

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2941**

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**Introduced by Assembly Members ~~Coto and Koretz~~ Koretz,  
Dymally, and Jerome Horton  
(Coauthors: Assembly Members Coto and Pavley)  
(Coauthor: Senator Migden)**

February 24, 2006

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An act to add Sections 7513.6 and 16642 to the Government Code, relating to investments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2941, as amended, ~~Coto~~ Koretz. Investments: government of ~~Public employee retirement system: investments:~~ Sudan.

Existing law establishes the Public Employees' Retirement System and the State Teachers' Retirement System. Existing law provides for the regulation of depository institutions by the Department of Financial Institutions.

*The California Constitution provides that the Legislature may by statute prohibit retirement board investments where it is in the public interest to do so and providing that the prohibition satisfies specified fiduciary standards.*

This bill would state the intent of the Legislature to enact legislation that would prohibit investments in entities doing business with the government of Sudan by the Public Employees' Retirement System; and the California State Teachers' Retirement System, depository institutions, and the Treasurer from investing in a company with business operations in Sudan, as specified. This bill would require the Board of Administration of the Public Employees' Retirement System

and the Teachers' Retirement Board of the State Teachers' Retirement System to sell or transfer any investments in a company with business operations in Sudan.

This bill would require those boards to report to the Legislature any investments in a company with business operations in Sudan and the sale or transfer of those investments, subject to the fiduciary duty of those boards, by June 30, 2007, and every year thereafter.

This bill would indemnify from the General Fund the present, former, and future board members, officers, and employees of and investment managers under contract with those retirement systems.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 7513.6 is added to the Government
- 2 Code, to read:
- 3 7513.6. (a) As used in this section, the following definitions
- 4 shall apply:
- 5 (1) "Active oil-related activities" means, but is not limited to,
- 6 the export of oil, the extraction or production of oil, or the
- 7 construction or maintenance of a pipeline or refinery.
- 8 (2) "Board" means the Board of Administration of the Public
- 9 Employees' Retirement System or the Teachers' Retirement
- 10 Board of the State Teachers' Retirement System, as applicable.
- 11 (3) "Business operations" means maintaining, selling, or
- 12 leasing equipment, facilities, personnel, or any other apparatus
- 13 of business or commerce in Sudan, including the ownership or
- 14 possession or real or personal property located in Sudan.
- 15 (4) "Company" means a sole proprietorship, organization,
- 16 association, corporation, partnership, venture, or other entity, its
- 17 subsidiary or affiliate that exists for profit making purposes or to
- 18 otherwise secure economic advantage. "Company" also means a
- 19 company owned or controlled, either directly or indirectly, by the
- 20 government of Sudan, that is established or organized under the
- 21 laws of or has its principal place of business in the Republic of
- 22 Sudan.
- 23 (5) "Government of Sudan" means the government of Sudan
- 24 or its instrumentalities.

1 (6) “Invest” or “investment” means the purchase, ownership,  
2 or control of stock of a company, association, or corporation, the  
3 capital stock of a mutual water company or corporation, bonds  
4 issued by the government or a political subdivision of Sudan,  
5 corporate bonds, or other debt instruments issued by a company,  
6 the commitment of funds or other assets to a company, including  
7 a loan or extension of credit to that company.

8 (7) “Military equipment” means weapons, arms, or military  
9 defense supplies.

10 (8) “Research firm” means a reputable, neutral third party  
11 research firm.

12 (9) “Substantial action” means a boycott of the government of  
13 Sudan, curtailing business in Sudan, or selling company assets,  
14 equipment, or real and personal property located in Sudan.

15 (10) “Sudan” means the Republic of the Sudan, a territory  
16 under the administration or control of the Sudan, including but  
17 not limited to, the Darfur region, or an individual, company, or  
18 public agency located in Khartoum, Northern Sudan, or the Nile  
19 River Valley that supports the Republic of the Sudan.

