

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

**SENATE BILL**

**No. 1570** Session of  
2008

---

INTRODUCED BY A. WILLIAMS, COSTA, FONTANA, ORIE, KITCHEN,  
O'PAKE, LOGAN AND PIPPY, SEPTEMBER 18, 2008

---

REFERRED TO FINANCE, SEPTEMBER 18, 2008

---

AN ACT

1 Prohibiting the investment of State funds in certain private  
2 business entities doing business in Sudan; and providing  
3 indemnification to certain persons.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Sudan  
8 Divestment Act.

9 Section 2. Declaration of policy.

10 The General Assembly finds and declares as follows:

11 (1) On July 23, 2004, the United States Congress  
12 declared that "the atrocities unfolding in Darfur, Sudan, are  
13 genocide."

14 (2) On September 9, 2004, Secretary of State Colin L.  
15 Powell told the United States Senate Foreign Relations  
16 Committee that "genocide has occurred and may still be  
17 occurring in Darfur" and "the Government of Sudan and the  
18 Janjaweed bear responsibility."

1           (3) On September 21, 2004, addressing the United Nations  
2           General Assembly, President George W. Bush affirmed the  
3           Secretary of State's finding and stated, "At this hour, the  
4           world is witnessing terrible suffering and horrible crimes in  
5           the Darfur region of Sudan, crimes my government has  
6           concluded are genocide."

7           (4) On December 7, 2004, the United States Congress  
8           noted that the genocidal policy in Darfur has led to reports  
9           of "systematic rape of thousands of women and girls, the  
10          abduction of women and children, and the destruction of  
11          hundreds of ethnically African villages, including the  
12          poisoning of their wells and the plunder of their crops and  
13          cattle upon which the people of such villages sustain  
14          themselves."

15          (5) Also on December 7, 2004, Congress found that "the  
16          Government of Sudan has restricted access by humanitarian and  
17          human rights workers to the Darfur area through intimidation  
18          by military and security forces, and through bureaucratic and  
19          administrative obstruction, in an attempt to inflict the most  
20          devastating harm on those individuals displaced from their  
21          villages and homes without any means of sustenance or  
22          shelter."

23          (6) On September 25, 2006, Congress reaffirmed that "the  
24          genocide unfolding in the Darfur region of Sudan is  
25          characterized by acts of terrorism and atrocities directed  
26          against civilians, including mass murder, rape, and sexual  
27          violence committed by the Janjaweed and associated militias  
28          with the complicity and support of the National Congress  
29          Party-led faction of the Government of Sudan."

30          (7) On September 26, 2006, the United States House of

1 Representatives stated that "an estimated 300,000 to 400,000  
2 people have been killed by the Government of Sudan and its  
3 Janjaweed allies since the Darfur crisis began in 2003, more  
4 than 2,000,000 people have been displaced from their homes,  
5 and more than 250,000 people from Darfur remain in refugee  
6 camps in Chad."

7 (8) The Darfur crisis represents the first time the  
8 United States Government has labeled ongoing atrocities a  
9 genocide.

10 (9) The United States Government has imposed sanctions  
11 against the Government of Sudan since 1997. These sanctions  
12 are monitored through the United States Treasury Department's  
13 Office of Foreign Assets Control (OFAC).

14 (10) According to a former chair of the United States  
15 Securities and Exchange Commission, "the fact that a foreign  
16 company is doing material business with a country,  
17 government, or entity on OFAC's sanctions list is, in the SEC  
18 staff's view, substantially likely to be significant to the  
19 reasonable investor's decision about whether to invest in  
20 that company."

21 (11) Since 1993, the United States Secretary of State  
22 has determined that Sudan is a country the government of  
23 which has repeatedly provided support for acts of  
24 international terrorism, thereby incurring restrictions of  
25 United States assistance, defense exports and sales, and  
26 financial and other transactions with the Government of  
27 Sudan.

28 (12) A 2006 United States House of Representatives  
29 report states that "a company's association with sponsors of  
30 terrorism and human rights abuses, no matter how large or

1 small, can have a materially adverse result on a public  
2 company's operations, financial condition, earnings, and  
3 stock prices, all of which can negatively affect the value of  
4 an investment."

5 (13) In response to the financial risk posed by  
6 investments in companies doing business with a terrorist-  
7 sponsoring state, the Securities and Exchange Commission  
8 established its Office of Global Security Risk to provide for  
9 enhanced disclosure of material information regarding such  
10 companies.

11 (14) The current Sudan divestment movement encompasses  
12 nearly 100 universities, cities, states and private pension  
13 plans.

