2007 DRAFTING REQUEST

Bill

Received: **02/13/2007**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Sheila Harsdorf (608) 266-7745**

By/Representing: **Matt Woebke (aide)**

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **State Finance - investment board**

Extra Copies: **RAC**

Submit via email: **YES**

Requester's email: **Sen.Harsdorf@legis.wisconsin.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

SWIB divestment from Sudan

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	agary 02/13/2007	jdyer 02/14/2007		_____ _____			S&L
/1			rschluet 02/14/2007	_____ _____	sbasford 02/14/2007	sbasford 02/14/2007	

FE Sent For: @ intro.
2-2-2007

<END>

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FE Sent For:

<END>

Gary, Aaron

From: Woebke, Matt
Sent: Tuesday, February 13, 2007 3:19 PM
To: Gary, Aaron
Subject: LRB -0823 Sudan Divestment

Hi Aaron,

I spoke with Sharon from Rep. Kessler's office regarding their bill draft (LRB-0823) regarding state divestment in companies engaged in commerce with Sudan. Sharon is or will be in contact with you, authorizing us to obtain a Senate companion to this draft. If you could prepare a draft for our office when you receive the notice from Rep. Kessler's office, we would appreciate it.

Thanks,
Matt

Matt Woebke
Office of Senator Sheila Harsdorf
Tel: 800-862-1092 or 608-266-7745
matt.woebke@legis.wisconsin.gov

Gary, Aaron

From: Little, Sharon
Sent: Tuesday, February 13, 2007 12:07 PM
To: Gary, Aaron
Subject: 07-08231.pdf

Hi Aaron,

Matt from Sen. Harsdorf's office is going to call to request a companion. Just a heads up that it's okay with us.

Sharon

LRB-0823/1
ARG:lmk:if

2007 BILL

AN ACT *to amend* 25.17 (intro.), 25.18 (1) (intro.) and 25.18 (2) (intro.); and *to create* 25.184 of the statutes; **relating to:** prohibiting the Investment Board from making certain investments relating to Sudan.

Analysis by the Legislative Reference Bureau

This bill generally prohibits the State of Wisconsin Investment Board (SWIB) from making certain future investments, and requires SWIB to divest itself of prior investments, related to Sudan. Within 90 days after the bill's effective date, SWIB must make its best efforts to identify all scrutinized companies in which SWIB has direct or indirect holdings. A "scrutinized company" is, with certain exceptions, a company that: 1) has business operations involving contracts with, or the provision of supplies or services to, the government of Sudan (not including the regional government of southern Sudan) or entities related to the government of Sudan if more than 10 percent of the company's revenues or assets linked to Sudan involve oil–related activities, mineral extraction activities, or power production activities; 2) is complicit in the Darfur genocide; or 3) supplies military equipment within Sudan. A "direct holding" is a security of a company held directly by SWIB in SWIB's name or in "street name" for SWIB or held in an account or fund in which SWIB owns all shares or interests. An "indirect holding" is a security of a company held in an account or fund, such as a mutual fund, managed by external managers in which SWIB owns shares or interests together with other investors. Best efforts by SWIB include, as applicable: reviewing and relying, as appropriate in SWIB's judgment, on publicly available information regarding companies with business operations in

Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities; contacting asset managers contracted by SWIB that invest in companies with business operations in Sudan; and contacting other institutional investors that have divested from, or engaged with, companies that have business operations in Sudan. By the first regular meeting of SWIB trustees after this initial 90 day identification period, SWIB must assemble a list of all scrutinized companies that it has identified, and the list must be updated on a quarterly basis.

After the bill's effective date, with certain exceptions, SWIB may not acquire securities of scrutinized companies on SWIB's list unless the company merely holds property, including rights, not presently used to generate revenues. In addition, immediately after the first regular meeting of SWIB trustees described above, SWIB must do all of the following with respect to companies in which SWIB has direct or indirect holdings: 1) send written notice to each company on the list that merely holds property or rights not presently used to generate revenues of the provisions of this bill and encourage the company to continue to refrain from initiating active business operations in Sudan, with such correspondence repeated semiannually; and 2) send written notice to all other companies on the list to inform each company of its scrutinized company status and to advise the company that it may become subject to divestment by SWIB. With certain exceptions, SWIB must divest itself of all publicly–traded securities of a scrutinized company sent the notice identified as 2) above unless it ceases active business operations within 90 days of the notice. SWIB must accomplish 50 percent of this divestment within nine months of the company appearing on SWIB's list and full divestment within 15 months of the company appearing on SWIB's list. If, within this 90 day period, the company ceases those business operations making it a scrutinized company, SWIB must remove the company from its list and need not divest from the company unless it resumes such business operations, in which case it becomes subject to immediate and full divestment. However, if the company remains a scrutinized company but, within this 90 day period, stops revenue–generating activities in Sudan, the company remains on SWIB's list but is not subject to divestment.

