

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4854

A bill to amend 1965 PA 314, entitled
"Public employee retirement system investment act,"
(MCL 38.1132 to 38.1140m) by adding section 13c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 13C. (1) AS USED IN THIS SECTION:

2 (A) "ACTIVE BUSINESS OPERATIONS" MEANS ALL BUSINESS OPERATIONS
3 THAT ARE NOT INACTIVE BUSINESS OPERATIONS.

4 (B) "BUSINESS OPERATIONS" MEANS ENGAGING IN COMMERCE IN ANY
5 FORM IN SUDAN, INCLUDING BY ACQUIRING, DEVELOPING, MAINTAINING,
6 OWNING, SELLING, POSSESSING, LEASING, OR OPERATING EQUIPMENT,
7 FACILITIES, PERSONNEL, PRODUCTS, SERVICES, PERSONAL PROPERTY, REAL
8 PROPERTY, OR ANY OTHER APPARATUS OF BUSINESS OR COMMERCE.

9 (C) "COMPANY" MEANS ANY SOLE PROPRIETORSHIP, ORGANIZATION,
10 ASSOCIATION, CORPORATION, PARTNERSHIP, JOINT VENTURE, LIMITED

PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, LIMITED LIABILITY COMPANY, OR OTHER ENTITY OR BUSINESS ASSOCIATION, INCLUDING ALL WHOLLY OWNED SUBSIDIARIES, MAJORITY-OWNED SUBSIDIARIES, PARENT COMPANIES, OR AFFILIATES OF SUCH ENTITIES OR BUSINESS ASSOCIATIONS, THAT EXISTS FOR PROFIT-MAKING PURPOSES.

(D) "COMPLICIT" MEANS TAKING ACTIONS DURING ANY PRECEDING 20-MONTH PERIOD WHICH HAVE DIRECTLY SUPPORTED OR PROMOTED THE GENOCIDAL CAMPAIGN IN DARFUR, INCLUDING, BUT NOT LIMITED TO, PREVENTING DARFUR'S VICTIMIZED POPULATION FROM COMMUNICATING WITH EACH OTHER, ENCOURAGING SUDANESE CITIZENS TO SPEAK OUT AGAINST AN INTERNATIONALLY APPROVED SECURITY FORCE FOR DARFUR, ACTIVELY WORKING TO DENY, COVER UP, OR ALTER THE RECORD ON HUMAN RIGHTS ABUSES IN DARFUR, OR OTHER SIMILAR ACTIONS.

(E) "DIRECT HOLDINGS" IN A COMPANY MEANS ALL SECURITIES OF THAT COMPANY HELD DIRECTLY BY THE FIDUCIARY OR IN AN ACCOUNT OR FUND IN WHICH THE FIDUCIARY OWNS ALL SHARES OR INTERESTS.

(F) "FIDUCIARY" MEANS THE MICHIGAN LEGISLATIVE RETIREMENT SYSTEM BOARD OF TRUSTEES FOR THE TIER 1 PLAN FOR THE MICHIGAN LEGISLATIVE RETIREMENT SYSTEM CREATED BY THE MICHIGAN LEGISLATIVE RETIREMENT SYSTEM ACT, 1957 PA 261, MCL 38.1001 TO 38.1080, AND THE TREASURER OF THIS STATE FOR THE RETIREMENT SYSTEMS CREATED UNDER ALL OF THE FOLLOWING ACTS:

(i) THE STATE POLICE RETIREMENT ACT OF 1986, 1986 PA 182, MCL 38.1601 TO 38.1648.

(ii) THE TIER 1 RETIREMENT PLAN AVAILABLE UNDER THE JUDGE'S RETIREMENT ACT OF 1992, 1992 PA 234, MCL 38.2101 TO 38.2670.

(iii) THE TIER 1 RETIREMENT PLAN AVAILABLE UNDER THE STATE

1 EMPLOYEES RETIREMENT ACT, 1943 PA 240, MCL 38.1 TO 38.69.

2 (iv) THE PUBLIC SCHOOL EMPLOYEES RETIREMENT ACT OF 1979, 1980
3 PA 300, MCL 38.1301 TO 38.1408.

