

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2007

SENATE BILL No. 335

By Senators Betts and Haley and Allen, Barone, Brownlee, Bruce, Francisco, Gilstrap, Hensley, Huelskamp, Journey, Kelly, Lee, Lynn, McGinn, Ostmeyer, Palmer, Petersen, Pyle, D. Schmidt, Schodorf, Steineger and Wysong

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15 AN ACT concerning the Kansas public employees retirement system;
16 relating to investment standards; prohibited investments; divestment,
17 conditions and procedures[; **state sponsor of terror, divestment**
18 **report**].
19

20 *Be it enacted by the Legislature of the State of Kansas:*

21 Section 1. (a) As used in sections 1 and 2, and amendments thereto:

22 (1) “Active business operations” means a company engaged in busi-
23 ness operations that provide revenue to the government of Sudan or a
24 company engaged in oil-related activities;

25 (2) “board” means the board of trustees of the Kansas public em-
26 ployees retirement system;

27 (3) “business operations” means maintaining, selling or leasing equip-
28 ment, facilities, personnel, or any other apparatus of business or com-
29 merce in Sudan, including the ownership or possession of real or personal
30 property located in Sudan;

31 (4) “company” means a sole proprietorship, organization, association,
32 corporation, partnership, venture or other entity, its subsidiary or affiliate
33 that exists for profitmaking purposes or to otherwise secure economic
34 advantage. “Company” also means a company owned or controlled, either
35 directly or indirectly, by the government of Sudan, that is established or
36 organized under the laws of or has its principal place of business in the
37 republic of the Sudan;

38 (5) “complicity” means the taking of actions which have directly sup-
39 ported or promoted the genocidal campaign in Darfur;

40 (6) “energy or power-related operations” means any business oper-
41 ation that involves a project commissioned by the national electricity cor-
42 poration of Sudan or similar Sudanese entity whose purpose is to facilitate
43 energy or power generation and delivery;

- 1 (7) “government of Sudan” means the government of Sudan or its
2 instrumentalities;
- 3 (8) “invest” or “investment” means the purchase, ownership or con-
4 trol of stock of a company, association or corporation, the capital stock of
5 a mutual water company or corporation, bonds issued by the government
6 or a political subdivision of Sudan, corporate bonds or other debt instru-
7 ments issued by a company, or the commitment of funds or other assets
8 to a company, including a loan or extension of credit to that company;
- 9 (9) “KPEERS fund” means the Kansas public employees retirement
10 fund created pursuant to the provisions of K.S.A. 74-4921, and amend-
11 ments thereto;
- 12 (10) “military equipment” means weapons, arms or military defense
13 supplies;
- 14 (11) “mineral extraction activities” includes, but is not limited to, the
15 exploring, extracting, processing, transporting or wholesale selling or trad-
16 ing of elemental minerals or associated metal alloys or oxides or ore;
- 17 (12) “oil-related activities” means, but is not limited to, the export of
18 oil, extracting or producing oil, exploration for oil, or the construction or
19 maintenance of a pipeline, refinery, or other oil field infrastructure;
- 20 (13) “research firm” means a reputable, neutral third-party research
21 firm;
- 22 (14) “substantial action” means a boycott of the government of Su-
23 dan, curtailing business in Sudan until that time described in subsection
24 (m), selling company assets, equipment or real and personal property
25 located in Sudan, or undertaking significant humanitarian efforts in the
26 eastern, southern, or western regions of Sudan; and
- 27 (15) “Sudan” means the republic of the Sudan, a territory under the
28 administration or control of the Sudan, including, but not limited to, the
29 Darfur region, or an individual, company, or public agency located in
30 Khartoum, northern Sudan, or the Nile River Valley that supports the
31 republic of the Sudan.
- 32 (b) The board shall not invest KPEERS funds in a company with busi-
33 ness operations in Sudan that meets all of the following criteria:
- 34 (1) The company is engaged in active business operations in Sudan.
35 If that company is not engaged in oil-related activities, that company also
36 lacks significant business operations in the eastern, southern and western
37 regions of Sudan; and
- 38 (2) either of the following apply:
- 39 (A) The company is engaged in oil-related activities, mineral extrac-
40 tion activities or energy or power-related operations, or contracts with
41 another company with business operations in the oil, mineral extraction,
42 energy and power sectors of Sudan, and the company failed to take sub-
43 stantial action related to the government of Sudan because of the Darfur

1 genocide; or

2 (B) the company has demonstrated complicity in the Darfur
3 genocide.

4 (c) Notwithstanding subsection (b), the board shall not invest KPERS
5 funds in a company that supplies military equipment within the borders
6 of Sudan. If a company provides equipment within the borders of Sudan
7 that may be readily used for military purposes, including, but not limited
8 to, radar systems and military-grade transport vehicles, there shall also be
9 a strong presumption against investing in that company unless that com-
10 pany implements safeguards to prevent the use of that equipment for
11 military purposes.

