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LC00470

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2007

A N A C T

RELATING TO PUBLIC FINANCE -- STATE INVESTMENT COMMISSION --
INVESTMENTS IN SUDAN

Introduced By: Representatives Almeida, Ajello, Church, Diaz, and Slater

Date Introduced: January 23, 2007

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative Findings. -- It is hereby found by the general assembly as
2 follows:

3 (a) On July 23, 2004, the United States Congress declared that “the atrocities unfolding in
4 Darfur, Sudan, are genocide.”

5 (b) On September 9, 2004, Secretary of State Colin L. Powell told the U.S. Senate
6 Foreign Relations Committee that “genocide has occurred and may still be occurring in Darfur”
7 and “the Government of Sudan and the Janjaweed bear responsibility.”

8 (c) On September 21, 2004, addressing the United Nations General Assembly, President
9 George W. Bush affirmed the Secretary of State's finding and stated, “At this hour, the world is
10 witnessing terrible suffering and horrible crimes in the Darfur region of Sudan, crimes my
11 government has concluded are genocide.”

12 (d) On December 7, 2004, the U.S. Congress noted that the genocidal policy in Darfur
13 has led to reports of “systematic rape of thousands of women and girls, the abduction of women
14 and children, and the destruction of hundreds of ethnically African villages, including the
15 poisoning of their wells and the plunder of their crops and cattle upon which the people of such
16 villages sustain themselves.”

17 (e) Also on December 7, 2004, Congress found that “the Government of Sudan has
18 restricted access by humanitarian and human rights workers to the Darfur area through

1 intimidation by military and security forces, and through bureaucratic and administrative
2 obstruction, in an attempt to inflict the most devastating harm on those individuals displaced from
3 their villages and homes without any means of sustenance or shelter.”

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

9 (g) On September 26, 2006, the U.S. House of Representatives stated that “an estimated
10 300,000 to 400,000 people have been killed by the Government of Sudan and its Janjaweed allies
11 since the [Darfur] crisis began in 2003, more than 2,000,000 people have been displaced from
12 their homes, and more than 250,000 people from Darfur remain in refugee camps in Chad.”

13 (h) The Darfur crisis represents the first time the United States Government has labeled
14 ongoing atrocities a genocide.

15 (i) The Federal Government has imposed sanctions against the Government of Sudan
16 since 1997. These sanctions are monitored through the U.S. Treasury Department’s Office of
17 Foreign Assets Control (OFAC).

18 (j) According to a former chair of the U.S. Securities and Exchange Commission, “the
19 fact that a foreign company is doing material business with a country, government, or entity on
20 OFAC’s sanctions list is, in the SEC staff’s view, substantially likely to be significant to a
21 reasonable investor’s decision about whether to invest in that company.”

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

26 (l) A 2006 U.S. House of Representatives report states that “a company’s association with
27 sponsors of terrorism and human rights abuses, no matter how large or small, can have a
28 materially adverse result on a public company’s operations, financial condition, earnings, and
29 stock prices, all of which can negatively affect the value of an investment.”

30 (m) In response to the financial risk posed by investments in companies doing business
31 with a terrorist-sponsoring state, the Securities and Exchange Commission established its Office
32 of Global Security Risk to provide for enhanced disclosure of material information regarding
33 such companies.

34 (n) The current Sudan divestment movement encompasses nearly one hundred (100)

1 universities, cities, states, and private pension plans.

2 (o) Companies facing such widespread divestment present further material risk to
3 remaining investors.

4 (p) It is a fundamental responsibility of the state of Rhode Island to decide where, how,
5 and by whom financial resources in its control should be invested, taking into account numerous
6 pertinent factors.

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

13 (r) It is the judgment of the Rhode Island general assembly that this act should remain in
14 effect only insofar as it continues to be consistent with, and does not unduly interfere with, the
15 foreign policy of the United States as determined by the Federal Government.

16 (s) It is the judgment of this Rhode Island general assembly that mandatory divestment of
17 public funds from certain companies is a measure that should be employed sparingly and
18 judiciously. A Congressional and Presidential declaration of genocide satisfies this high
19 threshold.

20 SECTION 2. Definitions. --

21 As used in this act, the following definitions shall apply:

22 (a) "Active business operations" means all business operations that are not inactive
23 business operations.

24 (b) "Business operations" means engaging in commerce in any form in Sudan, including
25 by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating
26 equipment, facilities, personnel, products, services, personal property, real property, or any other
27 apparatus of business or commerce.