4 (G) "GOVERNMENT OF SUDAN" MEANS THE GOVERNMENT IN KHARTOUM,
5 SUDAN, WHICH IS LED BY THE NATIONAL CONGRESS PARTY OR ANY SUCCESSOR
6 GOVERNMENT FORMED ON OR AFTER OCTOBER 13, 2006 AND DOES NOT INCLUDE
7 THE REGIONAL GOVERNMENT OF SOUTHERN SUDAN.

8 (H) "INACTIVE BUSINESS OPERATIONS" MEANS THE MERE CONTINUED
9 HOLDING OR RENEWAL OF RIGHTS TO PROPERTY PREVIOUSLY OPERATED FOR
10 THE PURPOSE OF GENERATING REVENUES BUT NOT PRESENTLY DEPLOYED FOR
11 SUCH PURPOSE.

12 (I) "INDIRECT HOLDINGS" IN A COMPANY MEANS ALL SECURITIES OF
13 THAT COMPANY HELD IN AN ACCOUNT OR FUND, SUCH AS A MUTUAL FUND OR
14 OTHER COMMINGLED FUND, MANAGED BY 1 OR MORE PERSONS NOT EMPLOYED BY
15 THE FIDUCIARY, IN WHICH THE FIDUCIARY OWNS SHARES OR INTERESTS
16 TOGETHER WITH OTHER INVESTORS NOT SUBJECT TO THE PROVISIONS OF THIS
17 ACT.

18 (J) "MARGINALIZED POPULATIONS OF SUDAN" INCLUDES, BUT IS NOT
19 LIMITED TO, ALL OF THE FOLLOWING:

20 (i) THE PORTION OF THE POPULATION IN THE DARFUR REGION THAT HAS
21 BEEN GENOCIDALLY VICTIMIZED.

22 (ii) THE PORTION OF THE POPULATION OF SOUTHERN SUDAN VICTIMIZED
23 BY SUDAN'S NORTH-SOUTH CIVIL WAR.

24 (iii) THE BEJA, RASHIDIYA, AND OTHER SIMILARLY UNDERSERVED
25 GROUPS OF EASTERN SUDAN.

26 (iv) THE NUBIAN AND OTHER SIMILARLY UNDERSERVED GROUPS IN
27 SUDAN'S ABYEI, SOUTHERN BLUE NILE, AND NUBA MOUNTAIN REGIONS.

1 (v) THE AMRI, HAMADAB, MANASIR, AND OTHER SIMILARLY
2 UNDERSERVED GROUPS OF NORTHERN SUDAN.

3 (K) "MILITARY EQUIPMENT" MEANS WEAPONS, ARMS, MILITARY
4 SUPPLIES, AND EQUIPMENT THAT READILY MAY BE USED FOR MILITARY
5 PURPOSES, INCLUDING, BUT NOT LIMITED TO, RADAR SYSTEMS OR MILITARY-
6 GRADE TRANSPORT VEHICLES; OR SUPPLIES OR SERVICES SOLD OR PROVIDED
7 DIRECTLY OR INDIRECTLY TO ANY FORCE ACTIVELY PARTICIPATING IN ARMED
8 CONFLICT IN SUDAN.

9 (I) "MINERAL EXTRACTION ACTIVITIES" INCLUDES EXPLORING,
10 EXTRACTING, PROCESSING, TRANSPORTING, OR WHOLESALE SELLING OR
11 TRADING OF ELEMENTAL MINERALS OR ASSOCIATED METAL ALLOYS OR OXIDES,
12 INCLUDING GOLD, COPPER, CHROMIUM, CHROMITE, DIAMONDS, IRON, IRON
13 ORE, SILVER, TUNGSTEN, URANIUM, AND ZINC, AS WELL AS FACILITATING
14 SUCH ACTIVITIES, INCLUDING BY PROVIDING SUPPLIES OR SERVICES IN
15 SUPPORT OF SUCH ACTIVITIES.