14 (15) The following are to be commended:

15 (i) The City of Philadelphia, which in September  
16 2006 divested its funds from companies doing business in  
17 Sudan, the largest city in the United States to do so to  
18 date.

19 (ii) The City of Pittsburgh, which in March 2007  
20 divested its funds from companies doing business in  
21 Sudan.

22 (iii) The over half dozen Pennsylvania colleges and  
23 universities which have already divested from companies  
24 doing business in Sudan or are considering doing so.

25 (16) Companies facing such widespread divestment present  
26 further material risk to remaining investors.

27 (17) It is a fundamental responsibility of the  
28 Commonwealth to decide where, how, and by whom financial  
29 resources in its control should be invested, taking into  
30 account numerous pertinent factors.

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

10 (19) It is the judgment of the General Assembly that  
11 this act should remain in effect only insofar as it continues  
12 to be consistent with, and does not unduly interfere with,  
13 the foreign policy of the United States as determined by the  
14 United States Government.

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

20 Section 3. Definitions.

21 The following words and phrases when used in this act shall  
22 have the meanings given to them in this section unless the  
23 context clearly indicates otherwise:

24 "Active business operations." All business operations that  
25 are not inactive business operations.

26 "Business operations." Engaging in commerce in any form in  
27 Sudan, including by acquiring, developing, maintaining, owning,  
28 selling, possessing, leasing or operating equipment, facilities,  
29 personnel, products, services, personal property, real property  
30 or any other apparatus of business or commerce.

1 "Company." A sole proprietorship, organization, association,  
2 corporation, partnership, joint venture, limited partnership,  
3 limited liability partnership, limited liability company or  
4 other entity or business association, including a wholly owned  
5 subsidiary, majority-owned subsidiary, parent company or  
6 affiliate of such entities or business associations, that exists  
7 for profit-making purposes.

8 "Complicit." Taking actions during any preceding 20-month  
9 period that have directly supported or promoted the genocidal  
10 campaign in Darfur, including, but not limited to:

11 (1) preventing members of Darfur's victimized population  
12 from communicating with each other;

13 (2) encouraging Sudanese citizens to speak out against  
14 an internationally approved security force for Darfur;

15 (3) actively working to deny, cover-up or alter the  
16 record on human rights abuses in Darfur; or

17 (4) other similar actions.

18 "Direct holdings in a company." All securities of that  
19 company held directly by the public fund in an account or fund  
20 in which the public fund owns all shares or interests.

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

28 "Inactive business operations." The mere continued holding  
29 or renewal of rights to property previously operated for the  
30 purpose of generating revenues but not presently deployed for

1 such purpose.

2 "Indirect holdings in a company." All securities of that  
3 company held in an account or fund, such as a mutual fund,  
4 managed by one or more persons not employed by a public fund, in  
5 which the public fund owns shares or interests together with  
6 other investors not subject to the provisions of this act.

7 "Marginalized populations of Sudan." Includes, but are not  
8 limited to:

9 (1) the portion of the population in the Darfur region  
10 that has been genocidally victimized;

11 (2) the portion of the population of southern Sudan  
12 victimized by Sudan's North-South civil war;

13 (3) the Beja, Rashidiya and other similarly underserved  
14 groups of eastern Sudan;

15 (4) the Nubian and other similarly underserved groups in  
16 Sudan's Abyei, Southern Blue Nile and Nuba Mountain regions;  
17 and

18 (5) the Amri, Hamadab, Manasir and other similarly  
19 underserved groups of northern Sudan.

20 "Military equipment." Weapons, arms, military supplies and  
21 equipment that readily may be used for military purposes,  
22 including radar systems or military-grade transport vehicles or  
23 supplies or services sold or provided directly or indirectly to  
24 any force actively participating in armed conflict in Sudan.

25 "Mineral extraction activities." Includes exploring,  
26 extracting, processing, transporting or wholesale selling or  
27 trading of elemental minerals or associated metal alloys or  
28 oxides (ore), including gold, copper, chromium, chromite,  
29 diamonds, iron, iron ore, silver, tungsten, uranium and zinc, as  
30 well as facilitating such activities, including by providing

1 supplies or services in support of such activities.

2 "Oil-related activities." Includes, but are not limited to:

3 (1) owning rights to oil blocks;

4 (2) exporting, extracting, producing, refining,  
5 processing, exploring for, transporting, selling or trading  
6 oil;

7 (3) constructing, maintaining or operating a pipeline,  
8 refinery or other oil-field infrastructure; or

9 (4) facilitating such activities, including by providing  
10 supplies or services in support of such activities, except  
11 that the mere retail sale of gasoline and related consumer  
12 products are not oil-related activities.