28 (c) "Company" means any sole proprietorship, organization, association, corporation,
29 partnership, joint venture, limited partnership, limited liability partnership, limited liability
30 company, or other entity or business association, including all wholly-owned subsidiaries,
31 majority-owned subsidiaries, parent companies, or affiliates of such entities or business
32 associations, that exists for profit-making purposes.

33 (d) "Complicit" means taking actions during any preceding twenty (20) month period
34 which have directly supported or promoted the genocidal campaign in Darfur, including, but not

1 limited to, preventing Darfur's victimized population from communicating with each other,
2 encouraging Sudanese citizens to speak out against an internationally approved security force for
3 Darfur, actively working to deny, cover up, or alter the record on human rights abuses in Darfur,
4 or other similar actions.

5 (e) "Direct holdings" in a company means all securities of that company held directly by
6 the public fund or in an account or fund in which the public fund owns all shares or interests.

7 (f) "Government of Sudan" means the government in Khartoum, Sudan, which is led by
8 the National Congress Party (formerly known as the National Islamic Front) or any successor
9 government formed on or after October 13, 2006 (including the coalition National Unity
10 Government agreed upon in the Comprehensive Peace Agreement for Sudan) and does not
11 include the regional government of southern Sudan.

12 (g) "Inactive business operations" means the mere continued holding or renewal of rights
13 to property previously operated for the purpose of generating revenues but not presently deployed
14 for such purpose.

15 (h) "Indirect holdings" in a company means all securities of that company held in an
16 account or fund, such as a mutual fund, managed by one or more persons not employed by the
17 public fund, in which the public fund owns shares or interests together with other investors not
18 subject to the provisions of this act.

19 (i) "Marginalized populations Of Sudan" include, but are not limited to, the portion of the
20 population in the Darfur region that has been genocidally victimized; the portion of the
21 population of southern Sudan victimized by Sudan's North-South civil war; the Beja, Rashidiya,
22 and other similarly underserved groups of eastern Sudan; the Nubian and other similarly
23 underserved groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain regions; and the
24 Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

25 (j) "Military equipment" means weapons, arms, military supplies, and equipment that
26 readily may be used for military purposes, including, but not limited to, radar systems or military-
27 grade transport vehicles; or supplies or services sold or provided directly or indirectly to any
28 force actively participating in armed conflict in Sudan.

29 (k) "Mineral extraction activities" include exploring, extracting, processing, transporting,
30 or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore),
31 including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium,
32 and zinc, as well as facilitating such activities, including by providing supplies or services in
33 support of such activities.

34 (l) "Oil-related activities" include, but are not limited to, owning rights to oil blocks;

1 exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or
2 trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field
3 infrastructure; and facilitating such activities, including by providing supplies or services in
4 support of such activities, provided that the mere retail sale of gasoline and related consumer
5 products shall not be considered oil-related activities.

6 (m) "Power production activities" means any business operation that involves a project
7 commissioned by the National Electricity Corporation (NEC) of Sudan or other similar
8 government of Sudan entity whose purpose is to facilitate power generation and delivery,
9 including, but not limited to, establishing power-generating plants or hydroelectric dams, selling
10 or installing components for the project, providing service contracts related to the installation or
11 maintenance of the project, as well as facilitating such activities, including by providing supplies
12 or services in support of such activities.

13 (n) "Public fund" means Rhode Island state pension funds or the state investment
14 commission in charge of the Rhode Island state pension funds.

15 (o) "Scrutinized company" means any company that meets the criteria in subparagraph
16 (1), (2), or (3) below:

17 (1) The company has business operations that involve contracts with and/or provision of
18 supplies or services to: (A) the government of Sudan; (B) companies in which the government of
19 Sudan has any direct or indirect equity share; (C) government of Sudan-commissioned
20 consortiums or projects; or (D) companies involved in government of Sudan-commissioned
21 consortiums or projects; and

22 (i) More than ten percent (10%) of the company's revenues or assets linked to Sudan
23 involve oil-related activities or mineral extraction activities; less than seventy-five percent (75%)
24 of the company's revenues or assets linked to Sudan involve contracts with and/or provision of
25 oil-related or mineral extracting products or services to the regional government of southern
26 Sudan or a project or consortium created exclusively by that regional government; and the
27 company has failed to take substantial action; or

28 (ii) More than ten percent (10%) of the company's revenues or assets linked to Sudan
29 involve power production activities; less than seventy-five percent (75%) of the company's power
30 production activities include projects whose intent is to provide power or electricity to the
31 marginalized populations of Sudan; and the company has failed to take substantial action.

32 (2) The company is complicit in the Darfur genocide.

