

BILL ANALYSIS

Senate Research Center
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S.B. 247
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Government Organization
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law does not place any restriction on the ability of the Employees Retirement System of Texas (ERS) to invest in companies that are beneficial to the Sudanese government and are indirectly facilitating the genocide occurring in Sudan. ERS may be investing in these companies and this bill restricts ERS from doing business with certain companies associated with the Sudanese government.

This bill differs in very significant ways from Sudan divestment legislation passed in states like Illinois and New Jersey since the proposed Texas legislation targets only the small subset of companies operating in Sudan that have problematic behavior (so called "scrutinized companies" – less than 15 percent of multinational corporations operating in Sudan).

S.B. 247 mandates engagement with scrutinized companies before any divestment action is taken. The state pension funds will have very little administrative expense associated with this bill because all material for researching and engaging problematic companies is publicly available and free of charge to ERS. S.B. 247 protects ERS by excluding certain "hard to target" investments and providing an opt-out if a pension fund can objectively demonstrate that divestment has had a negative impact on its portfolio.

As proposed, S.B. 247 requires ERS to engage and possibly divest from certain companies doing business in Sudan. Only those companies that substantially benefit the central government, provide little benefit to Sudanese citizens, and who have failed to address their role in indirectly facilitating Sudan's genocidal capacity are covered in this bill.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. LEGISLATIVE FINDINGS. Sets forth findings and declarations relating to the genocide in the Darfur region of Sudan. Sets forth that because the situation in Sudan poses a risk to companies operating in Sudan a divestment movement was begun. Sets forth that the genocide in Sudan is grounds for mandatory divestment of public funds.

SECTION 2. Amends Subtitle F, Title 10, Government Code, by adding Chapter 2264, as follows:

CHAPTER 2264. PROHIBITION ON INVESTMENT IN SUDAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2264.001. DEFINITIONS. Defines "active business operations," "business operations," "company," "complicit," "direct holdings in a company," "Government of Sudan," "inactive business operations," "indirect holdings in a company," "marginalized populations of Sudan," "military equipment," "mineral extraction activities," "oil-related activities," "power production activities," "scrutinized company," "social development company," and "substantial action."

Sec. 2264.002. **SCRUTINIZED BUSINESS OPERATIONS.** Sets forth conditions which constitute participation in scrutinized business operations.

Sec. 2264.003. **SOCIAL DEVELOPMENT COMPANY.** Prohibits a social development company not complicit in the Darfur genocide from being deemed a scrutinized company, notwithstanding other law.

Sec. 2264.004. **EXCEPTION.** Provides that any company excluded from the United States (U.S.) government's sanctions against Sudan is exempt from the divestment or investment prohibitions under this chapter.

Sec. 2264.005. **OTHER LEGAL OBLIGATIONS.** Exempts a state government entity (entity) attempting to comply with this chapter from conflicting statutory or common law obligations, including certain investment and securities portfolio choices.

[Reserves Sections 2264.006-2264.050 for expansion.]

SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

Sec. 2264.051. **LIST OF SCRUTINIZED COMPANIES.** Defines "system." Requires the Employees Retirement System of Texas (system) to keep a list of all scrutinized companies (companies). Sets forth requirements for preparing and updating the list. Requires the system to file the list with the presiding officer of each legislative house and the attorney general within 30 days of creation or revision.

Sec. 2264.052. **IDENTIFICATION OF INVESTMENT IN SCRUTINIZED COMPANIES.** Requires each entity to immediately determine which companies on the list the entity has direct or indirect holdings.

Sec. 2264.053. **NOTICE TO SCRUTINIZED COMPANY ENGAGED IN INACTIVE BUSINESS OPERATIONS.** Requires an entity to send written notice to each company on the list with which is associated that is engaged in inactive scrutinized activities. Sets forth that the written notice should advise the company of this chapter and urge the company to continue to refrain from active business operations in Sudan. Requires this correspondence to continue on a semiannual basis.

Sec. 2264.054. **ACTIONS RELATING TO SCRUTINIZED COMPANY ENGAGED IN ACTIVE BUSINESS OPERATIONS.** (a) Requires each entity to send a written notice to each company on the list in which the entity has holdings that notifies the company of its scrutinized company status and that it may become subject to divestment by the entity.