16 (M) "OIL-RELATED ACTIVITIES" INCLUDES, BUT IS NOT LIMITED TO,
17 OWNING RIGHTS TO OIL BLOCKS; EXPORTING, EXTRACTING, PRODUCING,
18 REFINING, PROCESSING, EXPLORING FOR, TRANSPORTING, SELLING, OR
19 TRADING OF OIL; CONSTRUCTING, MAINTAINING, OR OPERATING A PIPELINE,
20 REFINERY, OR OTHER OIL-FIELD INFRASTRUCTURE; AND FACILITATING SUCH
21 ACTIVITIES, INCLUDING BY PROVIDING SUPPLIES OR SERVICES IN SUPPORT
22 OF SUCH ACTIVITIES, PROVIDED THAT THE MERE RETAIL SALE OF GASOLINE
23 AND RELATED CONSUMER PRODUCTS SHALL NOT BE CONSIDERED OIL-RELATED
24 ACTIVITIES.

25 (N) "POWER PRODUCTION ACTIVITIES" MEANS ANY BUSINESS OPERATION
26 THAT INVOLVES A PROJECT COMMISSIONED BY THE NATIONAL ELECTRICITY
27 CORPORATION OF SUDAN OR OTHER SIMILAR GOVERNMENT OF SUDAN ENTITY

1 WHOSE PURPOSE IS TO FACILITATE POWER GENERATION AND DELIVERY,
2 INCLUDING, BUT NOT LIMITED TO, ESTABLISHING POWER-GENERATING PLANTS
3 OR HYDROELECTRIC DAMS, SELLING OR INSTALLING COMPONENTS FOR THE
4 PROJECT, PROVIDING SERVICE CONTRACTS RELATED TO THE INSTALLATION OR
5 MAINTENANCE OF THE PROJECT, AS WELL AS FACILITATING SUCH
6 ACTIVITIES, INCLUDING BY PROVIDING SUPPLIES OR SERVICES IN SUPPORT
7 OF SUCH ACTIVITIES.

8 (O) "SCRUTINIZED COMPANY" MEANS ANY COMPANY, EXCEPT A SOCIAL
9 DEVELOPMENT COMPANY AND A COMPANY DESCRIBED IN SUBSECTION (10) THAT
10 IS NOT COMPLICIT IN THE DARFUR GENOCIDE, THAT MEETS THE CRITERIA IN
11 SUBPARAGRAPH (i), (ii), OR (iii):

12 (i) THE COMPANY HAS BUSINESS OPERATIONS THAT INVOLVE CONTRACTS
13 WITH OR PROVISION OF SUPPLIES OR SERVICES TO 1 OR MORE OF THE
14 FOLLOWING:

15 (A) THE GOVERNMENT OF SUDAN.

16 (B) COMPANIES IN WHICH THE GOVERNMENT OF SUDAN HAS ANY DIRECT
17 OR INDIRECT EQUITY SHARE.

18 (C) GOVERNMENT OF SUDAN-COMMISSIONED CONSORTIA OR PROJECTS.

19 (D) COMPANIES INVOLVED IN GOVERNMENT OF SUDAN-COMMISSIONED
20 CONSORTIA OR PROJECTS AND THAT HAVE 1 OR MORE OF THE FOLLOWING:

21 (I) MORE THAN 10% OF THE COMPANY'S REVENUES OR ASSETS LINKED
22 TO SUDAN INVOLVE OIL-RELATED ACTIVITIES OR MINERAL EXTRACTION
23 ACTIVITIES, LESS THAN 75% OF THE COMPANY'S REVENUES OR ASSETS
24 LINKED TO SUDAN INVOLVE CONTRACTS WITH OR PROVISION OF OIL-RELATED
25 OR MINERAL EXTRACTING PRODUCTS OR SERVICES TO THE REGIONAL
26 GOVERNMENT OF SOUTHERN SUDAN OR A PROJECT OR CONSORTIUM CREATED
27 EXCLUSIVELY BY THAT REGIONAL GOVERNMENT, AND THE COMPANY HAS FAILED

1 TO TAKE SUBSTANTIAL ACTION.

2 (II) MORE THAN 10% OF THE COMPANY'S REVENUES OR ASSETS LINKED
3 TO SUDAN INVOLVE POWER PRODUCTION ACTIVITIES, LESS THAN 75% OF THE
4 COMPANY'S POWER PRODUCTION ACTIVITIES INCLUDE PROJECTS WHOSE INTENT
5 IS TO PROVIDE POWER OR ELECTRICITY TO THE MARGINALIZED POPULATIONS
6 OF SUDAN, AND THE COMPANY HAS FAILED TO TAKE SUBSTANTIAL ACTION.