33 (3) The company supplies military equipment within Sudan, unless it clearly shows that
34 the military equipment cannot be used to facilitate offensive military actions in Sudan or the

1 company implements rigorous and verifiable safeguards to prevent use of that equipment by
2 forces actively participating in armed conflict, for example, through post-sale tracking of such
3 equipment by the company, certification from a reputable and objective third-party that such
4 equipment is not being used by a party participating in armed conflict in Sudan, or sale of such
5 equipment solely to the regional government of southern Sudan or any internationally recognized
6 peacekeeping force or humanitarian organization.

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

9 (p) “Social development company” means a company whose primary purpose in Sudan is
10 to provide humanitarian goods or services, including medicine or medical equipment, agricultural
11 supplies or infrastructure, educational opportunities, journalism-related activities, information or
12 information materials, spiritual-related activities, services of a purely clerical or reporting nature,
13 food, clothing, or general consumer goods that are unrelated to oil-related activities, mineral
14 extraction activities, or power production activities.

15 (q) “Substantial action” means adopting, publicizing, and implementing a formal plan to
16 cease scrutinized business operations within one year and to refrain from any such new business
17 operations; undertaking significant humanitarian efforts on behalf of one or more marginalized
18 populations of Sudan; or through engagement with the government of Sudan, materially
19 improving conditions for the genocidally victimized population in Darfur.

20 Section 3. Identification of Companies. --

21 (a) Within ninety (90) days following passage of this act, the public fund shall make its
22 best efforts to identify all scrutinized companies in which the public fund has direct or indirect
23 holdings or could possibly have such holdings in the future. Such efforts shall include, as
24 appropriate:

25 (1) Reviewing and relying, as appropriate in the public fund’s judgment, on publicly
26 available information regarding companies with business operations in Sudan, including
27 information provided by non-profit organizations, research firms, international organizations, and
28 government entities; and/or

29 (2) Contacting asset managers contracted by the public fund that invest in companies
30 with business operations in Sudan; and/or

31 (3) Contacting other institutional investors that have divested from and/or engaged with
32 companies that have business operations in Sudan.

33 (b) By the first meeting of the public fund following the ninety (90) day period described
34 in subsection (a), the public fund shall assemble all scrutinized companies identified into a

1 “scrutinized companies list.”

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

4 Section 4. Required Actions. --

5 The public fund shall adhere to the following procedures for companies on the
6 scrutinized companies list:

7 (a) Engagement:

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

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

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

22 (4) If, within ninety (90) days following the public fund’s first engagement with a
23 company pursuant to paragraph (3), that company ceases scrutinized business operations, the
24 company shall be removed from the scrutinized companies list and the provisions of this section
25 shall cease to apply to it unless it resumes scrutinized business operations. If, within ninety (90)
26 days following the public fund’s first engagement, the company converts its scrutinized active
27 business operations to inactive business operations, the company shall be subject to all provisions
28 relating thereto.

29 (b) Divestment:

30 (1) If, after ninety (90) days following the public fund’s first engagement with a company
31 pursuant to subsection (a)(3), the company continues to have scrutinized active business
32 operations, and only while such company continues to have scrutinized active business
33 operations, the public fund shall sell, redeem, divest, or withdraw all publicly-traded securities of
34 the company, except as provided below, according to the following schedule:

1 (i) At least fifty percent (50%) of such assets shall be removed from the public fund's
2 assets under management by nine (9) months after the company's most recent appearance on the
3 scrutinized companies list.

4 (ii) One hundred percent (100%) of such assets shall be removed from the public fund's
5 assets under management within fifteen (15) months after the company's most recent appearance
6 on the scrutinized companies list.

7 (2) If a company that ceased scrutinized active business operations following engagement
8 pursuant to subsection (a)(3) resumes such operations, paragraph (1) shall immediately apply, and
9 the public fund shall send a written notice to the company. the company shall also be immediately
10 reintroduced onto the scrutinized companies list.

11 (c) Prohibition:

12 At no time shall the public fund acquire securities of companies on the scrutinized
13 companies list that have active business operations, except as provided below.

14 (d) Exemption:

15 No company which the United States government affirmatively declares to be excluded
16 from its present or any future federal sanctions regime relating to Sudan shall be subject to
17 divestment or investment prohibition pursuant to subsections (b) and (c).

18 (e) Excluded Securities:

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

28 Section 5. Reporting.--

29 (a) The public fund shall file a publicly-available report to the Rhode Island general
30 assembly and office of the attorney general that includes the scrutinized companies list within
31 thirty (30) days after the list is created.

