

REFERENCE TITLE: Sudan; investments; business operations; prohibition.

State of Arizona
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2008

SB 1366

Introduced by

Senators Aboud, Aguirre, Bee, Blendu, Garcia, Gray L, Johnson, Landrum
Taylor, Leff, Miranda, O'Halleran, Pesquiera, Waring: Allen, Arzberger,
Burns, Burton Cahill, Chevront, Flake, Gorman, Gould, Gray C, Hale,
Harper, Huppenthal, McCune Davis, Rios, Soltero, Tibshraeny, Verschoor

AN ACT

AMENDING TITLE 35, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 7;
PROVIDING FOR THE DELAYED REPEAL OF TITLE 35, CHAPTER 2, ARTICLE 7, ARIZONA
REVISED STATUTES; RELATING TO SUDAN INVESTMENTS AND BUSINESS OPERATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 35, chapter 2, Arizona Revised Statutes, is amended
3 by adding article 7, to read:

4 ARTICLE 7. SUDAN INVESTMENTS AND BUSINESS OPERATIONS

5 35-391. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "ACTIVE BUSINESS OPERATIONS" MEANS ALL BUSINESS OPERATIONS THAT ARE
8 NOT INACTIVE BUSINESS OPERATIONS.

9 2. "BUSINESS OPERATIONS" MEANS ENGAGING IN COMMERCE IN ANY FORM IN
10 SUDAN, INCLUDING ACQUIRING, DEVELOPING, MAINTAINING, OWNING, SELLING,
11 POSSESSING, LEASING OR OPERATING EQUIPMENT, FACILITIES, PERSONNEL, PRODUCTS,
12 SERVICES, PERSONAL PROPERTY, REAL PROPERTY OR ANY OTHER APPARATUS OF BUSINESS
13 OR COMMERCE.

14 3. "COMPANY" MEANS ANY SOLE PROPRIETORSHIP, ORGANIZATION, ASSOCIATION,
15 CORPORATION, PARTNERSHIP, JOINT VENTURE, LIMITED PARTNERSHIP, LIMITED
16 LIABILITY PARTNERSHIP, LIMITED LIABILITY COMPANY OR OTHER ENTITY OR BUSINESS
17 ASSOCIATION, INCLUDING ALL WHOLLY OWNED SUBSIDIARIES, MAJORITY-OWNED
18 SUBSIDIARIES OR PARENT COMPANIES OR AFFILIATES OF SUCH ENTITIES OR BUSINESS
19 ASSOCIATIONS, THAT EXISTS FOR PROFIT-MAKING PURPOSES.

20 4. "COMPLICIT" MEANS TAKING ACTIONS DURING ANY PRECEDING TWENTY-MONTH
21 PERIOD THAT HAVE SUPPORTED OR PROMOTED THE GENOCIDAL CAMPAIGN IN DARFUR,
22 INCLUDING PREVENTING DARFUR'S VICTIMIZED POPULATION FROM COMMUNICATING WITH
23 EACH OTHER, ENCOURAGING SUDANESE CITIZENS TO SPEAK OUT AGAINST AN
24 INTERNATIONALLY APPROVED SECURITY FORCE FOR DARFUR, ACTIVELY WORKING TO DENY,
25 COVER UP OR ALTER THE RECORD ON HUMAN RIGHTS ABUSES IN DARFUR OR OTHER
26 SIMILAR ACTIONS.

27 5. "DIRECT HOLDINGS" MEANS ALL PUBLICLY TRADED EQUITY SECURITIES HELD
28 DIRECTLY BY THE PUBLIC FUND IN WHICH THE PUBLIC FUND OWNS ALL SHARES OR
29 INTERESTS.

30 6. "GOVERNMENT OF SUDAN" MEANS THE GOVERNMENT IN KHARTOUM, SUDAN,
31 WHICH IS LED BY THE NATIONAL CONGRESS PARTY, FORMERLY KNOWN AS THE NATIONAL
32 ISLAMIC FRONT, OR ANY SUCCESSOR GOVERNMENT FORMED ON OR AFTER OCTOBER 13,
33 2006, INCLUDING THE COALITION NATIONAL UNITY GOVERNMENT AGREED ON IN THE
34 COMPREHENSIVE PEACE AGREEMENT FOR SUDAN, BUT DOES NOT INCLUDE THE REGIONAL
35 GOVERNMENT OF SOUTHERN SUDAN.

36 7. "INACTIVE BUSINESS OPERATIONS" MEANS THE CONTINUED HOLDING OR
37 RENEWAL OF RIGHTS TO PROPERTY PREVIOUSLY OPERATED FOR THE PURPOSE OF
38 GENERATING REVENUES BUT NOT PRESENTLY DEPLOYED FOR THAT PURPOSE.

39 8. "INDIRECT HOLDINGS" MEANS ALL PUBLICLY TRADED EQUITY SECURITIES
40 HELD IN AN ACCOUNT OR FUND, INCLUDING A MUTUAL FUND, MANAGED BY ONE OR MORE
41 PERSONS NOT EMPLOYED BY THE PUBLIC FUND, IN WHICH THE PUBLIC FUND OWNS SHARES
42 OR INTERESTS TOGETHER WITH OTHER INVESTORS WHO ARE NOT SUBJECT TO THIS
43 ARTICLE.