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

23 "Public fund." A Commonwealth fund, including the State  
24 Employees' Retirement Fund and the Public School Employees'  
25 Retirement Fund. The term includes the State entity responsible  
26 for administering the fund.

27 "Scrutinized company." A company that:

28 (1) engages in scrutinized business operations described  
29 under section 4; or

30 (2) is complicit in the Darfur genocide.

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

10 "Substantial action." Adopting, publicizing and implementing  
11 a formal plan to cease scrutinized business operations within  
12 one year and to refrain from any such new business operations,  
13 undertaking humanitarian efforts in conjunction with an  
14 international organization, the Government of Sudan, the  
15 regional Government of Southern Sudan or a nonprofit entity and  
16 evaluated and certified by an independent third party to be  
17 substantial in relationship to the company's Sudan business  
18 operations and of benefit to one or more marginalized  
19 populations of Sudan, or, through engagement with the Government  
20 of Sudan, materially improving conditions for the genocidally  
21 victimized population in Darfur.

22 Section 4. Scrutinized business operations.

23 (a) General rule.--A company engages in scrutinized business  
24 operations if:

25 (1) the company has business operations that involve  
26 contracts with or providing supplies or services to the  
27 Government of Sudan, a company in which the Government of  
28 Sudan has any direct or indirect equity share, a Government  
29 of Sudan-commissioned consortium or project or a company  
30 involved in a Government of Sudan-commissioned consortium or

1 project and:

2 (i) more than 10% of the company's revenues or  
3 assets linked to Sudan involve oil-related activities or  
4 mineral extraction activities, less than 75% of the  
5 company's revenues or assets linked to Sudan involve  
6 contracts with or provision of oil-related or mineral  
7 extracting products or services to the regional  
8 government of southern Sudan or a project or consortium  
9 created exclusively by that regional government and the  
10 company has failed to take substantial action; or

11 (ii) more than 10% of the company's revenues or  
12 assets linked to Sudan involve power production  
13 activities, less than 75% of the company's power  
14 production activities include projects whose intent is to  
15 provide power or electricity to the marginalized  
16 populations of Sudan and the company has failed to take  
17 substantial action; or

18 (2) the company supplies military equipment within  
19 Sudan, unless:

20 (i) the company clearly shows that the military  
21 equipment cannot be used to facilitate offensive military  
22 actions in Sudan; or

23 (ii) the company implements rigorous and verifiable  
24 safeguards to prevent use of that equipment by forces  
25 actively participating in armed conflict, including:

26 (A) using post-sale tracking of such equipment  
27 by the company;

28 (B) certification from a reputable and objective  
29 third party that such equipment is not being used by  
30 a party participating in armed conflict in Sudan; or

1 (C) selling such equipment solely to the  
2 regional government of southern Sudan or any  
3 internationally recognized peacekeeping force or  
4 humanitarian organization.

5 (b) Social development company.--Notwithstanding any other  
6 provision of this act, a social development company that is not  
7 complicit in the Darfur genocide may not be considered a  
8 scrutinized company.

9 Section 5. Identification of companies.

10 (a) Identification.--Within 90 days following the effective  
11 date of this act, the public fund shall make its best efforts to  
12 identify all scrutinized companies in which the public fund has  
13 direct or indirect holdings or could possibly have such holdings  
14 in the future. Efforts shall include, as appropriate, any of the  
15 following:

16 (1) reviewing and relying, as appropriate in the public  
17 fund's judgment, on publicly available information regarding  
18 companies with business operations in Sudan, including  
19 information provided by nonprofit organizations, research  
20 firms, international organizations and government entities;

21 (2) contacting asset managers contracted by the public  
22 fund that invest in companies with business operations in  
23 Sudan; or

24 (3) contacting other institutional investors that have  
25 divested from or engaged with companies that have business  
26 operations in Sudan.

27 (b) List.--By the first meeting of the public fund following  
28 the 90-day period described in subsection (a), the public fund  
29 shall assemble all scrutinized companies identified into a  
30 scrutinized companies list.

1 (c) Update.--The public fund shall update the scrutinized  
2 companies list on a quarterly basis based on evolving  
3 information from, among other sources, those listed in  
4 subsection (a).

