

Assembly Bill No. 2941

CHAPTER 442

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

[Approved by Governor September 25, 2006. Filed with
Secretary of State September 25, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2941, Koretz. Public retirement systems: investments: Sudan.

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 prohibit the Public Employees' Retirement System and the California State Teachers' Retirement System from investing public employee retirement funds in a company with active business operations in Sudan, as specified. The 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 active 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 January 1, 2008, and every year thereafter.

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

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The Congress of the United States has declared that genocide is occurring in the Darfur region of Sudan.

(b) The National Black Caucus of State Legislators Resolution 05-144 declares that the atrocities unfolding in Darfur are genocide under Article 1, Article 2, and Article 3 of the United Nations Convention of 1948.

(c) The United Nations International Commission of Inquiry on Darfur found that government and militia forces of Sudan have conducted indiscriminate attacks, including, but not limited to, the killing of civilians, torture, forced disappearances, the destruction of villages, rape and other

forms of sexual violence, pillaging, and forced displacement throughout Darfur.

(d) Sudanese government forces and government-supported militia forces have implemented a coordinated policy of ethnic cleansing.

(e) More than two and one-half million people are affected by the crisis in Sudan. According to the Intermediate Technology Development Group, two and one-half million people are displaced inside Sudan, 200,000 people are living as refugees, and more than 60 percent of the villages in northern Darfur have been destroyed or abandoned.

(f) According to the Report on Human Rights Practices in Sudan by the United States Department of State, Sudanese government forces have pursued a scorched earth policy aimed at removing populations from around a newly constructed oil pipeline and other oil production facilities.

(g) The United States Department of State Report on Human Rights Practices in Sudan found that 14,000 Dinka women and children have been abducted in Sudan.

(h) Christian Solidarity International reports that the government of Sudan is responsible for the revival of the evil institution of slavery.

(i) The Methodist Church of Southern Africa reports mass rapes of girls and women, the displacement of millions of people, and genocide and ethnic cleansing in Darfur.

(j) The Committee on Conscience of the United States Holocaust Memorial Museum has declared a genocide emergency in Sudan.

(k) Investing public retirement funds in business firms and institutions with ties to the repressive regime in Sudan is inconsistent with the moral and political values of the people of California.

(l) The Legislature acknowledges that divestment is a course of last resort that should be used sparingly and under extraordinary circumstances. This act is based on unique circumstances, specifically, the reprehensible and abhorrent genocide occurring in Sudan. This act is not intended to set precedent with regard to divestment policies and practices by public retirement and pension funds in California.

SEC. 2. Section 7513.6 is added to the Government Code, to read:

7513.6. (a) As used in this section, the following definitions shall apply:

(1) "Active business operations" means a company engaged in business operations that provide revenue to the government of Sudan or a company engaged in oil-related activities.

(2) "Board" means the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board of the State Teachers' Retirement System, as applicable.

(3) "Business operations" means maintaining, selling, or leasing equipment, facilities, personnel, or any other apparatus of business or commerce in Sudan, including the ownership or possession of real or personal property located in Sudan.

(4) "Company" means a sole proprietorship, organization, association, corporation, partnership, venture, or other entity, its subsidiary or affiliate

that exists for profitmaking purposes or to otherwise secure economic advantage. “Company” also means a company owned or controlled, either directly or indirectly, by the government of Sudan, that is established or organized under the laws of or has its principal place of business in the Republic of the Sudan.

(5) “Government of Sudan” means the government of Sudan or its instrumentalities.

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

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

(8) “Oil-related activities” means, but is not limited to, the export of oil, extracting or producing oil, exploration for oil, or the construction or maintenance of a pipeline, refinery, or other oil field infrastructure.

(9) “Public employee retirement funds” means the Public Employees’ Retirement Fund described in Section 20062 of this code, and the Teachers’ Retirement Fund described in Section 22167 of the Education Code.

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

(11) “Substantial action” means a boycott of the government of Sudan, curtailing business in Sudan until that time described in subdivision (m), selling company assets, equipment, or real and personal property located in Sudan, or undertaking significant humanitarian efforts in the eastern, southern, or western regions of Sudan.

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

(b) The board shall not invest public employee retirement funds in a company with business operations in Sudan that meets all of the following criteria:

(1) The company is engaged in active business operations in Sudan. If that company is not engaged in oil-related activities, that company also lacks significant business operations in the eastern, southern, and western regions of Sudan.

(2) Either of the following apply:

(A) The company is engaged in oil-related activities or energy or power-related operations, or contracts with another company with business operations in the oil, energy, and power sectors of Sudan, and the company failed to take substantial action related to the government of Sudan because of the Darfur genocide.

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

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

(d) (1) The board shall, without regard to the provisions regarding competitive bidding, contract with a research firm or firms to determine those companies that have business operations in Sudan. Those research firms shall, in the aggregate, obtain data on a majority of companies with business operations in Sudan. On or before March 30, 2007, those research firms shall report any findings to the board and those research firms shall submit further findings to the board if there is a change of circumstances in Sudan.