9. "MARGINALIZED POPULATIONS OF SUDAN" INCLUDES THE PORTION OF THE POPULATION IN THE DARFUR REGION THAT HAS BEEN GENOCIDALLY VICTIMIZED, THE PORTION OF THE POPULATION OF SOUTHERN SUDAN VICTIMIZED BY SUDAN'S NORTH-SOUTH CIVIL WAR, THE BEJA, RASHIDIYA AND OTHER SIMILARLY UNDERSERVED GROUPS OF EASTERN SUDAN, THE NUBIAN AND OTHER SIMILARLY UNDERSERVED GROUPS IN SUDAN'S ABYEI, SOUTHERN BLUE NILE AND NUBA MOUNTAIN REGIONS AND THE AMRI, HAMADAB, MANASIR AND OTHER SIMILARLY UNDERSERVED GROUPS OF NORTHERN SUDAN.

10. "MILITARY EQUIPMENT" MEANS WEAPONS, ARMS, MILITARY SUPPLIES AND EQUIPMENT THAT READILY MAY BE USED FOR MILITARY PURPOSES, INCLUDING RADAR SYSTEMS OR MILITARY-GRADE TRANSPORT VEHICLES OR SUPPLIES OR SERVICES SOLD OR PROVIDED DIRECTLY OR INDIRECTLY TO ANY FORCE ACTIVELY PARTICIPATING IN ARMED CONFLICT IN SUDAN.

11. "MINERAL EXTRACTION ACTIVITIES" INCLUDES EXPLORING, EXTRACTING, PROCESSING, TRANSPORTING OR WHOLESALE SELLING OR TRADING OF ELEMENTAL MINERALS OR ASSOCIATED METAL ALLOYS OR ORES, INCLUDING GOLD, COPPER, CHROMIUM, CHROMITE, DIAMONDS, IRON, IRON ORE, SILVER, TUNGSTEN, URANIUM AND ZINC, AND FACILITATING THOSE ACTIVITIES, INCLUDING BY PROVIDING SUPPLIES OR SERVICES IN SUPPORT OF THOSE ACTIVITIES.

12. "OIL-RELATED ACTIVITIES" INCLUDES OWNING RIGHTS TO OIL BLOCKS, EXPORTING, EXTRACTING, PRODUCING, REFINING, PROCESSING, EXPLORING FOR, TRANSPORTING, SELLING OR TRADING OF OIL, CONSTRUCTING, MAINTAINING OR OPERATING A PIPELINE, REFINERY OR OTHER OILFIELD INFRASTRUCTURE AND FACILITATING THOSE ACTIVITIES, INCLUDING BY PROVIDING SUPPLIES OR SERVICES IN SUPPORT OF THOSE ACTIVITIES, EXCEPT THAT THE RETAIL SALE OF GASOLINE AND RELATED CONSUMER PRODUCTS IS NOT AN OIL-RELATED ACTIVITY.

13. "POWER PRODUCTION ACTIVITIES" MEANS ANY BUSINESS OPERATION THAT INVOLVES A PROJECT COMMISSIONED BY THE NATIONAL ELECTRICITY CORPORATION OF SUDAN OR OTHER SIMILAR GOVERNMENT OF SUDAN ENTITY AND WHOSE PURPOSE IS TO FACILITATE POWER GENERATION AND DELIVERY, INCLUDING ESTABLISHING POWER-GENERATING PLANTS OR HYDROELECTRIC DAMS, SELLING OR INSTALLING COMPONENTS FOR THE PROJECT, PROVIDING SERVICE CONTRACTS RELATED TO THE INSTALLATION OR MAINTENANCE OF THE PROJECT OR FACILITATING THOSE ACTIVITIES, INCLUDING BY PROVIDING SUPPLIES OR SERVICES IN SUPPORT OF THOSE ACTIVITIES.

14. "PUBLIC FUND" MEANS THE ARIZONA STATE RETIREMENT SYSTEM ESTABLISHED BY TITLE 38, CHAPTER 5, ARTICLE 2, THE ELECTED OFFICIALS' RETIREMENT PLAN ESTABLISHED BY TITLE 38, CHAPTER 5, ARTICLE 3, THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM ESTABLISHED BY TITLE 38, CHAPTER 5, ARTICLE 4, THE CORRECTIONS OFFICER RETIREMENT PLAN ESTABLISHED BY TITLE 38, CHAPTER 5, ARTICLE 6 AND THE STATE TREASURER INVESTMENTS AUTHORIZED BY SECTION 35-314.02.