32 (b) Annually thereafter, the public fund shall file a publicly-available report to the Rhode
33 Island general assembly and the office of the attorney general and send a copy of that report to the
34 United States Presidential Special Envoy to Sudan (or an appropriate designee or successor) that

1 includes:

2 (1) A summary of correspondence with companies engaged by the public fund under
3 subdivisions 4(a)(2) and (a)(3);

4 (2) All investments sold, redeemed, divested, or withdrawn in compliance with
5 subsection 4(b);

6 (3) All prohibited investments under subsection 4(c); and

7 (4) Any progress made under subsection 4(e).

8 Section 6. Provisions for repeal of act. --

9 This act shall be repealed upon affirmative action of the general assembly. Provided, that
10 in determining whether to repeal this act, by way of suggestion and guidance only and without
11 binding or in any way inhibiting the discretion of future sessions of the general assembly, it is
12 submitted that the occurrence of any of the following should be construed and deemed to be a
13 basis for repealing this act:

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

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

17 (c) The Congress or President of the United States declares that the government of Sudan
18 has honored its commitments to cease attacks on civilians, demobilize and demilitarize the
19 Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian
20 assistance, and allow for the safe and voluntary return of refugees and internally displaced
21 persons; or

22 (d) The Congress or President of the United States, through legislation or executive order,
23 declares that mandatory divestment of the type provided for in this act interferes with the conduct
24 of United States foreign policy; or

25 (e) Such other circumstances as the general assembly determines to warrant the
26 discontinuance of the provisions of this chapter.

27 Section 7. Other Legal Obligations. --

28 With respect to actions taken in compliance with this act, including all good faith
29 determinations regarding companies as required by this act, the public fund shall be exempt from
30 any conflicting statutory or common law obligations, including any such obligations in respect to
31 choice of asset managers, investment funds, or investments for the public fund's securities
32 portfolios.

33 Section 8. Reinvestment in Certain Companies with Scrutinized Active Business
34 Operations. --

1 Notwithstanding anything herein to the contrary, the public fund shall be permitted to
2 cease divesting from certain scrutinized companies pursuant to subsection 4(b) and/or reinvest in
3 certain scrutinized companies from which it divested pursuant to subsection 4(b) if clear and
4 convincing evidence shows that the value for all assets under management by the public fund
5 becomes equal to or less than ninety-nine and one-half percent (99.50%) or fifty (50) basis points
6 of the hypothetical value of all assets under management by the public fund assuming no
7 divestment for any company had occurred under subsection 4(b). Cessation of divestment,
8 reinvestment, and/or any subsequent ongoing investment authorized by this section shall be
9 strictly limited to the minimum steps necessary to avoid the contingency set forth in the preceding
10 sentence. For any cessation of divestment, reinvestment, and/or subsequent ongoing investment
11 authorized by this section, the public fund shall provide a written report to the Rhode Island
12 general assembly and the office of the attorney general in advance of initial reinvestment, updated
13 semi-annually thereafter as applicable, setting forth the reasons and justification, supported by
14 clear and convincing evidence, for its decisions to cease divestment, reinvest, and/or remain
15 invested in companies with scrutinized active business operations. This section has no application
16 to reinvestment in companies on the ground that they have ceased to have scrutinized active
17 business operations.

18 Section 9. Enforcement. --

19 The attorney general is charged with enforcing the provisions of this act and, through any
20 lawful designee, may bring such actions in court as are necessary to do so.

21 Section 10. Severability. --

22 If any one or more provision, section, subsection, sentence, clause, phrase, or word of this
23 legislation or the application thereof to any person or circumstance is found to be invalid, illegal,
24 unenforceable or unconstitutional, the same is hereby declared to be severable and the balance of
25 this legislation shall remain effective and functional notwithstanding such invalidity, illegality,
26 unenforceability or unconstitutionality. The Rhode Island general assembly hereby declares that
27 it would have passed this legislation, and each provision, section, subsection, sentence, clause,
28 phrase or word thereof, irrespective of the fact that any one or more provision, section,
29 subsection, sentence, clause, phrase, or word be declared invalid, illegal, unenforceable or
30 unconstitutional, including, but not limited to, each of the engagement, divestment, and
31 prohibition provisions of this legislation.

32 SECTION 11. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PUBLIC FINANCE -- STATE INVESTMENT COMMISSION --
INVESTMENTS IN SUDAN

1 This act would limit state investment in the country of Sudan and in companies that
2 provide supplies and services to the government of the Sudan. The act would set forth the
3 criteria for determining a “scrutinized company” which has such ties to the Sudanese government
4 and/or the Darfur genocide.

5 This act would take effect upon passage.

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