7 (ii) THE COMPANY IS COMPLICIT IN THE DARFUR GENOCIDE.

8 (iii) THE COMPANY SUPPLIES MILITARY EQUIPMENT WITHIN SUDAN,
9 UNLESS THE FIDUCIARY FINDS THAT THE MILITARY EQUIPMENT WILL NOT BE
10 USED TO FACILITATE OFFENSIVE MILITARY ACTIONS IN SUDAN OR THE
11 FIDUCIARY FINDS THAT THE COMPANY IMPLEMENTS RIGOROUS AND VERIFIABLE
12 SAFEGUARDS TO PREVENT USE OF THAT EQUIPMENT BY FORCES ACTIVELY
13 PARTICIPATING IN ARMED CONFLICT.

14 (P) "SOCIAL DEVELOPMENT COMPANY" MEANS A COMPANY WHOSE PRIMARY
15 PURPOSE IN SUDAN IS TO PROVIDE HUMANITARIAN GOODS OR SERVICES,
16 INCLUDING MEDICINE OR MEDICAL EQUIPMENT, AGRICULTURAL SUPPLIES OR
17 INFRASTRUCTURE, EDUCATIONAL OPPORTUNITIES, JOURNALISM-RELATED
18 ACTIVITIES, INFORMATION OR INFORMATION MATERIALS, SPIRITUAL-RELATED
19 ACTIVITIES, SERVICES OF A PURELY CLERICAL OR REPORTING NATURE,
20 FOOD, CLOTHING, OR GENERAL CONSUMER GOODS THAT ARE UNRELATED TO
21 OIL-RELATED ACTIVITIES, MINERAL EXTRACTION ACTIVITIES, OR POWER
22 PRODUCTION ACTIVITIES.

23 (Q) "SUBSTANTIAL ACTION" MEANS ADOPTING, PUBLICIZING, AND
24 IMPLEMENTING A FORMAL PLAN TO CEASE SCRUTINIZED BUSINESS OPERATIONS
25 WITHIN 1 YEAR AND TO REFRAIN FROM ANY NEW BUSINESS OPERATIONS,
26 UNDERTAKING SIGNIFICANT HUMANITARIAN EFFORTS IN CONJUNCTION WITH AN
27 INTERNATIONAL ORGANIZATION, THE GOVERNMENT OF SUDAN, THE REGIONAL

1 GOVERNMENT OF SOUTHERN SUDAN, OR A NONPROFIT ENTITY AND EVALUATED
2 AND CERTIFIED BY AN INDEPENDENT THIRD PARTY TO BE SUBSTANTIAL IN
3 RELATIONSHIP TO THE COMPANY'S SUDAN BUSINESS OPERATIONS AND OF
4 BENEFIT TO 1 OR MORE MARGINALIZED POPULATIONS OF SUDAN, OR THROUGH
5 ENGAGEMENT WITH THE GOVERNMENT OF SUDAN, MATERIALLY IMPROVING
6 CONDITIONS FOR THE GENOCIDALLY VICTIMIZED POPULATION IN DARFUR.

7 (2) WITHIN 90 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY
8 ACT THAT ADDED THIS SECTION, THE FIDUCIARY SHALL MAKE ITS BEST
9 EFFORTS TO IDENTIFY ALL SCRUTINIZED COMPANIES IN WHICH THE
10 FIDUCIARY HAS DIRECT OR INDIRECT HOLDINGS OR COULD POSSIBLY HAVE
11 SUCH HOLDINGS IN THE FUTURE. THE EFFORTS SHALL INCLUDE 1 OR MORE OF
12 THE FOLLOWING:

13 (A) REVIEWING AND RELYING, AS APPROPRIATE IN THE FIDUCIARY'S
14 JUDGMENT, ON PUBLICLY AVAILABLE INFORMATION REGARDING COMPANIES
15 WITH BUSINESS OPERATIONS IN SUDAN, INCLUDING INFORMATION PROVIDED
16 BY NONPROFIT ORGANIZATIONS, RESEARCH FIRMS, INTERNATIONAL
17 ORGANIZATIONS, AND GOVERNMENT ENTITIES.