15. "SCRUTINIZED" MEANS ANY BUSINESS OPERATIONS THAT INVOLVE CONTRACTS WITH OR PROVISION OF SUPPLIES OR SERVICES TO THE GOVERNMENT OF SUDAN, COMPANIES IN WHICH THE GOVERNMENT OF SUDAN HAS ANY DIRECT OR INDIRECT EQUITY SHARE, GOVERNMENT OF SUDAN-COMMISSIONED CONSORTIUMS OR PROJECTS OR COMPANIES

1 INVOLVED IN GOVERNMENT OF SUDAN-COMMISSIONED CONSORTIUMS OR PROJECTS AND ANY
2 OF THE FOLLOWING APPLIES:

3 (a) A MATERIAL PORTION OF THE COMPANY'S REVENUES OR ASSETS ARE
4 ATTRIBUTED TO SUDAN AND INVOLVE OIL-RELATED ACTIVITIES OR MINERAL EXTRACTION
5 ACTIVITIES, LESS THAN SEVENTY-FIVE PER CENT OF THE COMPANY'S REVENUES OR
6 ASSETS ATTRIBUTED TO SUDAN INVOLVE CONTRACTS WITH OR PROVISION OF OIL-RELATED
7 OR MINERAL EXTRACTING PRODUCTS OR SERVICES TO THE REGIONAL GOVERNMENT OF
8 SOUTHERN SUDAN OR A PROJECT OR CONSORTIUM CREATED EXCLUSIVELY BY THAT
9 REGIONAL GOVERNMENT AND THE COMPANY HAS FAILED TO TAKE SUBSTANTIAL ACTION.
10 THE PUBLIC FUND HAS SOLE DISCRETION TO DETERMINE WHAT IS A MATERIAL PORTION
11 OF REVENUES OR ASSETS.

12 (b) A MATERIAL PORTION OF THE COMPANY'S REVENUES OR ASSETS ARE
13 ATTRIBUTED TO SUDAN AND INVOLVE POWER PRODUCTION ACTIVITIES, LESS THAN
14 SEVENTY-FIVE PER CENT OF THE COMPANY'S POWER PRODUCTION ACTIVITIES INCLUDE
15 PROJECTS WHOSE INTENT IS TO PROVIDE POWER OR ELECTRICITY TO THE MARGINALIZED
16 POPULATIONS OF SUDAN AND THE COMPANY HAS FAILED TO TAKE SUBSTANTIAL ACTION.
17 THE PUBLIC FUND HAS SOLE DISCRETION TO DETERMINE WHAT IS A MATERIAL PORTION
18 OF REVENUES OR ASSETS.

19 (c) THE COMPANY IS COMPLICIT IN THE DARFUR GENOCIDE.

20 (d) THE COMPANY SUPPLIES MILITARY EQUIPMENT IN SUDAN, UNLESS IT
21 CLEARLY SHOWS THAT THE MILITARY EQUIPMENT CANNOT BE USED TO FACILITATE
22 OFFENSIVE MILITARY ACTIONS IN SUDAN OR THE COMPANY IMPLEMENTS RIGOROUS AND
23 VERIFIABLE SAFEGUARDS TO PREVENT USE OF THAT EQUIPMENT BY FORCES ACTIVELY
24 PARTICIPATING IN ARMED CONFLICT SUCH AS THROUGH POST-SALE TRACKING OF THAT
25 EQUIPMENT BY THE COMPANY, CERTIFICATION FROM A REPUTABLE AND OBJECTIVE THIRD
26 PARTY THAT THE EQUIPMENT IS NOT BEING USED BY A PARTY PARTICIPATING IN ARMED
27 CONFLICT IN SUDAN OR SALE OF THAT EQUIPMENT SOLELY TO THE REGIONAL GOVERNMENT
28 OF SOUTHERN SUDAN OR ANY INTERNATIONALLY RECOGNIZED PEACEKEEPING FORCE OR
29 HUMANITARIAN ORGANIZATION. A SOCIAL DEVELOPMENT COMPANY THAT IS NOT
30 COMPLICIT IN THE DARFUR GENOCIDE SHALL NOT BE CONSIDERED TO BE A SCRUTINIZED
31 COMPANY.

32 16. "SOCIAL DEVELOPMENT COMPANY" MEANS A COMPANY WHOSE PRIMARY PURPOSE
33 IN SUDAN IS TO PROVIDE HUMANITARIAN GOODS OR SERVICES, INCLUDING MEDICINE OR
34 MEDICAL EQUIPMENT, AGRICULTURAL SUPPLIES OR INFRASTRUCTURE, EDUCATIONAL
35 OPPORTUNITIES, JOURNALISM-RELATED ACTIVITIES, INFORMATION OR INFORMATION
36 MATERIALS, SPIRITUAL-RELATED ACTIVITIES, SERVICES OF A PURELY CLERICAL OR
37 REPORTING NATURE, FOOD, CLOTHING OR GENERAL CONSUMER GOODS THAT ARE UNRELATED
38 TO OIL-RELATED ACTIVITIES, MINERAL EXTRACTION ACTIVITIES OR POWER PRODUCTION
39 ACTIVITIES.

40 17. "SUBSTANTIAL ACTION" MEANS ADOPTING, PUBLICIZING AND IMPLEMENTING A
41 FORMAL PLAN TO CEASE SCRUTINIZED BUSINESS OPERATIONS WITHIN ONE YEAR AND TO
42 REFRAIN FROM ANY SUCH NEW BUSINESS OPERATIONS, AND UNDERTAKING SIGNIFICANT
43 HUMANITARIAN EFFORTS IN CONJUNCTION WITH AN INTERNATIONAL ORGANIZATION, THE
44 GOVERNMENT OF SUDAN, THE REGIONAL GOVERNMENT OF SOUTHERN SUDAN OR A NONPROFIT
45 ENTITY AND EVALUATED AND CERTIFIED BY AN INDEPENDENT THIRD PARTY TO BE

1 SUBSTANTIAL IN RELATIONSHIP TO THE COMPANY'S SUDAN BUSINESS OPERATIONS AND OF
2 BENEFIT TO ONE OR MORE MARGINALIZED POPULATIONS OF SUDAN OR, THROUGH
3 ENGAGEMENT WITH THE GOVERNMENT OF SUDAN, MATERIALLY IMPROVING CONDITIONS FOR
4 THE GENOCIDALLY VICTIMIZED POPULATION IN DARFUR.

