

Article 6D.

Sudan (Darfur) Divestment Act.

**§ 147-86.41. Legislative findings.**

- (1) On July 23, 2004, the United States Congress declared that "the atrocities unfolding in Darfur, Sudan, are genocide."
- (2) On September 9, 2004, Secretary of State Colin L. Powell told the U.S. Senate Foreign Relations Committee that "genocide has occurred and may still be occurring in Darfur" and "the Government of Sudan and the Janjaweed bear responsibility."
- (3) On September 21, 2004, addressing the United Nations General Assembly, President George W. Bush affirmed the Secretary of State's finding and stated, "At this hour, the world is witnessing terrible suffering and horrible crimes in the Darfur region of Sudan, crimes my government has concluded are genocide."
- (4) On December 7, 2004, the U.S. Congress noted that the genocidal policy in Darfur has led to reports of "systematic rape of thousands of women and girls, the abduction of women and children, and the destruction of hundreds of ethnically African villages, including the poisoning of their wells and the plunder of their crops and cattle upon which the people of such villages sustain themselves."
- (5) Also on December 7, 2004, Congress found that "the Government of Sudan has restricted access by humanitarian and human rights workers to the Darfur area through intimidation by military and security forces, and through bureaucratic and administrative obstruction, in an attempt to inflict the most devastating harm on those individuals displaced from their villages and homes without any means of sustenance or shelter."
- (6) On September 25, 2006, Congress reaffirmed that "the genocide unfolding in the Darfur region of Sudan is characterized by acts of terrorism and atrocities directed against civilians, including mass murder, rape, and sexual violence committed by the Janjaweed and associated militias with the complicity and support of the National Congress Party-led faction of the Government of Sudan."
- (7) On September 26, 2006, the U.S. House of Representatives stated that "an estimated 300,000 to 400,000 people have been killed by the Government of Sudan and its Janjaweed allies since the [Darfur] crisis began in 2003, more than 2,000,000 people have been displaced from their homes, and more than 250,000 people from Darfur remain in refugee camps in Chad."
- (8) The Darfur crisis represents the first time the United States Government has labeled ongoing atrocities genocide.
- (9) The Federal Government has imposed sanctions against the Government of Sudan since 1997. These sanctions are monitored through the U.S. Treasury Department's Office of Foreign Assets Control (OFAC).
- (10) According to a former chair of the U.S. Securities and Exchange Commission, "the fact that a foreign company is doing material business with a country, government, or entity on OFAC's sanctions list is, in the SEC staff's view,

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

- (11) Since 1993, the U.S. Secretary of State has determined that Sudan is a country the government of which has repeatedly provided support for acts of international terrorism, thereby restricting United States assistance, defense exports and sales, and financial and other transactions with the Government of Sudan.
- (12) A 2006 U.S. House of Representatives report states that "a company's association with sponsors of terrorism and human rights abuses, no matter how large or small, can have a materially adverse result on a public company's operations, financial condition, earnings, and stock prices, all of which can negatively affect the value of an investment."
- (13) In response to the financial risk posed by investments in companies doing business with a terrorist-sponsoring state, the Securities and Exchange Commission established its Office of Global Security Risk to provide for enhanced disclosure of material information regarding such companies.
- (14) The current Sudan divestment movement encompasses nearly 100 universities, cities, states, and private pension plans.
- (15) Companies facing such widespread divestment present further material risk to remaining investors.
- (16) It is a fundamental responsibility of the State of North Carolina to decide where, how, and by whom financial resources in its control should be invested, taking into account numerous pertinent factors.
- (17) It is the prerogative and desire of the State of North Carolina in respect to investment resources in its control and to the extent reasonable, with due consideration for, among other things, return on investment, on behalf of itself and its investment beneficiaries, not to participate in an ownership or capital-providing capacity with entities that provide significant practical support for genocide, including certain non-United States companies presently doing business in Sudan.
- (18) It is the judgment of the General Assembly that this article should remain in effect only insofar as it continues to be consistent with, and does not unduly interfere with, the foreign policy of the United States as determined by the Federal Government.
- (19) It is the judgment of this General Assembly that mandatory divestment of public funds from certain companies is a measure that should be employed sparingly and judiciously. A Congressional and Presidential declaration of genocide satisfies this high threshold. (2007-486, s. 1.)