18 (B) CONTACTING ASSET MANAGERS CONTRACTED BY THE FIDUCIARY THAT
19 INVEST IN COMPANIES WITH BUSINESS OPERATIONS IN SUDAN.

20 (C) CONTACTING OTHER INSTITUTIONAL INVESTORS THAT HAVE
21 DIVESTED FROM OR ENGAGED WITH COMPANIES THAT HAVE BUSINESS
22 OPERATIONS IN SUDAN.

23 (3) AT THE END OF THE 90-DAY PERIOD OR BY THE FIRST MEETING OF
24 THE FIDUCIARY FOLLOWING THE 90-DAY PERIOD DESCRIBED IN SUBSECTION
25 (2), THE FIDUCIARY SHALL ASSEMBLE ALL SCRUTINIZED COMPANIES
26 IDENTIFIED INTO A SCRUTINIZED COMPANIES LIST.

27 (4) THE FIDUCIARY SHALL UPDATE THE SCRUTINIZED COMPANIES LIST

1 ON A QUARTERLY BASIS BASED ON EVOLVING INFORMATION FROM, AMONG
2 OTHER SOURCES, THOSE SOURCES LISTED IN SUBSECTION (2). THE
3 FIDUCIARY SHALL MAKE THE SCRUTINIZED COMPANIES LIST FREELY
4 AVAILABLE TO THE FIDUCIARIES OF OTHER PUBLIC RETIREMENT SYSTEMS
5 LOCATED IN THIS STATE IF MAKING THE LIST AVAILABLE DOES NOT VIOLATE
6 ANY AGREEMENTS WITH THIRD PARTIES OR REVEAL PROPRIETARY INFORMATION
7 OF A THIRD PARTY.

8 (5) THE FIDUCIARY SHALL ADHERE TO THE FOLLOWING PROCEDURE FOR
9 COMPANIES ON THE SCRUTINIZED COMPANIES LIST:

10 (A) THE FIDUCIARY SHALL IMMEDIATELY DETERMINE THE COMPANIES ON
11 THE SCRUTINIZED COMPANIES LIST IN WHICH THE FIDUCIARY OVERSEES
12 PURSUANT TO ITS RESPONSIBILITIES AS DEFINED IN SUBSECTION (1)(F).

13 (B) FOR EACH COMPANY IDENTIFIED IN SUBDIVISION (A) WITH ONLY
14 INACTIVE BUSINESS OPERATIONS, THE FIDUCIARY SHALL SEND A WRITTEN
15 NOTICE INFORMING THE COMPANY OF THIS SECTION AND ENCOURAGE THE
16 COMPANY TO CONTINUE TO REFRAIN FROM INITIATING ACTIVE BUSINESS
17 OPERATIONS IN SUDAN UNTIL IT IS ABLE TO AVOID SCRUTINIZED BUSINESS
18 OPERATIONS AND FURTHER ENCOURAGE THE COMPANY TO ENGAGE IN
19 SUBSTANTIAL HUMANITARIAN OPERATIONS IN THE COUNTRY. THE FIDUCIARY
20 SHALL CONTINUE THE CORRESPONDENCE ON A SEMIANNUAL BASIS.