5 35-392. Identification of companies

6 A. WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE EFFECTIVE DATE OF THIS
7 ARTICLE, THE PUBLIC FUND SHALL MAKE REASONABLE EFFORTS TO IDENTIFY ALL
8 SCRUTINIZED COMPANIES IN WHICH THE PUBLIC FUND HAS DIRECT HOLDINGS. SUCH
9 EFFORTS SHALL INCLUDE THE FOLLOWING:

10 1. REVIEWING AND RELYING, AS APPROPRIATE IN THE PUBLIC FUND'S
11 JUDGMENT, ON PUBLICLY AVAILABLE INFORMATION REGARDING COMPANIES WITH BUSINESS
12 OPERATIONS IN SUDAN, INCLUDING INFORMATION PROVIDED BY NONPROFIT
13 ORGANIZATIONS, RESEARCH FIRMS, INTERNATIONAL ORGANIZATIONS AND GOVERNMENT
14 ENTITIES.

15 2. CONTACTING ASSET MANAGERS CONTRACTED BY THE PUBLIC FUND THAT INVEST
16 IN COMPANIES WITH BUSINESS OPERATIONS IN SUDAN.

17 3. CONTACTING OTHER INSTITUTIONAL INVESTORS THAT HAVE DIVESTED FROM OR
18 ENGAGED WITH COMPANIES THAT HAVE BUSINESS OPERATIONS IN SUDAN.

19 B. BEFORE THE FIRST MEETING OF THE PUBLIC FUND FOLLOWING THE ONE
20 HUNDRED EIGHTY-DAY PERIOD, THE PUBLIC FUND SHALL ASSEMBLE ALL IDENTIFIED
21 SCRUTINIZED COMPANIES INTO A SCRUTINIZED COMPANIES LIST.

22 C. THE PUBLIC FUND SHALL UPDATE THE SCRUTINIZED COMPANIES LIST ON AN
23 ANNUAL BASIS BASED ON INFORMATION FROM THOSE ENTITIES LISTED IN SUBSECTION A.

24 35-393. Required actions

25 A. THE PUBLIC FUND SHALL ADHERE TO THE FOLLOWING PROCEDURES FOR
26 COMPANIES ON THE SCRUTINIZED COMPANIES LIST ON AN ANNUAL BASIS:

27 1. THE PUBLIC FUND SHALL MAKE REASONABLE EFFORTS TO DETERMINE THE
28 COMPANIES ON THE SCRUTINIZED COMPANIES LIST IN WHICH THE PUBLIC FUND OWNS
29 DIRECT HOLDINGS.

30 2. FOR EACH COMPANY IDENTIFIED PURSUANT TO PARAGRAPH 1 WITH ONLY
31 INACTIVE BUSINESS OPERATIONS, THE PUBLIC FUND SHALL SEND A WRITTEN NOTICE
32 INFORMING THE COMPANY OF THIS ARTICLE AND ENCOURAGING IT TO CONTINUE TO
33 REFRAIN FROM INITIATING ACTIVE BUSINESS OPERATIONS IN SUDAN UNTIL IT IS ABLE
34 TO AVOID SCRUTINIZED BUSINESS OPERATIONS. THE PUBLIC FUND SHALL CONTINUE
35 SUCH CORRESPONDENCE ON AN ANNUAL BASIS.

36 3. FOR EACH COMPANY NEWLY IDENTIFIED PURSUANT TO PARAGRAPH 1 WITH
37 ACTIVE BUSINESS OPERATIONS, THE PUBLIC FUND SHALL SEND A WRITTEN NOTICE
38 INFORMING THE COMPANY OF ITS SCRUTINIZED COMPANY STATUS AND THAT IT MAY
39 BECOME SUBJECT TO DIVESTMENT BY THE PUBLIC FUND. THE NOTICE SHALL OFFER THE
40 COMPANY THE OPPORTUNITY TO CLARIFY ITS SUDAN-RELATED ACTIVITIES AND SHALL
41 ENCOURAGE THE COMPANY, WITHIN ONE HUNDRED EIGHTY DAYS, TO EITHER CEASE ITS
42 SCRUTINIZED BUSINESS OPERATIONS OR CONVERT SUCH OPERATIONS TO INACTIVE
43 BUSINESS OPERATIONS IN ORDER TO AVOID QUALIFYING FOR DIVESTMENT BY THE PUBLIC
44 FUND.