(2) In addition to the reports described in paragraph (1), the board shall take all of the following actions no later than March 30, 2007:

(A) Review publicly available information regarding companies with business operations in Sudan.

(B) Contact other institutional investors that invest in companies with business operations in Sudan.

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

(e) (1) The board shall determine, by the next applicable board meeting and based on the information and reports described in subdivision (d), if a company meets the criteria described in subdivision (b) or (c). If the board plans to invest or has investments in a company that meets the criteria described in subdivision (b) or (c), that planned or existing investment shall be subject to subdivisions (g) and (h).

(2) Investments of the board in a company that does not meet the criteria described in subdivision (b) or (c) or does not have active business operations in Sudan are not subject to subdivision (h), provided that the company does not subsequently meet the criteria described in subdivision (b) or (c) or engage in active business operations. The board shall identify the reasons why that company does not satisfy the criteria described in subdivision (b) or (c) or does not engage in active business operations in the report to the Legislature described in subdivision (i).

(f) (1) Notwithstanding subdivision (e), if the board's investment in a company described in subdivision (b) or (c) is limited to investment via an externally and actively managed commingled fund, the board shall contact that fund manager in writing and request that the fund manager remove that company from the fund as described in subdivision (h). On or before June 30, 2007, if the fund or account manager creates a fund or account devoid of companies described in subdivision (b) or (c), the transfer of board investments from the prior fund or account to the fund or account

devoid of companies with business operations in Sudan shall be deemed to satisfy subdivision (h).

(2) If the board's investment in a company described in subdivision (b) or (c) is limited to an alternative fund or account, the alternative fund or account manager creates an actively managed commingled fund that excludes companies described in subdivision (b) or (c), and the new fund or account is deemed to be financially equivalent to the existing fund or account, the transfer of board investments from the existing fund or account to the new fund or account shall be deemed to satisfy subdivision (h). If the board determines that the new fund or account is not financially equivalent to the existing fund, the board shall include the reasons for that determination in the report described in subdivision (i).

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

(g) Except as described in subdivision (f) or paragraph (2) of subdivision (e), the board, in the board's capacity of shareholder or investor, shall notify any company described in paragraph (1) of subdivision (e) that the company is subject to subdivision (h) and permit that company to respond to the information and reports described in subdivision (d). The board shall request that the company take substantial action no later than 90 days from the date the board notified the company under this subdivision. If the board determines that a company has taken substantial action or has made sufficient progress towards substantial action before the expiration of that 90-day period, that company shall not be subject to subdivision (h). The board shall, at intervals not to exceed 90 days, continue to monitor and review the progress of the company until that company has taken substantial action in Sudan. A company that fails to complete substantial action or continue to make sufficient progress towards substantial action by the next time interval shall be subject to subdivision (h).

(h) If a company described in paragraph (1) of subdivision (e) fails to complete substantial action by the time described in subdivision (g), the board shall take the following actions:

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

(2) The board shall liquidate the investments of the board in that company no later than 18 months after this subdivision applies to that company. The board shall liquidate those investments in a manner to

address the need for companies to take substantial action in Sudan and consistent with the board's fiduciary responsibilities as described in Section 17 of Article XVI of the California Constitution.

(i) On or before January 1, 2008, and every year thereafter, the board shall file a report with the Legislature. The report shall describe the following:

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

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

(3) Whether the board has reduced its investments in a company that satisfies the criteria in subdivision (b) or (c).

(4) If the board has not completely reduced its investments in a company that satisfies the criteria in subdivision (b) or (c), when the board anticipates that the board will reduce all investments in that company or the reasons why a sale or transfer of investments is inconsistent with the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution.

(5) Any information described in subdivision (e).

(6) A detailed summary of investments that were transferred to funds or accounts devoid of companies with business operations in Sudan as described in subdivision (f).

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

(k) Nothing in this section shall require the board to take action as described in this section unless the board determines, in good faith, that the action described in this section is consistent with the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution.

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

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

(2) Investments in a company that promotes health, education, journalistic, or religious activities in or welfare in the western, eastern, or southern regions of Sudan.

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

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

(1) 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.

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

SEC. 3. Section 16642 is added to the Government Code, to read:

16642. Present, future, and former board members of the Public Employees' Retirement System or the State Teachers' Retirement System, jointly and individually, state officers and employees, research firms described in subdivision (d) of Section 7513.6, and investment managers under contract with the Public Employees' Retirement System or the State Teachers' Retirement System shall be indemnified from the General Fund and held harmless by the State of California from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorney's fees, and against all liability, losses, and damages of any nature whatsoever that these present, future, or former board members, officers, employees, research firms, or contract investment managers shall or may at any time sustain by reason of any decision to restrict, reduce, or eliminate investments pursuant to Section 7513.6