12 (d) (1) The board may contract with a research firm or firms to de-
13 termine those companies that have business operations in Sudan. Such
14 research firm or firms may obtain aggregate data on a majority of com-
15 panies with business operations in Sudan. On or before September 30,
16 2007, such research firm or firms may report any findings to the board
17 and may submit further findings to the board if there is a change of
18 circumstances in Sudan.

19 (2) In addition to the reports described in subsection (d)(1), the board
20 shall take all of the following actions no later than September 30, 2007:

21 (A) Review publicly available information regarding companies with
22 business operations in Sudan;

23 (B) contact other institutional investors that invest in companies with
24 business operations in Sudan; and

25 (C) send written notice to a company with business operations in
26 Sudan that the company may be subject to this section.

27 (e) (1) The board shall determine, by the next applicable board
28 meeting and based on the information and reports described in subsec-
29 tion (d), if a company meets the criteria described in subsection (b) or
30 (c). If the board plans to invest or has investments in a company that
31 meets the criteria described in subsection (b) or (c), that planned or ex-
32 isting investments shall be subject to subsections (g) and (h).

33 (2) Investments of the board in a company that does not meet the
34 criteria described in subsection (b) or (c) or does not have active business
35 operations in Sudan are not subject to subsection (h), provided that the
36 company does not subsequently meet the criteria described in subsection
37 (b) or (c) or engage in active business operations. The board shall identify
38 the reasons why that company does not satisfy the criteria described in
39 subsection (b) or (c) or does not engage in active business operations in
40 the report to the joint committee on pensions, investments and benefits
41 described in subsection (i).

42 (f) (1) ***The board shall not be required to divest passively man-***
43 ***aged commingled funds when the estimated annual costs of divest-***

1 ***ment exceed 5% of the total value of scrutinized companies with***
2 ***active business operations held in the fund and the ratio holds for***
3 ***at least six months time. Such an estimate should be submitted in a***
4 ***report to the joint committee on pensions, investments, and benefits***
5 ***before the exemption is exercised. The report should be updated***
6 ***semi-annually thereafter as applicable.***

7 (2) Notwithstanding subsection (e), if the board's investment in a
8 company described in subsection (b) or (c) is limited to investment via
9 an externally and actively managed commingled fund, the board shall
10 contact that fund manager in writing and request that the fund manager
11 remove that company from the KPERS fund as described in subsection
12 (h). If the KPERS fund or account manager creates a fund or account
13 devoid of companies described in subsection (b) or (c), the transfer of
14 board investments from the prior fund or account to the fund or account
15 devoid of companies with business operations in Sudan shall be deemed
16 to satisfy subsection (h).

17 ~~(2)~~ (3) If the board's investment in a company described in subsec-
18 tion (b) or (c) is limited to an alternative fund or account, the alternative
19 fund or account manager creates an actively managed commingled fund
20 that excludes companies described in subsection (b) or (c), and the new
21 fund or account is deemed to be financially equivalent to the existing
22 fund or account, the transfer of board investments from the existing fund
23 or account to the new fund or account shall be deemed to satisfy subsec-
24 tion (h). If the board determines that the new fund or account is not
25 financially equivalent to the existing fund, the board shall include the
26 reasons for that determination in the report described in subsection (i).

27 ~~(3)~~ (4) The board shall make a good faith effort to identify any private
28 equity investments that involve companies described in subsection (b) or
29 (c) or are linked to the government of Sudan. If the board determines
30 that a private equity investment clearly involves a company described in
31 subsection (b) or (c) or is linked to the government of Sudan, the board
32 shall consider, at its discretion, if those private equity investments shall
33 be subject to subsection (h). If the board determines that a private equity
34 investment clearly involves a company described in subsection (b) or (c)
35 or is linked to the government of Sudan and the board does not take
36 action as described in subsection (h), the board shall include the reasons
37 for its decision in the report described in subsection (i).

38 (g) Except as described in subsection (f) or subsection (e)(2), the
39 board, in the board's capacity of shareholder or investor, shall notify any
40 company described in subsection (e)(1) that the company is subject to
41 subsection (h) and permit that company to respond to the information
42 and reports described in subsection (d). The board shall request that the
43 company take substantial action no later than 90 days from the date the

1 board notified the company under this subsection. If the board deter-
2 mines that a company has taken substantial action or has made sufficient
3 progress towards substantial action before the expiration of that 90-day
4 period, that company shall not be subject to subsection (h). The board
5 shall, at intervals not to exceed 90 days, continue to monitor and review
6 the progress of the company until that company has taken substantial
7 action in Sudan. A company that fails to complete substantial action or
8 continue to make sufficient progress towards substantial action by the
9 next time interval shall be subject to subsection (h).

