

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 468

Introduced by Chambers, 11

Read first time January 17, 2007

Committee: Nebraska Retirement Systems

A BILL

1 FOR AN ACT relating to state funds; to amend section 72-1239.01,
2 Reissue Revised Statutes of Nebraska; to provide duties
3 and responsibilities relating to public funds invested in
4 Sudan-related companies; to harmonize provisions; and to
5 repeal the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Legislature finds and declares that:

2 (1) On September 26, 2006, the United States House of
3 Representatives stated that "an estimated 300,000 to 400,000 people
4 have been killed by the government of Sudan and its Janjaweed
5 allies since the [Darfur] crisis began in 2003, more than 520
6 million people have been displaced from their homes, and more than
7 two hundred fifty thousand people from Darfur remain in refugee
8 camps in Chad";

9 (2) The atrocities in Sudan were labeled genocide by
10 President George W. Bush when addressing the United Nations General
11 Assembly, September 21, 2004, and by Secretary of State Colin
12 Powell when testifying before the United States Senate Foreign
13 Relations Committee on September 9, 2004;

14 (3) On December 7, 2004, Congress noted that the
15 genocidal policy in Darfur includes "systematic rape of thousands
16 of women and girls, the abduction of women and children, and the
17 destruction of hundreds of ethnic African villages, including the
18 poisoning of their wells and the plunder of their crops and cattle
19 upon which the people of such villages sustain themselves";

20 (4) The federal government has imposed sanctions against
21 the government of Sudan since 1997;

22 (5) In response to the financial risk posed by
23 investments in companies doing business with a terrorist-sponsoring
24 state such as Sudan, the Securities and Exchange Commission
25 established its Office of Global Security Risk to provide enhanced

1 disclosure of material information regarding such companies;

2 (6) The current Sudan divestment movement has been
3 embraced by various universities, cities, states, and private
4 pension plans; and

5 (7) It is the intent of the Legislature that the state
6 divest designated public funds from companies and entities that
7 provide significant practical support for the genocide occurring in
8 Sudan.

9 Sec. 2. For purposes of sections 1 to 8 of this act:

10 (1) Direct holdings in a company means all securities of
11 that company held directly by the State of Nebraska on behalf of
12 the public fund or in an account or fund in which the State of
13 Nebraska, on behalf of the public fund, owns all shares, units, or
14 interests;

15 (2) Indirect holdings in a company means all securities
16 of that company held in an account or fund, such as a mutual
17 fund or other commingled fund, managed by one or more persons not
18 employed by the State of Nebraska, in which the State of Nebraska,
19 on behalf of the public fund, owns shares, units, or interests
20 together with other investors not subject to the provisions of
21 sections 1 to 8 of this act.

22 (3) Nonconforming company means a company that:

23 (a) Has a business relationship with the government of
24 Sudan, a business relationship with a project created by the
25 government of Sudan, or owns companies that are affiliated with a

1 project created by the government of Sudan;

2 (b) Provides little or no benefit to the disadvantaged
3 population of Sudan;

4 (c) Has not developed a substantial business-practice
5 policy that acknowledges and addresses the fact that the company
6 is contributing, whether intentionally or inadvertently, to the
7 Sudanese government's genocidal capacity;

8 (d) Is unwilling to constructively engage with
9 shareholders on the Sudan matter; and

10 (e) Derives at least one-half percent of its annual
11 revenue from Sudan-related operations, activities, and investments;
12 and

13 (4) Public fund means those state funds administered by
14 the State of Nebraska and invested by the Nebraska Investment
15 Council and the state investment officer pursuant to the Nebraska
16 State Funds Investment Act except for:

17 (a) Those funds in which investment and asset allocation
18 decisions are made by the plan participant, rather than by the
19 Nebraska Investment Council, including assets of (i) the Nebraska
20 educational savings plan trust created pursuant to sections 85-1801
21 to 85-1814 and (ii) the retirement systems administered by the
22 Public Employees Retirement Board; and

23 (b) The assets of the University Trust Fund created
24 pursuant to section 85-123.01.

25 Sec. 3. (1) Within six months after the effective date

1 of this act, the Nebraska Investment Council shall use reasonable
2 efforts to compile a list of nonconforming companies in which
3 the public fund has direct holdings. The council may contract
4 with a third party to assist in determining which companies are
5 nonconforming companies, the extent to which the public fund
6 has direct holdings in nonconforming companies, and any other
7 compliance-related matter.

8 (2) The council shall each year update the list of
9 nonconforming companies.

10 Sec. 4. (1) Within one year after the effective date
11 of this act, the Nebraska Investment Council shall divest the
12 public fund of all publicly-traded securities of all nonconforming
13 companies.

14 (2) At no time after the effective date of this act
15 shall the council acquire on behalf of the public fund any
16 publicly-traded securities of nonconforming companies, except as
17 provided in this section.

