

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1089**

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**Introduced by Assembly Member Hernandez**

February 23, 2007

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*An act to add Chapter 1.6 (commencing with Section 10287) to Part 2 of Division 2 of the Public Contract Code, relating to public contracts.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1089, as amended, Hernandez. Public contracts: Sudan.

*The State Contract Act governs contracting between state agencies and private contractors, and sets forth requirements for the procurement of materials, supplies, equipment, and services by state agencies. Existing law sets out the various responsibilities of the Department of General Services, and other state agencies in overseeing and implementing state contracting procedures and policies.*

*This bill would require the Department of General Services to prepare, as specified, a list of companies, as defined, that has ties to the government of Sudan, as defined, with which the state has a contract or could possibly have a contract with in the future and to present that list to the Legislature by April 1, 2008. This bill would prohibit a state agency from entering into a contract, as specified, with a company that is on the Department of General Services's list of companies that has ties to the government of Sudan. The bill also would require each prospective bidder for any state contract to certify under penalty of perjury that the bidder does not have ties to the government of Sudan.*

*By requiring prospective bidders to certify that the questionnaires have been signed under penalty of perjury, this bill would expand the*

scope of existing crime of perjury, and would thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The State Contract Act authorizes the Department of General Services, or any other department with authority to enter into contracts, to require those contracts to fulfill specified criteria.

~~This bill states the intent of the Legislature to enact legislation prohibiting the state of California from entering into a public contract with any company that conducts business with the Sudanese government.~~

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

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

1 SECTION 1. Chapter 1.6 (commencing with Section 10287)  
2 is added to Part 2 of Division 2 of the Public Contract Code, to  
3 read:

4  
5 CHAPTER 1.6. DARFUR ACCOUNTABILITY ACT  
6

7 10287. The Legislature hereby finds and declares all of the  
8 following:

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

11 (b) On September 21, 2004, addressing the United Nations  
12 General Assembly, President George W. Bush affirmed the  
13 Secretary of State’s finding and stated, “[A]t this hour, the world  
14 is witnessing terrible suffering and horrible crimes in the Darfur  
15 region of Sudan, crimes my government has concluded are  
16 genocide.”

17 (c) On December 7, 2004, the United States Congress noted  
18 that the genocidal policy in Darfur has led to reports of “systematic  
19 rape of thousands of women and girls, the abduction of women  
20 and children, and the destruction of hundreds of ethnically African  
21 villages, including the poisoning of their wells and the plunder of

1 *their crops and cattle upon which the people of such villages*  
2 *sustain themselves.”*

3 *(d) Also on December 7, 2004, Congress found that “the*  
4 *Government of Sudan has restricted access by humanitarian and*  
5 *human rights workers to the Darfur area through intimidation by*  
6 *military and security forces, and through bureaucratic and*  
7 *administrative obstruction, in an attempt to inflict the most*  
8 *devastating harm on those individuals displaced from their villages*  
9 *and homes without any means of sustenance or shelter.”*

10 *(e) On September 25, 2006, Congress reaffirmed that “the*  
11 *genocide unfolding in the Darfur region of Sudan is characterized*  
12 *by acts of terrorism and atrocities directed against civilians,*  
13 *including mass murder, rape, and sexual violence committed by*  
14 *the Janjaweed and associated militias with the complicity and*  
15 *support of the National Congress Party-led faction of the*  
16 *Government of Sudan.”*

17 *(f) On September 26, 2006, the United States House of*  
18 *Representatives stated that “an estimated 300,000 to 400,000*  
19 *people have been killed by the Government of Sudan and its*  
20 *Janjaweed allies since the [Darfur] crisis began in 2003, more*  
21 *than 2,000,000 people have been displaced from their homes, and*  
22 *more than 250,000 people from Darfur remain in refugee camps*  
23 *in Chad.”*

24 *(g) The Federal Government has imposed sanctions against the*  
25 *Government of Sudan since 1997. These sanctions are monitored*  
26 *through the United States Treasury Department’s Office of Foreign*  
27 *Assets Control (OFAC).*

28 *(h) Since 1993, the United States Secretary of State has*  
29 *determined Sudan is a country whose government has repeatedly*  
30 *provided support for acts of international terrorism, thereby*  
31 *restricting United States assistance, defense exports and sales,*  
32 *and financial and other transactions with the Government of Sudan.*

33 *(i) The Darfur crisis represents the first time the United States*  
34 *has labeled ongoing atrocities a genocide.*

35 *10287.1. As used in this chapter, the following apply:*

36 *(a) “Business operations” means engaging in commerce in any*  
37 *form in Sudan, including by acquiring, developing, maintaining,*  
38 *owning, selling, possessing, leasing, or operating equipment,*  
39 *facilities, personnel, products, services, personal property, real*  
40 *property, or any other apparatus of business or commerce.*

1 (b) “Company” means any sole proprietorship, organization,  
2 association, corporation, partnership, joint venture, limited  
3 partnership, limited liability partnership, limited liability company,  
4 or other entity or business association, including all wholly owned  
5 subsidiaries, majority-owned subsidiaries, parent companies, or  
6 affiliates of such entities or business associations, that exists for  
7 profitmaking purposes.