21 (C) FOR EACH COMPANY NEWLY IDENTIFIED IN SUBDIVISION (A) WITH
22 ACTIVE BUSINESS OPERATIONS, THE FIDUCIARY SHALL SEND A WRITTEN
23 NOTICE INFORMING THE COMPANY OF ITS SCRUTINIZED COMPANY STATUS AND
24 THAT IT MAY BECOME SUBJECT TO DIVESTMENT BY THE FIDUCIARY. THE
25 NOTICE SHALL OFFER THE COMPANY THE OPPORTUNITY TO CLARIFY ITS
26 SUDAN-RELATED ACTIVITIES AND SHALL ENCOURAGE THE COMPANY, WITHIN 90
27 DAYS, TO EITHER CEASE ITS SCRUTINIZED BUSINESS OPERATIONS OR

1 CONVERT SUCH OPERATIONS TO INACTIVE BUSINESS OPERATIONS IN ORDER TO
2 AVOID QUALIFYING FOR DIVESTMENT BY THE FIDUCIARY.

3 (D) IF, WITHIN 90 DAYS FOLLOWING THE FIDUCIARY'S FIRST
4 ENGAGEMENT WITH A COMPANY PURSUANT TO SUBDIVISION (C), THAT COMPANY
5 CEASES SCRUTINIZED BUSINESS OPERATIONS, THE COMPANY SHALL BE
6 REMOVED FROM THE SCRUTINIZED COMPANIES LIST AND THIS SECTION SHALL
7 CEASE TO APPLY TO IT UNLESS IT RESUMES SCRUTINIZED BUSINESS
8 OPERATIONS. IF, WITHIN 90 DAYS FOLLOWING THE FIDUCIARY'S FIRST
9 ENGAGEMENT, THE COMPANY CONVERTS ITS SCRUTINIZED ACTIVE BUSINESS
10 OPERATIONS TO INACTIVE BUSINESS OPERATIONS, THE COMPANY SHALL BE
11 SUBJECT TO THIS SECTION.

12 (E) IF, AFTER 90 DAYS FOLLOWING THE FIDUCIARY'S FIRST
13 ENGAGEMENT WITH A COMPANY PURSUANT TO SUBDIVISION (C), THE COMPANY
14 CONTINUES TO HAVE SCRUTINIZED ACTIVE BUSINESS OPERATIONS, AND ONLY
15 WHILE THE COMPANY CONTINUES TO HAVE SCRUTINIZED ACTIVE BUSINESS
16 OPERATIONS, THE FIDUCIARY SHALL SELL, REDEEM, DIVEST, OR WITHDRAW
17 ALL PUBLICLY TRADED SECURITIES OF THE COMPANY, ACCORDING TO THE
18 FOLLOWING SCHEDULE:

19 (i) AT LEAST 50% OF THE ASSETS SHALL BE REMOVED FROM THE
20 FIDUCIARY'S ASSETS UNDER MANAGEMENT WITHIN 9 MONTHS AFTER THE
21 COMPANY'S MOST RECENT APPEARANCE ON THE SCRUTINIZED COMPANIES LIST.

22 (ii) 100% OF THE ASSETS SHALL BE REMOVED FROM THE FIDUCIARY'S
23 ASSETS UNDER MANAGEMENT WITHIN 15 MONTHS AFTER THE COMPANY'S MOST
24 RECENT APPEARANCE ON THE SCRUTINIZED COMPANIES LIST.

25 (F) EXCEPT AS PROVIDED IN SUBDIVISIONS (G) AND (H), AT NO TIME
26 SHALL THE FIDUCIARY ACQUIRE SECURITIES OF COMPANIES ON THE
27 SCRUTINIZED COMPANIES LIST THAT HAVE ACTIVE BUSINESS OPERATIONS.

1 (G) NO COMPANY WHICH THE UNITED STATES GOVERNMENT
2 AFFIRMATIVELY DECLARES TO BE EXCLUDED FROM ITS PRESENT OR ANY
3 FUTURE FEDERAL SANCTIONS REGIME RELATING TO SUDAN SHALL BE SUBJECT
4 TO DIVESTMENT OR INVESTMENT PROHIBITION PURSUANT TO SUBDIVISIONS
5 (E) AND (F) .