#### **§ 147-86.42. Definitions.**

As used in this article, the following definitions apply:

- (1) Repealed by Session Laws 2017-193, s. 2.1, effective October 1, 2017.
- (2) "Business operations" means engaging in commerce in any form in Sudan, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel,

- products, services, personal property, real property, or any other apparatus of business or commerce.
- (3) "Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for profit-making purposes.
  - (4) "Complicit" means taking actions during any preceding 20-month period which have directly supported or promoted the genocidal campaign in Darfur, including, but not limited to, preventing Darfur's victimized population from communicating with each other, encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur, actively working to deny, cover up, or alter the record on human rights abuses in Darfur, or other similar actions.
  - (5) Repealed by Session Laws 2017-193, s. 2.1, effective October 1, 2017.
  - (5a) "Investment" means a commitment or contribution of funds or property, whatever the source, or a loan or other extension of credit. It does not include indirect beneficial ownership through index funds, commingled funds, limited partnerships, derivative instruments, or the like.
  - (6) "Government of Sudan" means the government in Khartoum, Sudan, which is led by the National Congress Party (formerly known as the National Islamic Front) or any successor government formed on or after October 13, 2006 (including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan), and does not include the regional government of southern Sudan.
  - (7), (8) Repealed by Session Laws 2017-193, s. 2.1, effective October 1, 2017.
  - (9) "Marginalized populations of Sudan" include, but are not limited to, the portion of the population in the Darfur region that has been genocidally victimized; the portion of the population of southern Sudan victimized by Sudan's North-South civil war; the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.
  - (10) "Military equipment" means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including, but not limited to, radar systems or military-grade transport vehicles; or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.
  - (11) "Mineral extraction activities" include exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or

- associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including by providing supplies or services in support of such activities.
- (12) "Oil-related activities" include, but are not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including by providing supplies or services in support of such activities, provided that the mere retail sale of gasoline and related consumer products shall not be considered Oil-Related Activities.
- (13) "Power production activities" means any business operation that involves a project commissioned by the National Electricity Corporation (NEC) of Sudan or other similar Government of Sudan entity whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including by providing supplies or services in support of such activities.
- (14) "Public fund" means any funds held by the State Treasurer to the credit of:
- a. The Teachers' and State Employees' Retirement System.
  - b. The Consolidated Judicial Retirement System.
  - c. The Firemen's and Rescue Workers' Pension Fund.
  - d. The Local Governmental Employees' Retirement System.
  - e. The Legislative Retirement System.
  - f. The Legislative Retirement Fund.
  - g. The North Carolina National Guard Pension Fund.
- (14a) "Restricted business operations" means business operations that have resulted in a company becoming a restricted company.
- (15) "Restricted company" means any company that meets the criteria in sub-subdivisions a., b., or c. below:
- a. The company has business operations that involve contracts with and/or provision of supplies or services to the Government of Sudan, to companies in which the Government of Sudan has any direct or indirect equity share, Government of Sudan-commissioned consortiums or projects, or to companies involved in Government of Sudan-commissioned consortiums or projects and at least one of the following conditions is satisfied:
    1. More than ten percent (10%) of the company's revenues or assets linked to Sudan involve oil-related activities or mineral extraction activities less than seventy-five percent (75%) of the

company's revenues or assets linked to Sudan involve contracts with and/or provision of oil-related or mineral extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government; and the company has failed to take substantial action.

2. More than ten percent (10%) of the company's revenues or assets linked to Sudan involve power production activities; less than seventy-five percent (75%) of the company's power production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action.
- b. The company is complicit in the Darfur genocide.
- c. The company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict, for example, through post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

Notwithstanding anything herein to the contrary, a social development company which is not complicit in the Darfur genocide shall not be considered a restricted company.