8 (c) “Complicit” means taking actions during any preceding  
9 20-month period that have directly supported or promoted the  
10 genocidal campaign in Darfur, including, but not limited to,  
11 preventing Darfur’s victimized population from communicating  
12 with each other, encouraging Sudanese citizens to speak out  
13 against an internationally approved security force for Darfur,  
14 actively working to deny, cover up, or alter the record on human  
15 rights abuses in Darfur, or other similar actions.

16 (d) “Government of Sudan” means the government in Khartoum,  
17 Sudan, which is led by the National Congress Party, formerly  
18 known as the National Islamic Front, or any successor government  
19 formed on or after October 13, 2006, including the coalition  
20 National Unity Government agreed upon in the Comprehensive  
21 Peace Agreement for Sudan and does not include the regional  
22 government of southern Sudan.

23 (e) “Inactive business operations” means the continued holding  
24 or renewal of rights to property previously operated for the purpose  
25 of generating revenues but not presently deployed for such purpose.

26 (f) “Marginalized populations of Sudan” include, but are not  
27 limited to, the portion of the population in the Darfur region that  
28 has been genocidally victimized; the portion of the population of  
29 southern Sudan victimized by Sudan’s North-South civil war; the  
30 Beja, Rashidiya, and other similarly underserved groups of eastern  
31 Sudan; the Nubian and other similarly underserved groups in  
32 Sudan’s Abyei, Southern Blue Nile, and Nuba Mountain regions;  
33 and the Amri, Hamadab, Manasir, and other similarly underserved  
34 groups of northern Sudan.

35 (g) “Military equipment” means weapons, arms, military  
36 supplies, and equipment that readily may be used for military  
37 purposes, including, but not limited to, radar systems or  
38 military-grade transport vehicles, or supplies or services sold or  
39 provided directly or indirectly to any force actively participating  
40 in armed conflict in Sudan.

1 (h) “Mineral extraction activities” include exploring, extracting,  
2 processing, transporting, or wholesale selling or trading of  
3 elemental minerals or associated metal alloys or oxides (ore),  
4 including gold, copper, chromium, chromite, diamonds, iron, iron  
5 ore, silver, tungsten, uranium, and zinc, as well as facilitating such  
6 activities, including by providing supplies or services in support  
7 of such activities.

8 (i) “Oil-related activities” include, but are not limited to,  
9 owning rights to oil blocks; exporting, extracting, producing,  
10 refining, processing, exploring for, transporting, selling, or trading  
11 of oil; constructing, maintaining, or operating a pipeline, refinery,  
12 or other oil-field infrastructure; and facilitating such activities,  
13 including by providing supplies or services in support of such  
14 activities, provided the mere retail sale of gasoline and related  
15 consumer products shall not be considered oil-related activities.

16 (j) “Power production activities” means any business operation  
17 that involves a project commissioned by the National Electricity  
18 Corporation (NEC) of Sudan or other similar government of Sudan  
19 entity whose purpose is to facilitate power generation and delivery,  
20 including, but not limited to, establishing power-generating plants  
21 or hydroelectric dams, selling or installing components for the  
22 project, providing service contracts related to the installation or  
23 maintenance of the project, as well as facilitating such activities,  
24 including by providing supplies or services in support of such  
25 activities.

26 (k) “Scrutinized company” means all of the following:

27 (1) A company that has business operations that involve  
28 contracts with and/or provides supplies or services to the  
29 government of Sudan, companies in which the government of Sudan  
30 has any direct or indirect equity share, government of  
31 Sudan-commissioned consortia or projects, or companies involved  
32 in government of Sudan-commissioned consortia or projects.

33 (A) A company that has more than 10 percent of the company’s  
34 revenues or assets linked to Sudan involve oil-related activities or  
35 mineral extraction activities.

36 (B) A company that has less than 75 percent of the company’s  
37 revenues or assets linked to Sudan involve contracts with and/or  
38 provision of oil-related or mineral extracting products or services  
39 to the regional government of southern Sudan or a project or  
40 consortium created exclusively by that regional government.

1 (C) A company that has more than 10 percent of the company's  
2 revenues or assets linked to Sudan involve power production  
3 activities.

4 (D) A company that has less than 75 percent of the company's  
5 power production activities include projects whose intent is to  
6 provide power or electricity to the marginalized populations of  
7 Sudan.

8 (R) Failed to take substantial action.

9 (2) Is complicit in the Darfur genocide.

10 (l) "Social development company" means a company whose  
11 primary purpose in Sudan is to provide humanitarian goods or  
12 services, including medicine or medical equipment, agricultural  
13 supplies or infrastructure, educational opportunities,  
14 journalism-related activities, information or information materials,  
15 spiritual-related activities, services of a purely clerical or reporting  
16 nature, food, clothing, or general consumer goods that are  
17 unrelated to oil-related activities, mineral extraction activities, or  
18 power production activities. Notwithstanding anything herein to  
19 the contrary, a social development company that is not complicit  
20 in the Darfur genocide shall not be considered a scrutinized  
21 company.