1 4. IF, WITHIN ONE HUNDRED EIGHTY DAYS FOLLOWING THE PUBLIC FUND'S
2 FIRST ENGAGEMENT WITH A COMPANY PURSUANT TO PARAGRAPH 3, THAT COMPANY CEASES
3 SCRUTINIZED BUSINESS OPERATIONS, THE COMPANY SHALL BE REMOVED FROM THE
4 SCRUTINIZED COMPANIES LIST AND THIS SECTION SHALL CEASE TO APPLY TO IT UNLESS
5 IT RESUMES SCRUTINIZED BUSINESS OPERATIONS. IF, WITHIN ONE HUNDRED EIGHTY
6 DAYS AFTER THE PUBLIC FUND'S FIRST ENGAGEMENT, THE COMPANY CONVERTS ITS
7 SCRUTINIZED ACTIVE BUSINESS OPERATIONS TO INACTIVE BUSINESS OPERATIONS, THE
8 COMPANY IS SUBJECT TO PARAGRAPH 2.

9 5. IF, AFTER ONE HUNDRED EIGHTY DAYS FOLLOWING THE PUBLIC FUND'S FIRST
10 ENGAGEMENT WITH A COMPANY PURSUANT TO PARAGRAPH 3, THE COMPANY CONTINUES TO
11 HAVE SCRUTINIZED ACTIVE BUSINESS OPERATIONS, AND ONLY WHILE THAT COMPANY
12 CONTINUES TO HAVE SCRUTINIZED ACTIVE BUSINESS OPERATIONS, THE PUBLIC FUND
13 SHALL SELL, REDEEM, DIVEST OR WITHDRAW ALL PUBLICLY TRADED SECURITIES OF THE
14 COMPANY ACCORDING TO THE FOLLOWING SCHEDULE:

15 (a) AT LEAST FIFTY PER CENT OF ASSETS SHALL BE REMOVED FROM THE PUBLIC
16 FUND'S ASSETS UNDER MANAGEMENT WITHIN TWELVE MONTHS AFTER THE COMPANY'S MOST
17 RECENT APPEARANCE ON THE SCRUTINIZED COMPANIES LIST.

18 (b) ONE HUNDRED PER CENT OF ASSETS SHALL BE REMOVED FROM THE PUBLIC
19 FUND'S ASSETS UNDER MANAGEMENT WITHIN TWENTY-FOUR MONTHS AFTER THE COMPANY'S
20 MOST RECENT APPEARANCE ON THE SCRUTINIZED COMPANIES LIST.

21 (c) IF A COMPANY THAT CEASED SCRUTINIZED ACTIVE BUSINESS OPERATIONS
22 FOLLOWING ENGAGEMENT PURSUANT TO PARAGRAPH 3 RESUMES SUCH OPERATIONS,
23 SUBDIVISION (a) SHALL IMMEDIATELY APPLY, AND THE PUBLIC FUND SHALL SEND A
24 WRITTEN NOTICE TO THE COMPANY. THE COMPANY SHALL ALSO BE IMMEDIATELY
25 REINTRODUCED ONTO THE SCRUTINIZED COMPANIES LIST.

26 6. THE PUBLIC FUND SHALL NOT ACQUIRE SECURITIES OF COMPANIES ON THE
27 SCRUTINIZED COMPANIES LIST THAT HAVE ACTIVE BUSINESS OPERATIONS, EXCEPT AS
28 PROVIDED IN PARAGRAPHS 7 AND 8.

29 7. A COMPANY THAT THE UNITED STATES GOVERNMENT AFFIRMATIVELY DECLARES
30 TO BE EXCLUDED FROM ITS PRESENT OR ANY FUTURE FEDERAL SANCTIONS REGIME
31 RELATING TO SUDAN SHALL NOT BE SUBJECT TO DIVESTMENT OR INVESTMENT
32 PROHIBITION PURSUANT TO PARAGRAPHS 5 AND 6.

33 8. NOTWITHSTANDING ANY OTHER LAW, PARAGRAPHS 5 AND 6 DO NOT APPLY TO
34 INDIRECT HOLDINGS IN ACTIVELY OR PASSIVELY MANAGED INVESTMENT FUNDS OR DIRECT
35 HOLDINGS IN PASSIVELY MANAGED INVESTMENT FUNDS. THE PUBLIC FUND SHALL
36 ANNUALLY SUBMIT LETTERS TO THE MANAGERS OF SUCH INVESTMENT FUNDS CONTAINING
37 COMPANIES WITH SCRUTINIZED ACTIVE BUSINESS OPERATIONS REQUESTING THAT THEY
38 CONSIDER REMOVING SUCH COMPANIES FROM THE FUND OR CREATE A SIMILAR ACTIVELY
39 OR PASSIVELY MANAGED FUND DEVOID OF SUCH COMPANIES. IF THE MANAGER CREATES A
40 SIMILAR FUND, THE USE OF WHICH WOULD NOT REQUIRE INCREASED FEES ON THE PART
41 OF THE PUBLIC FUND, THE PUBLIC FUND SHALL REPLACE ALL APPLICABLE INVESTMENTS
42 WITH INVESTMENTS IN THE SIMILAR FUND IN AN EXPEDITED TIME FRAME CONSISTENT
43 WITH PRUDENT INVESTING STANDARDS.