20 (b) The board shall not invest in a company with business  
21 operations in Sudan that meets all of the following criteria:

22 (1) The company provides revenue to the government of  
23 Sudan.

24 (2) The company with business operations in Sudan devotes a  
25 majority of its business operations in Sudan to the government of  
26 Sudan or has limited business operations in the Eastern,  
27 Southern, and Western regions of the Sudan.

28 (3) The company has demonstrated complicity in the Darfur  
29 genocide or failed or refused to take substantial action related to  
30 the government of Sudan because of genocide.

31 (c) Notwithstanding subdivision (b), the board shall not invest  
32 in a company that supplies military equipment within the borders  
33 of Sudan. If a company provides equipment within the borders of  
34 Sudan that may be readily used for military purposes, including  
35 but not limited to radar systems and military-grade transport  
36 vehicles, there shall also be a strong presumption against  
37 investing in that company unless that company implements  
38 safeguards to prevent the use of that equipment for military  
39 purposes.

1     (d) The board shall contract with a research firm to determine  
2 those companies that have business operations in Sudan. The  
3 research firm shall report its findings to the board on or before  
4 March 30, 2007, and thereafter shall provide updated reports to  
5 the board as circumstances in Sudan evolve. The report shall be  
6 based on all available information obtained by the research firm,  
7 including publicly available information, identify those  
8 companies with business operations in Sudan and whether a  
9 company satisfies all of the criteria in subdivision (b) or (c).

10    (e) If the board determines that a company contained in the  
11 report described in subdivision (d) no longer has business  
12 operations in Sudan, or a company has investments in the oil  
13 industry in Sudan and is not engaged in active oil-related  
14 activities, that company shall not be subject to subdivision (h),  
15 provided that the company continues to avoid having business  
16 operations or does not engage in active oil-related activities in  
17 Sudan. The board shall include that company in the report to the  
18 Legislature described in subdivision (i) and set forth the reasons  
19 why the board determined that company no longer has business  
20 operations or limits its business to passive oil industry  
21 investments in Sudan.

22    (f) If the board's investment in a company with business  
23 operations in Sudan is limited to investment via an index fund or  
24 similar investment owned by the board or the investment of the  
25 board is in an account commingled with the investments of other  
26 institutional investors, the board shall contact that fund or  
27 account manager in writing and request that the fund or account  
28 manager remove that company from the fund. On or before June  
29 30, 2007, if the fund or account manager creates a fund or  
30 account devoid of companies with business operations in Sudan,  
31 the transfer of board investments from the prior fund or account  
32 to the fund or account devoid of companies with business  
33 operations in Sudan shall be deemed to satisfy subdivision (h).

34    (g) Except as set forth in subdivision (f), the board shall send  
35 written notice to each company identified in the report described  
36 in subdivision (d), notifying that company that the board will  
37 reduce its investments in that company unless the company takes  
38 substantial action related to the government of Sudan. If, in the  
39 opinion of the board, that company does implement substantial  
40 action related to the government of Sudan within 90 days after

1 mailing of the board's notice, that company shall not be subject  
2 to subdivision (h), provided that the company continues to avoid  
3 having business operations in Sudan.

4 (h) If the board finds a company has business operations in  
5 Sudan and meets all of the criteria described in subdivision (b)  
6 or (c), the board shall take the following actions:

7 (1) On or after January 1, 2007, the board shall not make  
8 additional or new investments or renew existing investments in  
9 those companies.

10 (2) On or before June 30, 2007, the board shall reduce its  
11 investments in those companies by 50 percent.

12 (3) On or before January 1, 2008, the board shall reduce its  
13 remaining investments in those companies. As of January 1,  
14 2008, the board shall not be invested in companies with business  
15 operations in Sudan that meet all of the requirements of  
16 subdivision (b) or (c).

17 (i) On or before June 30, 2007, and every year thereafter, the  
18 board shall file a report with the Legislature. The report shall  
19 describe the following:

20 (1) A list of investments the board has in companies with  
21 business operations in Sudan, including but not limited to, the  
22 issuer, by name, of the stock, bonds, securities and other  
23 evidence of indebtedness.