5 Section 6. Required actions.

6 (a) Engagement.--The public fund shall adhere to the  
7 following procedure for companies on the scrutinized companies  
8 list:

9 (1) The public fund shall immediately determine the  
10 companies on the scrutinized companies list in which the  
11 public fund owns direct or indirect holdings.

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

19 (3) For each company newly identified in paragraph (1)  
20 with active business operations, the public fund shall send a  
21 written notice informing the company of its scrutinized  
22 company status and that it may become subject to divestment  
23 by the public fund. The notice shall offer the company the  
24 opportunity to clarify its Sudan-related activities and shall  
25 encourage the company, within 90 days, to either cease its  
26 scrutinized business operations or convert the operations to  
27 inactive business operations in order to avoid qualifying for  
28 divestment by the public fund.

29 (4) If, within 90 days following the public fund's first  
30 engagement with a company pursuant to paragraph (3), that

1 company ceases scrutinized business operations, the company  
2 shall be removed from the scrutinized companies list and the  
3 provisions of this section shall cease to apply to it unless  
4 it resumes scrutinized business operations. If, within 90  
5 days following the public fund's first engagement, the  
6 company converts its scrutinized active business operations  
7 to inactive business operations, the company shall be subject  
8 to all provisions relating thereto.

9 (b) Divestment.--The public fund shall adhere to the  
10 following procedure for companies on the scrutinized companies  
11 list:

12 (1) If, after 90 days following the public fund's first  
13 engagement with a company pursuant to subsection (a)(3), the  
14 company continues to have scrutinized active business  
15 operations, and only while the company continues to have  
16 scrutinized active business operations, the public fund shall  
17 sell, redeem, divest or withdraw all publicly traded  
18 securities of the company, except as provided, according to  
19 the following schedule:

20 (i) At least 50% of such assets shall be removed  
21 from the public fund's assets under management by nine  
22 months after the company's most recent appearance on the  
23 scrutinized companies list.

24 (ii) 100% of such assets shall be removed from the  
25 public fund's assets under management within 15 months  
26 after the company's most recent appearance on the  
27 scrutinized companies list.

28 (2) If a company that ceased scrutinized active business  
29 operations following engagement pursuant to subsection (a)(3)  
30 resumes such operations, paragraph (1) shall immediately

1 apply, and the public fund shall send a written notice to the  
2 company. The company shall also be immediately reintroduced  
3 onto the scrutinized companies list.

4 (c) Prohibition.--At no time shall the public fund acquire  
5 securities of companies on the scrutinized companies list that  
6 have active business operations, except as provided in  
7 subsection (d).

8 (d) Exemption.--No company which the United States  
9 Government affirmatively declares to be excluded from its  
10 present or any future Federal sanctions regime relating to Sudan  
11 shall be subject to divestment or investment prohibition  
12 pursuant to subsections (b) and (c).

13 (e) Excluded securities.--Notwithstanding any provision of  
14 this act to the contrary, subsections (b) and (c) shall not  
15 apply to indirect holdings in actively managed investment funds.  
16 The public fund shall, however, submit letters to the managers  
17 of such investment funds containing companies with scrutinized  
18 active business operations requesting that they consider  
19 removing such companies from the fund or create a similar  
20 actively managed fund with indirect holdings devoid of such  
21 companies. If the manager creates a similar fund, the public  
22 fund shall replace all applicable investments with investments  
23 in the similar fund in an expedited time frame consistent with  
24 prudent investing standards. For the purposes of this section,  
25 "private equity" funds shall be deemed to be actively managed  
26 investment funds.

27 Section 7. Reporting.

28 (a) Initial report.--The public fund shall file a publicly  
29 available report to the General Assembly and the Auditor General  
30 that includes the scrutinized companies list within 30 days

1 after the list is created.

2 (b) Subsequent reports.--Annually thereafter, the public  
3 fund shall file a publicly available report to the General  
4 Assembly and the Auditor General and send a copy of that report  
5 to the United States Presidential Special Envoy to Sudan, or an  
6 appropriate designee or successor, that includes:

7 (1) A summary of correspondence with companies engaged  
8 by the public fund under section 6(a)(2) and (3).

9 (2) All investments sold, redeemed, divested or  
10 withdrawn in compliance with section 6(b).

11 (3) All prohibited investments under section 6(c).

12 (4) Any progress made under section 6(e).

13 Section 8. Expiration.

14 This act shall expire upon the occurrence of any of the  
15 following:

16 (1) The Congress or President of the United States  
17 declares that the Darfur genocide has been halted for at  
18 least 12 months.