(b) Requires this notice to allow a company to clarify its activities in relation to Sudan and encourage the company to end or convert to inactivate status its scrutinized operations within 90 days to avert qualifying for divestment by the entity.

(c) Requires the entity to remove the company from the scrutinized companies list upon cessation of scrutinized business operations if such cessation occurs during the 90 day period under Subsection (b). Sets forth that upon such occurrence this chapter no longer applies to the company unless scrutinized operations are resumed.

(d) Provides that if a company converts to inactivate its scrutinized operations within 90 days of receiving notice the company is subject to all provisions in this chapter relating to inactive business operations.

(e) Requires an entity to sell, redeem, divest, or withdraw all publicly traded securities of a company, except securities described by Section 2264.057, which fails to end or convert to inactive scrutinized business activities within 90 days of receiving notice.

Sec. 2264.055. ACTIONS RELATING TO SCRUTINIZED COMPANY COMPLICIT IN GENOCIDE. (a) Requires an entity to send written notice to each company on the list that has been complicit informing the company of its scrutinized status and that it may be subject to divestment.

(b) Requires this notice to require the company to refrain from further action making it complicit.

(c) Requires an entity to sell, redeem, divest, or withdraw all publicly traded securities in a company, except securities described by Section 2264.057, that continues to take action making it complicit after receiving notice, and within a certain time.

Sec. 2264.056. DIVESTMENT OF ASSETS. (a) Requires an entity to sell, redeem, divest, or withdraw assets in a company to comply with a certain schedule. Requires an entity to send written notice informing a company resuming once scrutinized active business operations that the entity will sell, redeem, divest, or withdraw all publicly traded securities in the company pursuant to that schedule.

Sec. 2264.057. INVESTMENTS EXEMPTED FROM DIVESTMENT. Exempts indirect holdings in actively managed investment funds (funds) or private equity funds from being subject to divestment by an entity. Requires an entity to submit letters to managers of funds containing scrutinized companies requesting that scrutinized companies be removed from the fund or that a fund excluding scrutinized companies be created. Requires an entity to relocate all of its applicable investments in an expedited time frame consistent with prudent investment standards if a fund excluding scrutinized companies is created.

Sec. 2264.058. AUTHORIZED INVESTMENT IN COMPANIES WITH SCRUTINIZED ACTIVE BUSINESS OPERATIONS. (a) Authorizes an entity able to cease divesting from or to reinvest in a scrutinized company if clear and convincing evidence shows that the value for all assets under management by the state governmental entity becomes equal to or less than 99.5 percent of the hypothetical value of all assets under management by the entity had the entity not divested from any scrutinized company under Section 2264.055.

(b) Authorizes an entity to invest in a company to the degree necessary to ensure the value of the entity's managed assets does not fall below 99.5 percent of its hypothetical value of all assets.

(c) Requires an entity to submit a written report to the presiding officer of each legislative house and the attorney general setting forth the reason and justification supported by clear and convincing evidence of its decisions to stop divestment, reinvest, or continue investment in a company.

(d) Requires that this report be updated semiannually.

(e) Exempts reinvestment in companies that have ended active scrutinized operations from this section.

Sec. 2264.059. PROHIBITED INVESTMENTS. Prohibits an entity from attaining securities in a company on the list except as allowed by Sections 2264.004 and 2264.058.

[Reserves Sections 2264.060-2264.100 for expansion.]

SUBCHAPTER C. EXPIRATION; REPORT; ENFORCEMENT

Sec. 2264.101. EXPIRATION OF CHAPTER. Sets forth that this chapter expires on the date when the U.S. Congress or president of the U.S. declares the Darfur genocide has been halted for a minimum of one year, the U.S. revokes its sanctions against the

Sudanese government, or the U.S. Congress or president through legislation or an executive order declares that mandatory divestment of the type provided for in this chapter interferes with the conduct of U.S. foreign policy.

Sec. 2264.102. REPORT. Requires each entity to file a publicly available report with the presiding officer of each legislative house, the attorney general, and the United States presidential special envoy to Sudan by December 31st of each year that contains certain information.

Sec. 2264.103. ENFORCEMENT. Authorizes the attorney general to initiate any action necessary to enforce this chapter.

SECTION 3. Requires the Employees Retirement System of Texas to create the list within 90 days of the effective date of this Act.

SECTION 4. Effective date: upon passage or September 1, 2007.