United
23 States Congress that the Government of Sudan has honored its commitments to

24 (A) abide by the United Nations Security Council Resolution 1769
25 (2007);

26 (B) cease attacks on civilians;

27 (C) demobilize and demilitarize the Janjaweed and associated militias;

28 (D) grant free and unfettered access for delivery of humanitarian
29 assistance; and

30 (E) allow for the safe and voluntary return of refugees and internally
31 displaced persons;

1 (2) the United States Congress or the President of the United States, through
2 legislation or executive order, declares that the Sudan divestment authorized in AS 37.10.072
3 interferes with the conduct of United States foreign policy; or

4 (3) P.L. 110-174 (Sudan Accountability and Divestment Act of 2007) is
5 repealed.

6 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 NOTICE. Not later than 30 days after the enactment of this Act, the Department of
9 Law is directed to submit written notice to the Attorney General of the United States
10 describing this Act.

11 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).