44 B. FOR THE PURPOSES OF THIS SECTION, PRIVATE EQUITY FUNDS SHALL BE
45 DEEMED TO BE ACTIVELY MANAGED INVESTMENT FUNDS.

35-394. Reporting

A. THE PUBLIC FUND SHALL SUBMIT A PUBLICLY AVAILABLE REPORT TO THE SENATE FINANCIAL INSTITUTIONS, INSURANCE AND RETIREMENT COMMITTEE AND THE HOUSE OF REPRESENTATIVES PUBLIC INSTITUTIONS AND RETIREMENT COMMITTEE, OR THEIR SUCCESSOR COMMITTEES, AND THE CENTRAL PROCUREMENT OFFICER OF THIS STATE THAT INCLUDES THE SCRUTINIZED COMPANIES LIST WITHIN THIRTY DAYS AFTER THE LIST IS FIRST CREATED.

B. ON OR BEFORE JANUARY 31 OF EACH YEAR, THE PUBLIC FUND SHALL SUBMIT A PUBLICLY AVAILABLE REPORT TO THE SENATE FINANCIAL INSTITUTIONS, INSURANCE AND RETIREMENT COMMITTEE AND THE HOUSE OF REPRESENTATIVES PUBLIC INSTITUTIONS AND RETIREMENT COMMITTEE, OR THEIR SUCCESSOR COMMITTEES, THAT INCLUDES ALL OF THE FOLLOWING:

1. A SUMMARY OF CORRESPONDENCE WITH COMPANIES ENGAGED BY THE PUBLIC FUND PURSUANT TO SECTION 35-393, SUBSECTION A, PARAGRAPHS 2 AND 3.

2. ALL INVESTMENTS SOLD, REDEEMED, DIVESTED OR WITHDRAWN IN COMPLIANCE WITH SECTION 35-393, PARAGRAPH 5.

3. ALL PROHIBITED INVESTMENTS UNDER SECTION 35-393, SUBSECTION A, PARAGRAPH 6.

4. ANY PROGRESS MADE UNDER SECTION 35-393, SUBSECTION A, PARAGRAPH 8.

5. ALL INVESTMENT COSTS ASSOCIATED WITH COMPLIANCE WITH SECTION 35-393.

35-395. Other legal obligations; immunity

A. WITH RESPECT TO ACTIONS TAKEN IN COMPLIANCE WITH THIS ARTICLE, INCLUDING ALL GOOD FAITH DETERMINATIONS REGARDING COMPANIES AS REQUIRED BY THIS ARTICLE, A PUBLIC FUND, ITS BOARD OF DIRECTORS AND INDIVIDUAL BOARD MEMBERS, AGENTS, ATTORNEYS, TRUSTEES, OFFICERS, EMPLOYEES, CUSTODIANS, FIDUCIARIES, RESEARCH FIRMS AND INVESTMENT MANAGERS UNDER CONTRACT WITH THE PUBLIC FUND ARE EXEMPT FROM ANY CONFLICTING STATUTORY OR COMMON LAW OBLIGATIONS, INCLUDING ANY SUCH OBLIGATIONS WITH RESPECT TO CHOICE OF ASSET MANAGERS, INVESTMENT FUNDS OR INVESTMENTS FOR THE PUBLIC FUND'S SECURITIES PORTFOLIOS.

B. WITH RESPECT TO ALL ACTIONS TAKEN IN GOOD FAITH COMPLIANCE WITH THIS ARTICLE, A PUBLIC FUND, ITS BOARD OF DIRECTORS AND INDIVIDUAL BOARD MEMBERS, AGENTS, ATTORNEYS, TRUSTEES, OFFICERS, EMPLOYEES, CUSTODIANS, FIDUCIARIES, RESEARCH FIRMS AND INVESTMENT MANAGERS UNDER CONTRACT WITH THE PUBLIC FUND ARE IMMUNE FROM ANY LIABILITY.

C. A PUBLIC FUND, ITS BOARD OF DIRECTORS AND INDIVIDUAL BOARD MEMBERS, AGENTS, ATTORNEYS, TRUSTEES, OFFICERS, EMPLOYEES, CUSTODIANS, FIDUCIARIES, RESEARCH FIRMS AND INVESTMENT MANAGERS UNDER CONTRACT WITH THE PUBLIC FUND ARE INDEMNIFIED FROM THE STATE GENERAL FUND AND HELD HARMLESS BY THIS STATE FROM ALL CLAIMS, DEMANDS, SUITS, ACTIONS, DAMAGES, JUDGMENTS, COSTS, CHARGES AND EXPENSES, INCLUDING COSTS AND ATTORNEY FEES, AND AGAINST ALL LIABILITY, LOSSES AND DAMAGES OF ANY NATURE THAT THE PUBLIC FUND, BOARD OF DIRECTORS AND INDIVIDUAL BOARD MEMBERS, AGENTS, ATTORNEYS, TRUSTEES, OFFICERS, EMPLOYEES, CUSTODIANS, FIDUCIARIES, RESEARCH FIRMS AND INVESTMENT MANAGERS UNDER

1 CONTRACT WITH THE PUBLIC FUND MAY AT ANY TIME SUSTAIN BY REASON OF ANY
2 DECISION TO RESTRICT, REDUCE OR ELIMINATE INVESTMENTS MADE IN GOOD FAITH
3 COMPLIANCE WITH THIS ARTICLE.