24 (2) A detailed summary of the business operations a company  
25 described in paragraph (1) has in Sudan and whether that  
26 company satisfies all of the criteria in subdivision (b) or (c).

27 (3) Whether the board has reduced its investments in a  
28 company described in paragraph (2).

29 (4) If the board has not completely reduced its investments in  
30 a company described in paragraph (2), when the board  
31 anticipates that the board will reduce all investments in that  
32 company.

33 (j) If the board voluntarily sells or transfers all of its  
34 investments in a company with business operations in Sudan, this  
35 section shall not apply except that the board shall file a report  
36 with the Legislature related to that company as described in  
37 subdivision (i).

38 (k) Nothing in this section shall be construed to alter or  
39 diminish the existing fiduciary or statutory obligations and other  
40 terms, conditions, or limitations on the investment of retirement

1 system assets for the exclusive benefit of the participants of the  
2 retirement system and their beneficiaries.

3 (l) This section shall not apply to a company that provides  
4 clearly dedicated social development for all areas of the Sudan,  
5 including but not limited to, a company that provides general  
6 consumer goods, medicine, medical supplies and equipment,  
7 agricultural supplies and equipment, educational, health,  
8 welfare, or religious opportunities, or journalistic activities.

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

11 (1) The government of Sudan halts the genocide in Darfur for  
12 12 months as determined by both the Department of State and the  
13 Congress of the United States.

14 (2) The United States revokes its current sanctions against  
15 Sudan.

16 SEC. 2. Section 16642 is added to the Government Code, to  
17 read:

18 16642. Present, future, and former board members of the  
19 Public Employees' Retirement System or the State Teachers'  
20 Retirement System, jointly and individually, state officers and  
21 employees, and investment managers under contract with the  
22 Public Employees' Retirement System or the State Teachers'  
23 Retirement System shall be indemnified from the General Fund  
24 by the State of California from all claims, demands, suits,  
25 actions, damages, judgments, costs, charges and expenses,  
26 including court costs and attorney's fees, and against all  
27 liability, losses, and damages of any nature whatsoever that these  
28 present, future, or former board members, officers, employees, or  
29 contract investment managers shall or may at any time sustain by  
30 reason of any decision to restrict, reduce, or eliminate  
31 investments pursuant to Section 7513.6

32 SECTION 1. ~~It is the intent of the Legislature to enact~~  
33 ~~legislation that would do the following:~~

34 ~~(a) Prohibit the investment by, or deposit from, the Public~~  
35 ~~Employees' Retirement System and the California State~~  
36 ~~Teachers' Retirement System in any entity doing business in or~~  
37 ~~with the government of Sudan until the United Nations~~  
38 ~~determines that the government of Sudan has taken sufficient and~~  
39 ~~demonstrable steps to end human rights abuses in Sudan.~~

1 ~~(b) Prohibit a fiduciary of the Public Employees' Retirement~~  
2 ~~System or the California State Teachers' Retirement System~~  
3 ~~from, directly or through a fund manager, transacting any~~  
4 ~~business with any entity that has not certified through one of its~~  
5 ~~officers that the company does not engage in business activities~~  
6 ~~with the government of Sudan.~~

7 ~~(c) Provide that a depository institution would lose its license~~  
8 ~~to do business in California if it makes loans to any entity doing~~  
9 ~~business in or with the government of Sudan until the United~~  
10 ~~Nations determines that the government of Sudan has taken~~  
11 ~~sufficient and demonstrable steps to end human rights abuses in~~  
12 ~~Sudan.~~

13 ~~(d) Prohibit the Treasurer from depositing any funds or~~  
14 ~~otherwise transacting business with a depository institution~~  
15 ~~unless an officer of the depository institution certifies that the~~  
16 ~~depository institution does not loan money to or invest in any~~  
17 ~~entity involved with the government of Sudan.~~