22 (m) "Substantial action" means adopting, publicizing, and  
23 implementing a formal plan to cease scrutinized business  
24 operations within one year and to refrain from any new business  
25 operations; undertaking significant humanitarian efforts on behalf  
26 of one or more marginalized populations of Sudan; or through  
27 engagement with the government of Sudan, materially improving  
28 conditions for the genocidally victimized population in Darfur.

29 10287.2. (a) Within 90 days of the law taking effect, the  
30 Department of General Services shall identify, using its best efforts  
31 and prepare, a list of scrutinized companies with which the state  
32 has a contract or could possibly have a contract with in the future.

33 "Best efforts" shall include all of the following, as appropriate:

34 (1) Reviewing and relying, as appropriate, on publicly available  
35 information regarding companies with business operations in  
36 Sudan, including information provided by nonprofit organizations,  
37 research firms, international organizations, and governmental  
38 entities.

39 (2) Contacting companies with which the state has a contract  
40 and that have business operations in Sudan.

1     ***(b) The list shall be presented to the Legislature on or before***  
2 ***April 1, 2008.***

3     ***10287.3. (a) A state agency shall not enter into a contract on***  
4 ***or after April 1, 2008, for construction, alteration, repair,***  
5 ***improvement, professional services, materials, supplies, or***  
6 ***equipment with a contractor that is on the scrutinized companies***  
7 ***list prepared pursuant to Section 10287.2.***

8     ***(b) A state agency shall not enter into any contract on or after***  
9 ***April 1, 2008, for the acquisition of goods or services in the amount***  
10 ***of one hundred thousand dollars (\$100,000) or more with a***  
11 ***contractor that is on the scrutinized companies list prepared***  
12 ***pursuant to Section 10287.2.***

13     ***10287.4. A state agency shall require each prospective bidder***  
14 ***that submits a bid or proposal with respect to any contract to***  
15 ***submit a statement by which the bidder swears under penalty of***  
16 ***perjury that the prospective bidder is not a scrutinized company.***

17     ***10287.5. This act shall be repealed upon affirmative action of***  
18 ***the Legislature. Provided, that in determining whether to repeal***  
19 ***this act, by way of suggestion and guidance only and without***  
20 ***binding or in any way inhibiting the discretion of future sessions***  
21 ***of the Legislature, it is submitted that the occurrence of any of the***  
22 ***following should be construed and deemed to be a basis for***  
23 ***repealing this act:***

24     ***(a) The Congress or President of the United States declares the***  
25 ***Darfur genocide has been halted for at least 12 months.***

26     ***(b) The United States revokes all sanctions imposed against the***  
27 ***government of Sudan.***

28     ***(c) The Congress or President of the United States declares the***  
29 ***government of Sudan has honored its commitments to cease attacks***  
30 ***on civilians, demobilize and demilitarize the Janjaweed and***  
31 ***associated militias, grant free and unfettered access for deliveries***  
32 ***of humanitarian assistance, and allow for the safe and voluntary***  
33 ***return of refugees and internally displaced persons.***

34     ***(d) The Congress or President of the United States, through***  
35 ***legislation or executive order, declares mandatory divestment of***  
36 ***the type provided for in this act interferes with the conduct of***  
37 ***United States foreign policy.***

38     ***(e) Such other circumstances as the Legislature determines to***  
39 ***warrant the discontinuance of the provisions of this chapter.***

1     10287.6. (a) *If any one or more provision, section, subsection,*  
 2 *sentence, clause, phrase, or word of this act or the application*  
 3 *thereof to any person or circumstance is found to be invalid, illegal,*  
 4 *unenforceable or unconstitutional, the same is hereby declared to*  
 5 *be severable and the balance of this act shall remain effective and*  
 6 *functional notwithstanding such invalidity, illegality,*  
 7 *unenforceability, or unconstitutionality.*

8     (b) *The Legislature hereby declares it would have passed this*  
 9 *act, and each provision, section, subsection, sentence, clause,*  
 10 *phrase or word thereof, irrespective of the fact that any one or*  
 11 *more provision, section, subsection, sentence, clause, phrase, or*  
 12 *word be declared invalid, illegal, unenforceable or*  
 13 *unconstitutional, including, but not limited to, each of the*  
 14 *engagement, divestment, and prohibition provisions of this*  
 15 *legislation.*

16     SEC. 2. *No reimbursement is required by this act pursuant to*  
 17 *Section 6 of Article XIII B of the California Constitution because*  
 18 *the only costs that may be incurred by a local agency or school*  
 19 *district will be incurred because this act creates a new crime or*  
 20 *infraction, eliminates a crime or infraction, or changes the penalty*  
 21 *for a crime or infraction, within the meaning of Section 17556 of*  
 22 *the Government Code, or changes the definition of a crime within*  
 23 *the meaning of Section 6 of Article XIII B of the California*  
 24 *Constitution.*

25     ~~SECTION 1. It is the intent of the Legislature to enact~~  
 26 ~~legislation prohibiting the state of California from entering into a~~  
 27 ~~public contract with any company that conducts business with the~~  
 28 ~~Sudanese government.~~