6 (H) SUBDIVISIONS (E) AND (F) SHALL NOT APPLY TO INDIRECT
7 HOLDINGS IN ACTIVELY MANAGED INVESTMENT FUNDS. FOR PURPOSES OF THIS
8 SECTION, ACTIVELY MANAGED INVESTMENT FUNDS INCLUDE PRIVATE EQUITY
9 FUNDS AND PUBLICLY TRADED FUNDS. BEFORE THE FIDUCIARY INVESTS IN A
10 NEW PRIVATE EQUITY FUND THAT IS NOT IN THE FIDUCIARY'S PORTFOLIO AS
11 OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
12 SECTION, THE FIDUCIARY SHALL PERFORM DUE DILIGENCE TO PREVENT
13 INVESTMENT IN ANY PRIVATE EQUITY FUND WHERE THE OFFERING MEMORANDUM
14 OR PROSPECTUS IDENTIFIES THE PURPOSE OF THE PRIVATE EQUITY FUND AS
15 INVESTING IN SCRUTINIZED COMPANIES WITH ACTIVE BUSINESS OPERATIONS
16 IN SUDAN. THE FIDUCIARY IS NOT REQUIRED TO IDENTIFY HOLDINGS IN
17 PRIVATE EQUITY FUNDS OR SUBMIT ENGAGEMENT LETTERS TO THOSE FUNDS.
18 IF THE MANAGER OF A PUBLICLY TRADED, ACTIVELY MANAGED FUND THAT IS
19 IN THE FIDUCIARY'S PORTFOLIO ON THE EFFECTIVE DATE OF THE
20 AMENDATORY ACT THAT ADDED THIS SECTION CREATES A SIMILAR PUBLICLY
21 TRADED, ACTIVELY MANAGED FUND WITH INDIRECT HOLDINGS DEVOID OF
22 IDENTIFIED SCRUTINIZED COMPANIES WITH SCRUTINIZED ACTIVE BUSINESS
23 OPERATIONS AS DEFINED IN THIS SECTION, THE FIDUCIARY SHALL REPLACE
24 ALL APPLICABLE INVESTMENTS WITH INVESTMENTS IN THE SIMILAR FUND IN
25 AN EXPEDITED TIME FRAME CONSISTENT WITH PRUDENT INVESTMENT
26 STANDARDS.

27 (6) THE FIDUCIARY SHALL FILE A PUBLICLY AVAILABLE REPORT TO

1 THE LEGISLATURE THAT INCLUDES THE SCRUTINIZED COMPANIES LIST WITHIN
2 30 DAYS AFTER THE LIST IS CREATED. ANNUALLY THEREAFTER, THE
3 FIDUCIARY SHALL FILE A PUBLICLY AVAILABLE REPORT TO THE LEGISLATURE
4 AND SEND A COPY OF THAT REPORT TO THE UNITED STATES PRESIDENTIAL
5 SPECIAL ENVOY TO SUDAN THAT INCLUDES ALL OF THE FOLLOWING:

6 (A) A SUMMARY OF CORRESPONDENCE WITH COMPANIES ENGAGED BY THE
7 FIDUCIARY UNDER THIS SECTION.

8 (B) ALL INVESTMENTS SOLD, REDEEMED, DIVESTED, OR WITHDRAWN IN
9 COMPLIANCE WITH THIS SECTION.

10 (C) ALL PROHIBITED INVESTMENTS UNDER THIS SECTION.

11 (D) ANY PROGRESS MADE UNDER SUBSECTION (5) (H) .

12 (7) THIS SECTION IS EFFECTIVE UNTIL THE FIRST OCCURRENCE OF
13 ANY OF THE FOLLOWING:

14 (A) THE UNITED STATES CONGRESS OR THE PRESIDENT OF THE UNITED
15 STATES DECLARES THAT THE DARFUR GENOCIDE HAS BEEN HALTED FOR AT
16 LEAST 12 MONTHS.

17 (B) THE UNITED STATES REVOKES ALL SANCTIONS IMPOSED AGAINST
18 THE GOVERNMENT OF SUDAN.