The prohibitions on investment in, and requirement of divestment from, certain companies under the bill do not apply with respect to: 1) any company that is affirmatively declared by the federal government to be excluded from any federal sanctions regime relating to Sudan; 2) indirect holdings in actively managed investment funds, including private equity funds, although the bill requires SWIB to submit letters to the managers of such funds containing certain information and SWIB may, under specified circumstances, be required to replace investments in such funds. The requirement of divestment from certain companies under the bill also does not apply if clear and convincing evidence shows that the value for all assets under SWIB's management has decreased to 99.5 percent or less of the value of all assets under SWIB's management when calculated as if no divestment had occurred, but, in such case, the divestment requirement is only suspended to the extent necessary to avoid a decrease in the value of assets to or beyond this threshold. The provisions of the bill do not apply at all if the U.S. congress or president declares that

the Darfur genocide has been halted for at least 12 months, the United States revokes all sanctions imposed against the government of Sudan, or the U.S. congress or president declares that mandatory divestment of the type provided for in the bill interferes with the conduct of U.S. foreign policy.

The bill authorizes the attorney general to bring actions to enforce the provisions of the bill. The bill also provides a certain immunity to SWIB, including with respect to its standard of responsibility when investing money, in taking any action in compliance with the bill. The bill also requires SWIB to make certain reports to the legislature and to the attorney general.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 25.17 (intro.) of the statutes is amended to read:

25.17 Powers and duties of board. (intro.) The "State of Wisconsin Investment Board" shall be a body corporate with power to sue and be sued in said name. The board shall have a seal with the words, "State of Wisconsin Investment Board". Subject to ~~s.~~ ss. 25.183 and 25.184, the board shall:

SECTION 2. 25.18 (1) (intro.) of the statutes is amended to read:

25.18 **(1)** (intro.) In addition to the powers and duties enumerated in s. 25.17, but subject to ~~s.~~ ss. 25.183 and 25.184, the board may:

SECTION 3. 25.18 (2) (intro.) of the statutes is amended to read:

25.18 **(2)** (intro.) In addition to the powers set forth in sub. (1) and s. 25.17, but subject to ~~s.~~ ss. 25.183 and 25.184, the board may:

SECTION 4. 25.184 of the statutes is created to read:

25.184 Prohibited investments relating to Sudan. (1) DEFINITIONS. In this section:

(a) "Active business operations" means all business operations that are not inactive business operations.

(b) "Business operations" means engaging in commerce in any form in Sudan, including doing any of the following:

1. Acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, products, or services, or real or personal property.

2. Maintaining personnel.

3. Acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating any other apparatus of business or commerce.

(c) "Company" means any of the following if it exists for profit–making purposes:

1. Any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association.

2. Any wholly–owned subsidiary, majority–owned subsidiary, parent company, or affiliate of a company described in subd. 1.

(d) "Complicit in the Darfur genocide" means having taken any action during a preceding 20 month period that has directly supported or promoted the genocidal campaign in Darfur, including any action to prevent Darfur's victimized population from communicating with each other or to encourage Sudanese citizens to speak out against an internationally approved security force for Darfur, and including actively working to deny, cover up, or alter the record on human rights abuses in Darfur.

(e) "Direct holdings" by the board in a company means all securities of that company held directly by the board in the board's name or as nominee where the board is the beneficial owner or held in an account or fund in which the board owns all shares or interests.

(f) "Government of Sudan" means the government in Khartoum, Sudan, which is led by the National Congress Party, formerly known as the National Islamic Front, or any successor government formed on or after the effective date of this paragraph .... [revisor inserts date], including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan but not including the regional government of southern Sudan.

(g) "Inactive business operations" means the mere continued holding or renewal of rights to property previously operated or used for the purpose of generating revenues but not presently deployed for such purpose.

(h) "Indirect holdings" in a company means all securities of that company held in an account or fund, such as a mutual fund, managed by external managers in which the board owns shares or interests together with other investors.

(i) "Marginalized populations of Sudan" include any of the following:

1. The portion of the population in the Darfur region that has been genocidally victimized.

2. The portion of the population of southern Sudan victimized by Sudan's North–South civil war.

3. The Beja, Rashidiya, and other similarly underserved groups of eastern Sudan.

4. The Nubian and other similarly underserved groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain regions.

5. The Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(j) "Military equipment" means any of the following:

1. Weapons, arms, military supplies, and equipment that readily may be used for military purposes, including radar systems or military–grade transport vehicles.

2. Supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(k) "Mineral extraction activities" include any of the following:

1. Exploring for, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides, such as ore, including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc.

2. Facilitating any activity described in subd. 1., including providing supplies or services in support of any such activity.

(L) 1. "Oil–related activities" include any of the following:

a. Owning rights to oil blocks.

b. Exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil.

c. Constructing, maintaining, or operating a pipeline, refinery, or other oil–field infrastructure.

d. Facilitating any activity described in subd. 1. a. to c., including providing supplies or services in support of any such activity.

2. "Oil–related activities" do not include the mere retail sale of gasoline and related consumer products.

(m) "Power production activities" means any of the following:

1. Any business operation that involves a project commissioned by the National Electricity Corporation of Sudan or other similar government of Sudan entity the

purpose of which is to facilitate power generation and delivery, including establishing power–generating plants or hydroelectric dams.

2. Selling or installing components for any project described in subd. 1.

3. Providing service contracts related to the installation or maintenance of any project described in subd. 1.

4. Facilitating any project or activity described in subd. 1. to 3., including providing supplies or services in support of any such project or activity.

(n) "Scrutinized active business operations" means those business operations that are both active business operations and scrutinized business operations.

(o) "Scrutinized business operations" means those business operations of a company that cause the company to be a scrutinized company under this section.

(p) "Scrutinized company" means any company, except a social development company that is not complicit in the Darfur genocide, to which any of the following applies:

1. The company has business operations that involve any contract with, or the provision of any supplies or services to, the government of Sudan, to any company in which the government of Sudan has any direct or indirect equity share, to any government of Sudan–commissioned consortium or project, or to any company involved in any government of Sudan–commissioned consortium or project, the company has failed to take substantial action to cease scrutinized business operations, and more than 10 percent of the company's revenues or assets linked to Sudan involve any of the following:

a. Oil–related activities or mineral extraction activities if less than 75 percent of the company's revenues or assets linked to Sudan involve contracts with, or provision of oil–related or mineral extracting products or services to, the regional

government of southern Sudan or a project or consortium created exclusively by that regional government.

b. Power production activities if less than 75 percent of the company's power production activities include projects intended to provide power or electricity to the marginalized populations of Sudan.

2. The company is complicit in the Darfur genocide.

3. The company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict, such as through post–sale tracking of such equipment by the company, certification from a reputable and objective 3rd party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

(q) "Social development company" means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism–related activities, information or information materials, spiritual–related activities, services of a purely clerical or reporting nature, or food, clothing, or general consumer goods that are unrelated to oil–related activities, mineral extraction activities, or power production activities.

(r) "Substantial action to cease scrutinized business operations" means doing any of the following:

1. Adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one year and refraining from any new scrutinized business operations.

2. Undertaking significant humanitarian efforts on behalf of one or more marginalized populations of Sudan.

3. Materially improving conditions for the genocidally victimized population in Darfur, through engagement with the government of Sudan.

(2) IDENTIFICATION OF SCRUTINIZED COMPANIES. (a) Not later than 90 days after the effective date of this paragraph .... [revisor inserts date], the board shall make its best efforts to identify all scrutinized companies in which the board has direct or indirect holdings or may foreseeably have such holdings in the future. Best efforts include, as applicable, all of the following:

1. Reviewing and relying, as appropriate in the board's judgment, on publicly available information regarding companies with business operations in Sudan, including information provided by non–profit organizations, research firms, international organizations, and government entities.

2. Contacting asset managers contracted by the board that invest in companies with business operations in Sudan.

3. Contacting other institutional investors that have divested from, or engaged with, companies that have business operations in Sudan.

(b) Not later than the first regular meeting of the trustees of the board after the date specified in par. (a), the board shall assemble a list of all scrutinized companies identified under par. (a). The board shall update this list on a quarterly basis based on evolving information from, among other sources, those sources identified in par. (a).

(3) ENGAGEMENT. (a) With respect to the companies on the scrutinized companies list under sub. (2) (b) in which the board has direct or indirect holdings, immediately after the date specified in sub. (2) (a), the board shall do all of the following:

1. For each company on the list with only inactive business operations, the board shall send a written notice to inform the company of the provisions of this section and to encourage the company to continue to refrain from initiating active business operations in Sudan until it is able to avoid scrutinized business operations. The board shall continue such correspondence on a semiannual basis.

2. For each company on the list with active business operations, the board shall send a written notice to inform the company of its scrutinized company status and to advise the company that it may become subject to divestment by the board. The notice shall advise the company that the company will be subject to divestment by the board unless, within 90 days after the notice, the company ceases its scrutinized business operations or converts its business operations to inactive business operations. The notice shall also advise the company that it may, within this 90 day period, attempt to clarify to the board the company's Sudan–related activities in an effort to avoid divestment.