19 (2) The United States revokes all sanctions imposed  
20 against the Government of Sudan.

21 (3) The Congress or President of the United States  
22 declares that the Government of Sudan has honored its  
23 commitments to cease attacks on civilians, demobilize and  
24 demilitarize the Janjaweed and associated militias, grant  
25 free and unfettered access for deliveries of humanitarian  
26 assistance and allow for the safe and voluntary return of  
27 refugees and internally displaced persons.

28 (4) The Congress or President of the United States,  
29 through legislation or executive order, declares that  
30 mandatory divestment of the type provided for in this act



1 public fund shall provide a written report to the General  
2 Assembly and the Auditor General in advance of initial  
3 reinvestment, updated semiannually thereafter as applicable,  
4 setting forth the reasons and justification, supported by clear  
5 and convincing evidence, for its decisions to cease divestment,  
6 reinvest or remain invested in companies with scrutinized active  
7 business operations.

8 (d) Application.--This section has no application to  
9 reinvestment in companies on the ground that have ceased to have  
10 scrutinized active business operations.

11 Section 11. Indemnification.

12 (a) General rule.--Each indemnitee shall be indemnified and  
13 held harmless by the Commonwealth for all good faith actions  
14 taken by the indemnitee and for all good faith failures to take  
15 action, regardless of the date of any such action or failure to  
16 take action; in connection with attempts to comply with any  
17 investment limitations imposed by statute against all expense,  
18 liability and loss, including, without limitation, attorney  
19 fees, judgments, fines, taxes, penalties and amounts paid or to  
20 be paid in settlements reasonably incurred or suffered by the  
21 indemnitee in connection with any proceeding.

22 (b) Advance payment.--The right to indemnification provided  
23 in this section shall include the right to have the expenses  
24 reasonably incurred by the indemnitee in defending any  
25 proceeding paid by the Commonwealth in advance of the final  
26 disposition of the proceeding upon the receipt by the  
27 Commonwealth of a written undertaking by the indemnitee to  
28 refund the amounts so advanced if it is ultimately determined  
29 that the indemnitee is not entitled to indemnification under  
30 this section.

1 (c) Persons entitled.--Indemnification pursuant to this  
2 section shall continue as to an indemnitee who has ceased to be  
3 a board member, designee of a board member, officer or employee  
4 of a public fund and shall inure to the benefit of such person's  
5 legal representatives, heirs, executors and administrators.

6 (d) Reimbursement to public funds.--To the extent that the  
7 Commonwealth does not make any indemnification payments,  
8 including any advancement of legal fees and expenses, within 30  
9 days of demand therefore, a public fund shall make such payment  
10 and the Commonwealth shall reimburse the public fund.

11 (e) Construction.--The repeal or amendment of any provision  
12 of this section shall not limit the rights of any indemnitee to  
13 indemnification, including advancement of expenses, with respect  
14 to any action or failure to act occurring prior to the effective  
15 date of such repeal or amendment.

16 (f) Definitions.--As used in this section, the following  
17 words and phrases shall have the meanings given to them in this  
18 subsection:

19 "Indemnitee." Each current or former board member, duly  
20 appointed designee of a board member, officer, employee,  
21 including, without limitation, the attorneys in the Office of  
22 Chief Counsel that serve a public fund, agent, research firm, or  
23 investment manager of a public fund who was or is a party to, or  
24 is threatened to be made a party to, or is otherwise involved  
25 in, any proceeding, by reason of the fact that the person is or  
26 was a board member, designee of a board member, officer,  
27 employee, agent, research firm or investment manager of a public  
28 fund.

29 "Proceeding." Any threatened, pending or completed action,  
30 suit or proceeding, including, without limitation, an action,

1 suit or proceeding by or in the right of a public fund, relating  
2 to compliance with any investment limitations imposed by  
3 statute, whether civil, criminal, administrative, investigative  
4 or through arbitration.

5 Section 12. Audits.

6 The Auditor General shall conduct an annual compliance audit  
7 of each public fund subject to the provisions of this act. The  
8 Auditor General may refer any finding of an audit conducted  
9 under this section to the Attorney General for investigation.

10 Section 13. Reimbursement.

11 After the end of the fiscal year of each public fund, the  
12 public fund shall submit to and the Secretary of the Budget  
13 shall certify the determination of the losses incurred by the  
14 public fund as a result of compliance with the provisions of  
15 this act and the Commonwealth shall promptly reimburse the  
16 public fund for such losses from the General Fund.

17 Section 14. Effective date.

18 This act shall take effect in 60 days.