S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 23, 2009

Introduced by M. of A. TOWNS, RAIA, CAHILL, ALFANO, WALKER, DINOWITZ, JAFFEE, BOYLAND -- Multi-Sponsored by -- M. of A. BENJAMIN, BRADLEY, BRENNAN, COOK, GIGLIO, GLICK, JOHN, PAULIN, PHEFFER, SWEENEY, TITUS -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to the investment of public pension funds in companies doing business in Sudan and providing for the repeal of such provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings and declaration. The legislature finds and declares that:

a. On November 3, 1997, the United States imposed sanctions on Sudan, finding that the policies and actions of the government of Sudan, including continued support for international terrorism, ongoing efforts to destabilize neighboring governments, and the prevalence of human rights violations, including slavery and the denial of religious freedom, constituted an unusual and extraordinary threat to national security and American foreign policy; and

b. On July 23, 2004, both chambers of the United States Congress unanimously adopted a joint resolution condemning the continuing atrocities in the Darfur region of western Sudan as "genocide" and called upon the international community to work to end what it termed a humanitarian catastrophe; and

c. In September 2004 the United States Department of State announced that genocide had occurred in Darfur, and on June 2, 2005 President Bush reaffirmed the government's belief that genocide is taking place in Darfur; and

d. Ongoing violence and lawlessness in the Darfur region has resulted in estimated civilian deaths ranging from 50,000 to 200,000. Hundreds of thousands of people have been injured or maimed, nearly 1.5 million

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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people are displaced, and the population is afflicted with famine, malnutrition and illness; and

e. The crisis in the Darfur region has been instigated by, and is continuing with the support of, the Sudanese government which has deliberately attacked and encouraged attacks against its citizens. To this end, the Sudanese government arms and collaborates with violent militia groups known as the Janjaweed for the purpose of conducting attacks on the civilians. The Janjaweed employ a "scorched earth" policy in their attacks on civilian populations, burning entire villages to the ground, and displacing or killing the occupants; and

f. In addition, numerous reports and testimony document that rape and sexual violence against women is systematically and tactically used by the Janjaweed, and slavery or slavery-like indenture is practiced, fueled by abductions carried out by the Janjaweed; and

g. The New York State Legislature is deeply disturbed by the continuing violence against and displacement of the civilians of the Darfur region and believes there is a need for continued and increasing pressure on the Sudanese government to end the genocide and its arming of the Janjaweed.

S 2. The retirement and social security law is amended by adding a new section 13-a to read as follows:

S 13-A. INVESTMENTS IN COMPANIES DOING BUSINESS IN SUDAN. A. CONSISTENT WITH HIS OR HER CONSTITUTIONAL AUTHORITY, THE COMPTROLLER MAY, IN HIS OR HER DISCRETION, AND IN A MANNER CONSISTENT WITH HIS OR HER FIDUCIARY DUTY, REFRAIN FROM INVESTING THE FUNDS OF THE RETIREMENT SYSTEM IN COMPANIES THAT ARE DOING BUSINESS IN SUDAN, OR DIVEST FROM COMPANIES THAT ARE DOING BUSINESS IN SUDAN.

B. FOR PURPOSES OF THIS SECTION "COMPANIES DOING BUSINESS IN SUDAN" ARE THOSE COMPANIES THAT THE COMPTROLLER DETERMINES EITHER DIRECTLY OR THROUGH AN AFFILIATED INSTRUMENTALITY MEET THE FOLLOWING CRITERIA:

1. PROVIDE REVENUES TO THE SUDANESE GOVERNMENT THROUGH BUSINESS WITH THE GOVERNMENT, GOVERNMENT-OWNED COMPANIES OR GOVERNMENT-CONTROLLED CONSORTIUMS; AND

2. OFFER LITTLE SUBSTANTIVE BENEFIT TO THOSE OUTSIDE OF THE SUDANESE GOVERNMENT OR ITS AFFILIATED SUPPORTERS IN KHARTOUM, NORTHERN SUDAN AND THE NILE RIVER VALLEY; THIS "OUTSIDE" POPULATION SPECIFICALLY INCLUDES THE COUNTRY'S DISAFFECTED EASTERN, SOUTHERN, AND WESTERN REGIONS; OR

3. HAVE DEMONSTRATED COMPLICITY IN THE DARFUR GENOCIDE.

C. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION B OF THIS SECTION, COMPANIES DOING BUSINESS IN SUDAN WILL INCLUDE THOSE COMPANIES THAT THE COMPTROLLER DETERMINES PROVIDE MILITARY EQUIPMENT, ARMS, OR DEFENSE SUPPLIES TO ANY DOMESTIC PARTY IN SUDAN, INCLUDING THE SUDANESE GOVERNMENT AND REBELS, OR ANY EQUIPMENT THAT MAY BE READILY CO-OPTED FOR MILITARY USE, INCLUDING RADAR SYSTEMS AND MILITARY-GRADE TRANSPORT VEHICLES, UNLESS THAT COMPANY HAS IMPLEMENTED SAFEGUARDS AGAINST SUCH CO-OPTION.

D. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION B OF THIS SECTION, COMPANIES DOING BUSINESS IN SUDAN SHALL NOT INCLUDE THOSE COMPANIES THAT THE COMPTROLLER DETERMINES EITHER DIRECTLY OR THROUGH AN AFFILIATED INSTRUMENTALITY, PROVIDE SERVICES CLEARLY DEDICATED TO SOCIAL DEVELOPMENT FOR THE WHOLE COUNTRY. SUCH ENTITIES INCLUDE, BUT ARE NOT LIMITED TO, THOSE PROVIDING MEDICINE AND MEDICAL EQUIPMENT, AGRICULTURAL SUPPLIES AND AGRICULTURAL INFRASTRUCTURE, EDUCATIONAL OPPORTUNITIES, JOURNALISM-RELATED ACTIVITIES, AND GENERAL CONSUMER GOODS.

S 3. The retirement and social security law is amended by adding a new section 313-a to read as follows:

S 313-A. INVESTMENTS IN COMPANIES DOING BUSINESS IN SUDAN. A. CONSISTENT WITH HIS OR HER CONSTITUTIONAL AUTHORITY, THE COMPTROLLER MAY, IN HIS OR HER DISCRETION, AND IN A MANNER CONSISTENT WITH HIS OR HER FIDUCIARY DUTY, REFRAIN FROM INVESTING THE FUNDS OF THE POLICEMEN'S AND FIREMEN'S RETIREMENT SYSTEM IN COMPANIES THAT ARE DOING BUSINESS IN SUDAN, OR DIVEST FROM COMPANIES THAT ARE DOING BUSINESS IN SUDAN.

B. FOR PURPOSES OF THIS SECTION "COMPANIES DOING BUSINESS IN SUDAN" ARE THOSE COMPANIES WHICH THE COMPTROLLER DETERMINES EITHER DIRECTLY OR THROUGH AN AFFILIATED INSTRUMENTALITY MEET THE FOLLOWING CRITERIA:

1. PROVIDE REVENUES TO THE SUDANESE GOVERNMENT THROUGH BUSINESS WITH THE GOVERNMENT, GOVERNMENT-OWNED COMPANIES OR GOVERNMENT-CONTROLLED CONSORTIUMS; AND

2. OFFER LITTLE SUBSTANTIVE BENEFIT TO THOSE OUTSIDE OF THE SUDANESE GOVERNMENT OR ITS AFFILIATED SUPPORTERS IN KHARTOUM, NORTHERN SUDAN AND THE NILE RIVER VALLEY; THIS "OUTSIDE" POPULATION SPECIFICALLY INCLUDES THE COUNTRY'S DISAFFECTED EASTERN, SOUTHERN, AND WESTERN REGIONS; OR

3. HAVE DEMONSTRATED COMPLICITY IN THE DARFUR GENOCIDE.

C. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION B OF THIS SECTION, COMPANIES DOING BUSINESS IN SUDAN WILL INCLUDE THOSE COMPANIES THAT THE COMPTROLLER DETERMINES PROVIDE MILITARY EQUIPMENT, ARMS, OR DEFENSE SUPPLIES TO ANY DOMESTIC PARTY IN SUDAN, INCLUDING THE SUDANESE GOVERNMENT AND REBELS, OR ANY EQUIPMENT THAT MAY BE READILY CO-OPTED FOR MILITARY USE, INCLUDING RADAR SYSTEMS AND MILITARY-GRADE TRANSPORT VEHICLES, UNLESS THAT COMPANY HAS IMPLEMENTED SAFEGUARDS AGAINST SUCH CO-OPTION.

D. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION B OF THIS SECTION, COMPANIES DOING BUSINESS IN SUDAN SHALL NOT INCLUDE THOSE COMPANIES THAT THE COMPTROLLER DETERMINES EITHER DIRECTLY OR THROUGH AN AFFILIATED INSTRUMENTALITY, PROVIDE SERVICES CLEARLY DEDICATED TO SOCIAL DEVELOPMENT FOR THE WHOLE COUNTRY. SUCH ENTITIES INCLUDE, BUT ARE NOT LIMITED TO, THOSE PROVIDING MEDICINE AND MEDICAL EQUIPMENT, AGRICULTURAL SUPPLIES AND AGRICULTURAL INFRASTRUCTURE, EDUCATIONAL OPPORTUNITIES, JOURNALISM-RELATED ACTIVITIES, AND GENERAL CONSUMER GOODS.

S 4. A representative from the office of the comptroller shall appear before the state senate's civil service and pensions committee and the assembly's governmental employees committee to discuss progress on Sudan divestment, within one year of the effective date of this act. A representative from the office of the comptroller shall submit a report to the legislature at the time of such appearance that includes:

a. all communications with companies that are under consideration for divestment pursuant to this act; and

b. all options explored for divesting from such companies.

S 5. This act shall take effect immediately and shall expire and be deemed repealed upon the earliest of the following:

(1) three years from the effective date of this act;

(2) the government of Sudan halts the genocide in Darfur for 12 months as determined by both the Department of State and the Congress of the United States; or

(3) the United States revokes its current sanctions against Sudan; and the comptroller shall notify the legislative bill drafting commission upon the occurrence of either of the events described in subdivisions two or three of this section in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effecting the provisions of section 44 of the legislative law and section 70-b of the public officers law.