- (16) "Social development company" means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to oil-related activities, mineral extraction activities, or power production activities.
- (17) "Substantial action" means adopting, publicizing, and implementing a detailed plan to cease restricted business operations within one year and to refrain from any such new business operations; undertaking significant humanitarian efforts on behalf of one or more marginalized populations of Sudan; or through engagement with the Government of Sudan, materially improving conditions for the genocidally victimized population in Darfur. (2007-486, s. 2; 2015-241, s. 21.2(a); 2015-268, s. 7.5; 2017-193, s. 2.1.)

**§ 147-86.43. Identification of companies.**

(a) Within 90 days of August 30, 2007, the public fund shall develop and make publicly available a list of companies it determines to be engaged in restricted business activities. In the development of this list, the public fund shall use any other state lists of restricted companies pursuant to similar laws and any federal information or guidance on companies engaged in restricted business activities, and any other credible information provided by nonprofit organizations, research firms, and governmental entities. The public fund shall make every effort to avoid erroneously, including a company on the list. Before finalizing an initial or update list, the public fund must do all of the following before a company is included on the list:

- (1) Provide 90 days written notice of the public fund's intent to include the company on the list. The notices shall inform the company that inclusion on the list would make the company ineligible for State investment, may result in the company becoming subject to divestment by the North Carolina Retirement Systems, and may affect the company's ability to conduct business with the State and its subdivisions. The notice shall specify that the company may be removed from the list if the company ceases engagement in the restricted business activities.
  - (2) The public fund shall provide a company with an opportunity to comment in writing that it is not engaged in restricted activities in Sudan. If the company demonstrates to the public fund that the company is not engaged in restricted activities, the company shall not be included on the list.
  - (3) Repealed by Session Laws 2017-193, s. 2.2, effective October 1, 2017.
- (b) Repealed by Session Laws 2017-193, s. 2.2, effective October 1, 2017.
- (c) The public fund shall update the list on an annual basis based on evolving information from, among other sources, those listed in subsection (a) of this section. (2007-486, s. 3; 2017-193, s. 2.2.)

**§ 147-86.44. Required actions.**

- (a) through (c) Repealed by Session Laws 2017-193, s. 2.3, effective October 1, 2017.
- (d) Investments Prohibited. – At no time shall the public fund invest with companies on the list created pursuant to G.S. 147-86.43.
- (d1) Existing Investments. – Any existing investment with a company that is identified on a list created pursuant to G.S. 147-86.43 as a company engaging in restricted business activities must be divested within 180 days of the adoption of the list.
- (e) Exemption. – No company which the United States Government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Sudan shall be subject to divestment or investment prohibition pursuant to subsections (c) and (d) of this section.
- (e1) Nothing in this Article shall require the North Carolina Retirement Systems or the State Treasurer to take action unless it is determined by the State Treasurer, in good faith, that the action is consistent with the fiduciary responsibilities of the Retirement Systems and the State Treasurer.
- (f) Repealed by Session Laws 2017-193, s. 2.3, effective October 1, 2017. (2007-486, s. 4; 2015-241, s. 21.2(b); 2015-268, s. 7.5; 2017-193, s. 2.3.)

**§ 147-86.45. Reporting.**

The public fund shall report to the Joint Legislative Commission on Governmental Operations annually on October 1 on information regarding investments sold, redeemed, divested, or withdrawn in compliance with this Article. (2007-486, s. 5; 2017-193, s. 2.4.)

**§ 147-86.46. Expiration of this article.**

This article expires upon the occurrence of any of the following:

- (1) The Congress or President of the United States declaring that the Darfur genocide has been halted for at least 12 months.
- (2) The United States revoking all sanctions imposed against the Government of Sudan.
- (3) The Congress or President of the United States declaring that the Government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons.
- (4) The Congress or President of the United States, through legislation or executive order, declaring that mandatory divestment of the type provided for in this article interferes with the conduct of United States foreign policy. (2007-486, s. 6.)

**§ 147-86.47:** Repealed by Session Laws 2017-193, s. 2.5, effective October 1, 2017.

**§ 147-86.48:** Repealed by Session Laws 2017-193, s. 2.5, effective October 1, 2017.

**§ 147-86.49. Enforcement.**

The Attorney General is charged with enforcing the provisions of this article and, through any lawful designee, may bring such actions in court as are necessary to do so. (2007-486, s. 9.)