4 35-396. Reinvestment in certain companies with scrutinized
5 active business operations

6 NOTWITHSTANDING ANY OTHER LAW, THE PUBLIC FUND MAY CEASE DIVESTING FROM
7 CERTAIN SCRUTINIZED COMPANIES PURSUANT TO SECTION 35-393, SUBSECTION A,
8 PARAGRAPH 5 OR REINVEST IN CERTAIN SCRUTINIZED COMPANIES FROM WHICH IT
9 DIVESTED PURSUANT TO SECTION 35-393, SUBSECTION A, PARAGRAPH 5 IF A
10 PREPONDERANCE OF THE EVIDENCE SHOWS THAT THE VALUE OF THE ASSETS OF THE
11 AFFECTED ACCOUNT OF THE PUBLIC FUND BECOMES EQUAL TO OR LESS THAN NINETY-NINE
12 AND THREE-QUARTERS PER CENT OF THE HYPOTHETICAL VALUE OF THE ASSETS OF THE
13 AFFECTED ACCOUNT OF THE PUBLIC FUND ASSUMING NO DIVESTMENT FOR ANY COMPANY
14 HAD OCCURRED UNDER SECTION 35-393, SUBSECTION A, PARAGRAPH 5. FOR ANY
15 CESSATION OF DIVESTMENT, REINVESTMENT OR SUBSEQUENT ONGOING INVESTMENT
16 AUTHORIZED BY THIS SECTION, THE PUBLIC FUND SHALL PROVIDE A WRITTEN REPORT TO
17 THE SENATE FINANCIAL INSTITUTIONS, INSURANCE AND RETIREMENT COMMITTEE AND THE
18 HOUSE OF REPRESENTATIVES PUBLIC INSTITUTIONS AND RETIREMENT COMMITTEE, OR
19 THEIR SUCCESSOR COMMITTEES, IN ADVANCE OF INITIAL REINVESTMENT, UPDATED
20 ANNUALLY THEREAFTER AS APPLICABLE, SETTING FORTH THE REASONS AND
21 JUSTIFICATION, SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE, FOR ITS
22 DECISIONS TO CEASE DIVESTMENT, REINVEST OR REMAIN INVESTED IN COMPANIES WITH
23 SCRUTINIZED ACTIVE BUSINESS OPERATIONS. THIS SECTION HAS NO APPLICATION TO
24 REINVESTMENT IN COMPANIES ON THE GROUND THAT THEY HAVE CEASED TO HAVE
25 SCRUTINIZED ACTIVE BUSINESS OPERATIONS.

26 35-397. Prohibition on government contracts

27 A. THIS STATE AND POLITICAL SUBDIVISIONS OF THIS STATE SHALL ENSURE
28 THAT EACH CONTRACT ENTERED INTO BY THIS STATE OR A POLITICAL SUBDIVISION OF
29 THIS STATE FOR THE PROCUREMENT OF GOODS OR SERVICES INCLUDES A CLAUSE THAT
30 REQUIRES THE CONTRACTOR TO CERTIFY TO THE CONTRACTING OFFICER THAT THE
31 CONTRACTOR DOES NOT HAVE SCRUTINIZED BUSINESS OPERATIONS IN SUDAN.

32 B. IF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE DETERMINES
33 THAT THE CONTRACTOR HAS SUBMITTED A FALSE CERTIFICATION UNDER SUBSECTION A OF
34 THIS SECTION, THE STATE OR POLITICAL SUBDIVISION MAY IMPOSE REMEDIES AS
35 PROVIDED BY LAW. ON THE DETERMINATION OF A FALSE CERTIFICATION UNDER
36 SUBSECTION A OF THIS SECTION, THIS STATE OR A POLITICAL SUBDIVISION OF THIS
37 STATE MAY TERMINATE A COVERED CONTRACT.

38 C. THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE SHALL NOTIFY
39 THE CENTRAL PROCUREMENT OFFICER OF THIS STATE OF ANY CONTRACTOR THAT HAS
40 SUBMITTED A FALSE CERTIFICATION UNDER SUBSECTION A OF THIS SECTION.

41 D. BASED ON INFORMATION REPORTED IN SECTION 35-394, SUBSECTION A, THE
42 CENTRAL PROCUREMENT OFFICER OF THIS STATE SHALL COMPILE AND MAKE AVAILABLE,
43 ON AN ANNUAL BASIS, A LIST OF PARTIES EXCLUDED FROM ARIZONA PROCUREMENT.

1 E. BASED ON INFORMATION REPORTED IN SECTION 35-394, SUBSECTION A, THE
2 CENTRAL PROCUREMENT OFFICER OF THIS STATE MAY SUSPEND A CONTRACTOR FROM
3 ELIGIBILITY FOR STATE OR POLITICAL SUBDIVISION CONTRACTS ON THE NOTIFICATION
4 FROM THE STATE OR POLITICAL SUBDIVISION OF A FALSE CERTIFICATION UNDER
5 SUBSECTION A OF THIS SECTION. THE SUSPENSION PERIOD SHALL NOT EXCEED THREE
6 YEARS.

7 F. THIS SECTION DOES NOT LIMIT THE USE OF OTHER REMEDIES AVAILABLE TO
8 THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE OR ANY OTHER OFFICIAL OF
9 THIS STATE ON THE BASIS OF A FALSE CERTIFICATION UNDER SUBSECTION A OF THIS
10 SECTION.