10 (h) If a company described in subsection (e)(1) fails to complete sub-
11 stantial action by the time described in subsection (g), the board shall
12 take the following actions:

13 (1) The board shall not make additional or new investments or renew
14 existing investments in that company.

15 (2) The board shall liquidate the investments of the board in that
16 company no later than 18 months after this subsection applies to that
17 company. The board shall liquidate those investments in a manner to
18 address the need for companies to take substantial action in Sudan and
19 consistent with the board's fiduciary responsibilities as provided in K.S.A.
20 74-4921, and amendments thereto.

21 (i) On or before June 30, 2008, and every year thereafter, the board
22 shall file a report with the joint committee on pensions, investments and
23 benefits. The report shall describe the following:

24 (1) A list of investments the board has in companies with business
25 operations in Sudan, including, but not limited to, the issuer, by name,
26 of the stock, bonds, securities and other evidence of indebtedness;

27 (2) a detailed summary of the business operations a company de-
28 scribed in subsection (i)(1) has in Sudan and whether that company sat-
29 isfies all of the criteria in subsection (b) or (c);

30 (3) whether the board has reduced KPERS fund investments in a
31 company that satisfies the criteria in subsection (b) or (c);

32 (4) if the board has not completely reduced KPERS fund investments
33 in a company that satisfies the criteria in subsection (b) or (c), when the
34 board anticipates that the board will reduce all investments in that com-
35 pany or the reasons why a sale or transfer of investments is inconsistent
36 with the fiduciary responsibilities of the board as provided in K.S.A. 74-
37 4921, and amendments thereto;

38 (5) any information described in subsection (e); and

39 (6) a detailed summary of investments that were transferred to funds
40 or accounts devoid of companies with business operations in Sudan as
41 described in subsection (f).

42 (j) If the board voluntarily sells or transfers all KPERS fund invest-
43 ments in a company with business operations in Sudan, this section shall

1 not apply except that the board shall file a report with the legislature
2 related to that company as described in subsection (i).

3 (k) Nothing in this section shall require the board to take action as
4 described in this section unless the board determines, in good faith, that
5 the action described in this section is consistent with the fiduciary re-
6 sponsibilities of the board as provided in K.S.A. 74-4921, and amend-
7 ments thereto.

8 (l) Subsection (h) shall not apply to any of the following:

9 (1) Investments in a company that is primarily engaged in supplying
10 goods or services intended to relieve human suffering in Sudan;

11 (2) investments in a company that promotes health, education, jour-
12 nalist or religious activities in or welfare in the western, eastern or south-
13 ern regions of Sudan; and

14 (3) investments in a United States company that is authorized by the
15 federal government to have business operations in Sudan.

16 (m) This section shall remain in effect only until one of the following
17 occurs, and as of the date of that action, is repealed:

18 (1) The government of Sudan halts the genocide in Darfur for 12
19 months as determined by both the department of state and the congress
20 of the United States; or

21 (2) the United States revokes its current sanctions against Sudan.

22 New Sec. 2. Present, future and former board members jointly and
23 individually, state officers and employees, research firms described in
24 subsection (d) of section 1, and amendments thereto, and investment
25 managers under contract with the Kansas public employees retirement
26 system shall be indemnified from the state general fund and held harm-
27 less by the state from all claims, demands, suits, actions, damages, judg-
28 ments, costs, charges and expenses, including court costs and attorney's
29 fees, and against all liability, losses and damages of any nature whatsoever
30 that these present, future or former board members, officers, employees,
31 research firms or contract investment managers shall or may at any time
32 sustain by reason of any decision to restrict, reduce or eliminate invest-
33 ments pursuant to section 1, and amendments thereto.

34 ***[Sec. 3. (a) As used in this section, "state sponsor of terror"***
35 ***means the government of any country designated by the United***
36 ***States department of state, pursuant to the arms export control act,***
37 ***the export administration act or the foreign assistance act, as a state***
38 ***sponsor of terrorism.***

39 ***[(b) The executive director of the Kansas public employees re-***
40 ***retirement system shall compile a report of actions necessary to divest***
41 ***from any company, organization or other entity that invests in, pro-***
42 ***vides financial support to or does business with a state sponsor of***
43 ***terror.***

1 ***[(c) The report required by this section shall include an analysis***
2 ***of the fiscal effect of such divestment upon the Kansas public em-***
3 ***ployees retirement system and shall be submitted to the president***
4 ***of the senate, the speaker of the house of representatives and the***
5 ***joint committee on pensions, investments and benefits not later than***
6 ***January 15, 2008.]***

7 Sec. ~~3~~ ***[4.]*** This act shall take effect and be in force from and after
8 its publication in the statute book.