

110TH CONGRESS
1ST SESSION

S. 831

To authorize States and local governments to prohibit the investment of State assets in any company that has a qualifying business relationship with Sudan.

IN THE SENATE OF THE UNITED STATES

MARCH 8, 2007

Mr. DURBIN (for himself, Mr. CORNYN, Mr. SPECTER, Mr. LIEBERMAN, and Mr. OBAMA) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To authorize States and local governments to prohibit the investment of State assets in any company that has a qualifying business relationship with Sudan.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sudan Divestment Au-
5 thorization Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) On July 22, 2004, the Senate and the
9 House of Representatives passed concurrent resolu-

1 tions declaring that “the atrocities unfolding in
2 Darfur, Sudan, are genocide”.

3 (2) On June 30, 2005, President Bush affirmed
4 that “the violence in Darfur region is clearly geno-
5 cide [and t]he human cost is beyond calculation”.

6 (3) The Darfur Peace and Accountability Act of
7 2006, which was signed into law on October 13,
8 2006, reaffirms that “the genocide unfolding in the
9 Darfur region of Sudan is characterized by acts of
10 terrorism and atrocities directed against civilians, in-
11 cluding mass murder, rape, and sexual violence com-
12 mitted by the Janjaweed and associated militias with
13 the complicity and support of the National Congress
14 Party-led faction of the Government of Sudan”.

15 (4) Several States and governmental entities,
16 through legislation and other means, have expressed
17 their desire, or are considering measures—

18 (A) to divest any equity in, or to refuse to
19 provide debt capital to, certain companies that
20 operate in Sudan; and

21 (B) to disassociate themselves and the
22 beneficiaries of their public pension and endow-
23 ment funds from directly or indirectly sup-
24 porting the Darfur genocide.

1 (5) Efforts of States and other governmental
2 entities to divest their pension funds and other in-
3 vestments of companies that operate in Sudan build
4 upon the legal and historical legacy of the anti-
5 apartheid movement in the United States, a move-
6 ment which contributed to the end of apartheid in
7 South Africa and the holding of free elections in
8 that country in 1994.

9 (6) Although divestment measures should be
10 employed judiciously and sparingly, declarations of
11 genocide by Congress and the President justify such
12 action.

13 **SEC. 3. SENSE OF CONGRESS.**

14 It is the sense of Congress that—

15 (1) States and other governmental entities
16 should be permitted to provide for the divestment of
17 certain State assets within their jurisdictions as an
18 expression of opposition to the genocidal actions and
19 policies of the Government of Sudan; and

20 (2) a divestment measure authorized under sec-
21 tion 5 does not violate the United States Constitu-
22 tion because such a measure—

23 (A) is not preempted under the Supremacy
24 Clause;

1 (B) does not constitute an undue burden
2 on foreign or interstate commerce under the
3 Commerce Clause; and

4 (C) does not intrude on, or interfere with,
5 the conduct of foreign affairs of the United
6 States.

7 **SEC. 4. DEFINITIONS.**

8 In this Act:

9 (1) ASSETS.—The term “assets” means any
10 public pension, retirement, annuity, or endowment
11 fund, or similar instrument, managed by a State.

12 (2) COMPANY.—The term “company” means
13 any natural person, legal person, sole proprietorship,
14 organization, association, corporation, partnership,
15 firm, joint venture, franchisor, franchisee, financial
16 institution, utility, public franchise, trust, enterprise,
17 limited partnership, limited liability partnership, lim-
18 ited liability company, or other business entity or as-
19 sociation, including all wholly-owned subsidiaries,
20 majority-owned subsidiaries, parent companies, or
21 affiliates of such business entities or associations.

22 (3) COMPANY WITH A QUALIFYING BUSINESS
23 RELATIONSHIP WITH SUDAN.—The term “company
24 with a qualifying business relationship with
25 Sudan”—

1 (A) means any company—

2 (i) that is wholly or partially managed
3 or controlled, either directly or indirectly,
4 by the Government of Sudan or any of its
5 agencies, including political units and sub-
6 divisions;

7 (ii) that is established or organized
8 under the laws of the Government of
9 Sudan;

10 (iii) whose domicile or principal place
11 of business is in Sudan;

12 (iv) that is engaged in business oper-
13 ations that provide revenue to the Govern-
14 ment of Sudan;

15 (v) that owns, maintains, sells, leases,
16 or controls property, assets, equipment, fa-
17 cilities, personnel, or any other apparatus
18 of business or commerce in Sudan, includ-
19 ing ownership or possession of real or per-
20 sonal property located in Sudan;

21 (vi) that transacts commercial busi-
22 ness, including the provision or obtaining
23 of goods or services, in Sudan;

24 (vii) that has distribution agreements
25 with, issues credits or loans to, or pur-

chases bonds of commercial paper issued
by—

(I) the Government of Sudan; or

(II) any company whose domicile
or principal place of business is in
Sudan;

(viii) that invests in—

(I) the Government of Sudan; or

(II) any company whose domicile
or principal place of business is in
Sudan; or

(ix) that is fined, penalized, or sanc-
tioned by the Office of Foreign Assets
Control of the Department of the Treasury
for violating any Federal rule or restriction
relating to Sudan after the date of the en-
actment of this Act; and

(B) does not include—

(i) nongovernmental organizations
(except agencies of Sudan), which—

(I) have consultative status with
the United Nations Economic and So-
cial Council; or

1 (II) have been accredited by a de-
 2 partment or specialized agency of the
 3 United Nations;

4 (ii) companies that operate in Sudan
 5 under a permit or other authority of the
 6 United States;

7 (iii) companies whose business activi-
 8 ties in Sudan are strictly limited to the
 9 provision of goods and services that are—

10 (I) intended to relieve human
 11 suffering;

12 (II) intended to promote welfare,
 13 health, religious, or spiritual activities;

14 (III) used for educational pur-
 15 poses;

16 (IV) used for humanitarian pur-
 17 poses; or

18 (V) used for journalistic activi-
 19 ties.

20 (4) GOVERNMENT OF SUDAN.—The term “Gov-
 21 ernment of Sudan”—

22 (A) means—

23 (i) the government in Khartoum,
 24 Sudan, which is led by the National Con-

gress Party (formerly known as the National Islamic Front); or

(ii) any successor government formed on or after the date of the enactment of this Act, including the Government of National Unity, established in 2005 as a result of the Comprehensive Peace Agreement for Sudan; and

(B) does not include the regional Government of Southern Sudan.

(5) STATE.—The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any department, agency, public university or college, county, city, village, or township of such governmental entity.

**SEC. 5. AUTHORIZATION FOR CERTAIN STATE AND LOCAL
DIVESTMENT MEASURES.**

(a) IN GENERAL.—Notwithstanding any other provision of law, any State may adopt measures to prohibit any investment of State assets in the Government of Sudan or in any company with a qualifying business relationship with Sudan, during any period in which the Government

1 of Sudan, or the officials of such government are subject
2 to sanctions authorized under—

3 (1) the Sudan Peace Act (Public Law 107–
4 245);

5 (2) the Comprehensive Peace in Sudan Act of
6 2004 (Public Law 108–497);

7 (3) the USA PATRIOT Improvement and Re-
8 authorization Act of 2005 (Public Law 109–177);

9 (4) the Darfur Peace and Accountability Act of
10 2006 (Public Law 109–344); or

11 (5) any other Federal law or executive order.

12 (b) APPLICABILITY.—Subsection (a) shall apply to
13 measures adopted by a State before, on, or after the date
14 of the enactment of this Act.

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