11 G. THE GOVERNOR MAY WAIVE THE REQUIREMENT OF SUBSECTION A OF THIS
12 SECTION ON A CASE-BY-CASE BASIS IF THE GOVERNOR DETERMINES AND CERTIFIES IN
13 WRITING TO THE CENTRAL PROCUREMENT OFFICER OF THIS STATE THAT IT IS IN THE
14 STATE'S BEST INTEREST TO DO SO.

15 H. WITHIN ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION, THE
16 CENTRAL PROCUREMENT OFFICER OF THIS STATE SHALL PROVIDE A WRITTEN REPORT TO
17 THE SENATE FINANCIAL INSTITUTIONS, INSURANCE AND RETIREMENT COMMITTEE AND THE
18 HOUSE OF REPRESENTATIVES PUBLIC INSTITUTIONS AND RETIREMENT COMMITTEE, OR
19 THEIR SUCCESSOR COMMITTEES, AND THE GOVERNOR ON THE ACTIONS TAKEN UNDER THIS
20 SECTION.

21 Sec. 2. Delayed repeal; condition; notice

22 A. Title 35, chapter 2, article 7, Arizona Revised Statutes, as added
23 by this act, is repealed on the earliest date that any of the following
24 occurs:

25 1. The United States Congress or the President of the United States
26 declares that the Darfur genocide has been halted.

27 2. The United States revokes all sanctions imposed against the
28 government of Sudan.

29 3. The United States Congress or the President of the United States
30 declares that the government of Sudan has honored its commitments to abide by
31 the United Nations security council resolution 1769 (2007), cease attacks on
32 civilians, demobilize and demilitarize the Janjaweed and associated militias,
33 grant free and unfettered access for deliveries of humanitarian assistance
34 and allow for the safe and voluntary return of refugees and internally
35 displaced persons.

36 4. The United States Congress or the President of the United States,
37 through legislation or executive order, declares that divestment of the type
38 provided for in this act interferes with conduct of United States foreign
39 policy.

40 5. July 1, 2013.

41 B. The director of the Arizona state retirement system shall notify in
42 writing the director of the Arizona Legislative Council of this date.

1 Sec. 3. Legislative findings and declarations

2 The legislature finds and declares that:

3 1. On July 23, 2004, the United States Congress declared that
4 "atrocities unfolding in Darfur, Sudan are genocide".

5 2. On September 9, 2004, Secretary of State Colin L. Powell told the
6 United States senate foreign relations committee that "genocide has occurred
7 and may still be occurring in Darfur" and "the government of Sudan and
8 Janjaweed bear responsibility".

9 3. On September 21, 2004, addressing the United Nations General
10 Assembly, President George W. Bush affirmed the Secretary of State's findings
11 and stated, "at this hour, the world is witnessing terrible suffering and
12 horrible crimes in the Darfur region of Sudan, crimes my government has
13 concluded are genocide".

14 4. On September 26, 2006, the United States house of representatives
15 stated that "an estimated 300,000 to 400,000 people have been killed by the
16 government of Sudan and its Janjaweed allies since the [Darfur] crisis began
17 in 2003, more than 2,000,000 people have been displaced from their homes, and
18 more than 250,000 people from Darfur remain in refugee camps in Chad".

19 5. The Darfur crisis represents the first time the United States
20 government has labeled ongoing atrocities a genocide, imposing sanctions
21 against the government of Sudan since 1997.

22 6. Since 1993, the United States Secretary of State has determined
23 that the government of Sudan has repeatedly provided support for acts of
24 international terrorism thereby restricting United States assistance, defense
25 exports and sales and financial and other transactions with the government of
26 Sudan.

27 7. According to the former chairperson of the United States Securities
28 and Exchange Commission, "the fact that a foreign company is doing material
29 business with a country, government, or entity on [the United States Treasury
30 Department's Office of Foreign Assets Control's] sanctions list is, in the
31 SEC staff's view, substantially likely to be significant to a reasonable
32 investor's decision about whether to invest in a company".

33 8. A 2006 United States house of representatives report states that "a
34 company's association with sponsors of terrorism and human rights abuses, no
35 matter how large or small, can have a materially adverse result on a public
36 company's operations, financial condition, earnings, and stock prices, all of
37 which can negatively affect the value of an investment".

38 9. On December 31, 2007, President George W. Bush signed the Sudan
39 accountability and divestment act of 2007, effectively authorizing state and
40 local governments to divest from companies that support the Sudanese
41 government at the expense of marginalized populations in Sudan.

42 10. The current Sudan divestment movement encompasses nearly one
43 hundred universities, cities, states and private pension plans, with
44 companies facing widespread divestment presenting further material risk to
45 remaining investors.

1 11. It is the desire of the Legislature, with respect to investment
2 resources in its control and to the extent reasonable, with due consideration
3 for, among other things, return on investment, on behalf of itself and its
4 investment beneficiaries not to support businesses, governments or countries
5 that support the practice of genocide.

6 12. The divestment of public funds from certain companies is a measure
7 that should be employed sparingly and judiciously, and a congressional and
8 presidential declaration of genocide satisfies this high threshold.