19 (C) THE CONGRESS OR PRESIDENT OF THE UNITED STATES DECLARES
20 THAT THE GOVERNMENT OF SUDAN HAS HONORED ITS COMMITMENTS TO CEASE
21 ATTACKS ON CIVILIANS, DEMOBILIZE AND DEMILITARIZE THE JANJAWEEED AND
22 ASSOCIATED MILITIAS, GRANT FREE AND UNFETTERED ACCESS FOR
23 DELIVERIES OF HUMANITARIAN ASSISTANCE, AND ALLOW FOR THE SAFE AND
24 VOLUNTARY RETURN OF REFUGEES AND INTERNALLY DISPLACED PERSONS.

25 (D) THE CONGRESS OR PRESIDENT OF THE UNITED STATES, THROUGH
26 LEGISLATION OR EXECUTIVE ORDER, DECLARES THAT MANDATORY DIVESTMENT
27 OF THE TYPE PROVIDED FOR IN THIS ACT INTERFERES WITH THE CONDUCT OF

1 UNITED STATES FOREIGN POLICY.

2 (8) WITH RESPECT TO ACTIONS TAKEN IN COMPLIANCE WITH THIS
3 SECTION, INCLUDING ALL GOOD FAITH DETERMINATIONS REGARDING
4 COMPANIES AS REQUIRED BY THIS SECTION, THE FIDUCIARY SHALL BE
5 EXEMPT FROM ANY CONFLICTING STATUTORY OR COMMON LAW OBLIGATIONS,
6 INCLUDING ANY OBLIGATIONS IN RESPECT TO CHOICE OF ASSET MANAGERS,
7 INVESTMENT FUNDS, OR INVESTMENTS FOR THE FIDUCIARY'S SECURITIES
8 PORTFOLIOS.

9 (9) THE FIDUCIARY, MEMBERS OF AN INVESTMENT ADVISORY
10 COMMITTEE, AND ANY PERSON WITH DECISION-MAKING AUTHORITY WITH
11 REGARD TO INVESTMENTS OF THE FIDUCIARY SHALL NOT BE HELD LIABLE FOR
12 ANY ACTION UNDERTAKEN FOR THE PURPOSE OF COMPLYING WITH OR
13 EXECUTING THE MANDATES REQUIRED UNDER THIS SECTION.

14 (10) SCRUTINIZED COMPANY DOES NOT INCLUDE A COMPANY THAT THE
15 FEDERAL GOVERNMENT HAS AFFIRMATIVELY EXCLUDED FROM FEDERAL
16 SANCTIONS FOR BUSINESS THE SCRUTINIZED COMPANY CONDUCTS RELATING TO
17 SUDAN, OR THAT HAS CONSISTENTLY OBTAINED APPLICABLE LICENSES OR
18 APPROVALS TO CONDUCT TRANSACTIONS WITH SUDAN. IF THE FIDUCIARY
19 BECOMES AWARE AT ANY TIME THAT A COMPANY THAT HAS NOT BEEN
20 AFFIRMATIVELY EXCLUDED FROM FEDERAL SANCTIONS FOR BUSINESS IT
21 CONDUCTS RELATING TO SUDAN AND HAS NOT RECEIVED FROM THE UNITED
22 STATES GOVERNMENT APPLICABLE LICENSES OR APPROVALS TO CONDUCT
23 TRANSACTIONS WITH SUDAN, THAT COMPANY IS IMMEDIATELY SUBJECT TO
24 SUBSECTION (5).

25 (11) IF ANY PROVISION, SECTION, SUBSECTION, SENTENCE, CLAUSE,
26 PHRASE, OR WORD OF THIS LEGISLATION OR ITS APPLICATION TO ANY
27 PERSON OR CIRCUMSTANCE IS FOUND TO BE INVALID, ILLEGAL,

1 UNENFORCEABLE, OR UNCONSTITUTIONAL, THE SAME IS HEREBY DECLARED TO
2 BE SEVERABLE AND THE BALANCE OF THIS LEGISLATION SHALL REMAIN
3 EFFECTIVE AND FUNCTIONAL NOTWITHSTANDING SUCH INVALIDITY,
4 ILLEGALITY, UNENFORCEABILITY, OR UNCONSTITUTIONALITY.

5 Enacting section 1. This amendatory act does not take effect
6 unless Senate Bill No. 846 of the 94th Legislature is enacted into
7 law.