18 (3) No company that the United States government
19 affirmatively declares to be excluded from its federal sanctions
20 regime relating to Sudan shall be subject to divestment or the
21 investment prohibition pursuant to this section.

22 (4) Notwithstanding anything in sections 1 to 8 of this
23 act to the contrary, subsections (1) and (2) of this section
24 shall not apply to (a) indirect holdings in actively managed
25 investment funds, (b) passively managed index separate accounts,

1 or (c) passively managed indirect holdings. For purposes of this
2 section, actively managed investment funds includes private equity
3 funds, private equity fund-of-funds, private real estate funds, and
4 private real estate fund-of-funds.

5 Sec. 5. The Nebraska Investment Council shall each year
6 report and certify to the Legislature that the public fund is in
7 compliance with the requirements of sections 1 to 8 of this act.

8 Sec. 6. With respect to actions taken in compliance
9 with sections 1 to 8 of this act, including all good-faith
10 determinations, the Nebraska Investment Council and the state
11 investment officer shall be exempt from any conflicting statutory
12 or common-law obligations, including any such obligations with
13 respect to duties imposed by the Nebraska State Funds Investment
14 Act.

15 Sec. 7. Notwithstanding anything in sections 1 to 8 of
16 this act to the contrary, the public fund shall be permitted
17 to cease divesting from nonconforming companies and reinvest in
18 nonconforming companies from which it divested if the value for all
19 assets of the public fund becomes equal to or less than ninety-nine
20 and one-half percent of the hypothetical value of all assets of
21 the public fund assuming no divestment for any company had occurred
22 under section 4 of this act. For any cessation of divestment,
23 reinvestment, or subsequent ongoing investment authorized by this
24 section, the Nebraska Investment Council shall provide notice
25 to the Legislature of such activity in its annual report and

1 certification required pursuant to section 5 of this act.

2 Sec. 8. The Attorney General shall enforce the provisions
3 of sections 1 to 8 of this act pursuant to state law.

4 Sec. 9. Section 72-1239.01, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 72-1239.01 (1) (a) The appointed members of the Nebraska
7 Investment Council shall have the responsibility for the investment
8 management of the assets of the retirement systems administered
9 by the Public Employees Retirement Board as provided in section
10 84-1503 and the assets of the Nebraska educational savings plan
11 trust created pursuant to sections 85-1801 to 85-1814. The
12 appointed members shall be deemed fiduciaries with respect to
13 the investment of the assets of the retirement systems and of the
14 Nebraska educational savings plan trust and shall be held to the
15 standard of conduct of a fiduciary specified in subsection (3)
16 of this section. The nonvoting, ex officio members of the council
17 shall not be deemed fiduciaries.

18 (b) As fiduciaries, the appointed members of the council
19 and the state investment officer shall discharge their duties
20 with respect to the assets of the retirement systems and of the
21 Nebraska educational savings plan trust solely in the interests
22 of the members and beneficiaries of the retirement systems or the
23 interests of the participants and beneficiaries of the Nebraska
24 educational savings plan trust, as the case may be, for the
25 exclusive purposes of providing benefits to members, members'

1 beneficiaries, participants, and participants' beneficiaries and
2 defraying reasonable expenses incurred within the limitations and
3 according to the powers, duties, and purposes prescribed by law.

4 (2) (a) The appointed members of the Nebraska Investment
5 Council shall have the responsibility for the investment management
6 of the assets of state funds. The appointed members shall be deemed
7 fiduciaries with respect to the investment of the assets of state
8 funds and shall be held to the standard of conduct of a fiduciary
9 specified in subsection (3) of this section. The nonvoting, ex
10 officio members of the council shall not be deemed fiduciaries.

11 (b) As fiduciaries, the appointed members of the council
12 and the state investment officer shall discharge their duties with
13 respect to the assets of state funds solely in the interests of the
14 citizens of the state within the limitations and according to the
15 powers, duties, and purposes prescribed by law.

16 (3) The appointed members of the council shall act with
17 the care, skill, prudence, and diligence under the circumstances
18 then prevailing that a prudent person acting in like capacity
19 and familiar with such matters would use in the conduct of an
20 enterprise of a like character and with like aims by diversifying
21 the investments of the assets of the retirement systems, the
22 Nebraska educational savings plan trust, and state funds so
23 as to minimize risk of large losses, unless in light of such
24 circumstances it is clearly prudent not to do so. No assets of
25 the retirement systems or the Nebraska educational savings plan

1 trust shall be invested or reinvested if the sole or primary
2 investment objective is for economic development or social purposes
3 or objectives.

4 (4) Notwithstanding the provisions of subsections (1)
5 through (3) of this section, the appointed members of the council
6 shall consider noneconomic factors as provided in sections 1 to 8
7 of this act in carrying out their fiduciary duties.

8 Sec. 10. Original section 72-1239.01, Reissue Revised
9 Statutes of Nebraska, is repealed.