(b) If, within 90 days following the board's first engagement with a company under par. (a) 2., that company ceases scrutinized business operations, the board shall remove the company from the list under sub. (2) (b) and the provisions of this section shall cease to apply to it unless it resumes scrutinized business operations. If, within 90 days following the board's first engagement under par. (a) 2., the company converts its scrutinized active business operations to inactive business operations, the company shall remain subject to the provisions of this subsection.

(4) DIVESTMENT. (a) Except as provided in subs. (6) to (8), if, after 90 days following the board's first engagement with a company as described in sub. (3) (a) 2., the company continues to have scrutinized active business operations, the board shall sell, redeem, divest, or withdraw all publicly–traded securities of the company, according to the following schedule:

1. At least 50 percent of such assets shall be removed from the board's assets under management by 9 months after the company's first appearance on the list under sub. (2) (b).

2. One hundred percent of such assets shall be removed from the board's assets under management within 15 months after the company's first appearance on the list under sub. (2) (b).

(b) If a company that ceased scrutinized active business operations resumes scrutinized active business operations, the company shall be immediately reintroduced onto the list under sub. (2) (b), and par. (a) shall apply except that all assets of the company shall be immediately removed from the board's assets under management. The board shall send written notice to the company of divestment under this paragraph.

(5) PROHIBITION. Except as provided in subs. (6) to (8), after the effective date of this subsection .... [revisor inserts date], the board may not acquire securities of companies on the scrutinized companies list under sub. (2) (b) that have active business operations.

(6) EXEMPTIONS. Subsections (4) and (5) do not apply to any company that the federal government has affirmatively declared, or at any time in the future affirmatively declares, to be excluded from any federal sanctions regime relating to Sudan.

(7) EXCLUDED SECURITIES. Subsections (4) and (5) do not apply to indirect holdings in actively managed investment funds. However, the board shall submit letters to the managers of such investment funds containing companies with scrutinized active business operations requesting that they consider removing such companies from the fund or create a similar actively managed fund with indirect holdings devoid of such companies. If the manager creates a similar fund, the board shall replace all applicable investments with investments in the similar fund in an expedited timeframe consistent with prudent investing standards. For the purposes of this subsection, private equity funds are considered to be actively managed investment funds.

(8) REINVESTMENT IN CERTAIN COMPANIES. (a) The board shall be permitted to cease divesting from certain scrutinized companies under sub. (4), or to reinvest in certain scrutinized companies from which it divested under sub. (4), or both, if clear and convincing evidence shows that the value for all assets under management by the board has decreased to 99.5 percent or less of the value of all assets under management by the board when calculated as if no divestment from any company had occurred under sub. (4).

(b) The board may only cease divesting or reinvest under par. (a) to the extent necessary to avoid a decrease in the value of assets of the amount specified in par. (a).

(c) This subsection does not apply to reinvestment in companies on the ground that they have ceased to have scrutinized active business operations.

(9) REPORTING. (a) Not later than 30 days after the initial creation of the list specified in sub. (2) (b), the board shall submit a report that includes this list to the

chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2) and to the attorney general.

(b) The board shall submit a report annually, not later than the anniversary date of the report required under par. (a), to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2) and to the attorney general, with a copy provided to the United States Presidential Special Envoy to Sudan or an appropriate designee or successor of the Special Envoy, that includes all of the following:

1. A summary of correspondence with companies engaged by the board under sub. (3) (a).

2. All investments sold, redeemed, divested, or withdrawn in compliance with sub. (4).

3. All prohibited investments under sub. (5).

4. Any progress made under sub. (7).

(c) If the board ceases divestment or reinvests in Sudan in a manner authorized under sub. (8), the board shall submit a report to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2) and to the attorney general, prior to cessation of divestment or reinvestment, as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for the board's decision to cease divestment or to reinvest in companies with scrutinized active business operations. This report shall be updated semiannually thereafter, as applicable.

(d) Notwithstanding s. 19.35, the board shall make any report required under this subsection available to the public.

(10) TERMINATION OF REQUIREMENTS. The provisions of this section shall cease to apply upon the occurrence of any of the following:

(a) The U.S. congress or president of the United States declares that the Darfur genocide has been halted for at least 12 months.

(b) The United States revokes all sanctions imposed against the government of Sudan.

(c) The U.S. congress or president of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this section interferes with the conduct of the foreign policy of the United States.

(11) OTHER LEGAL OBLIGATIONS. Notwithstanding s. 25.15 (2) and any other provision of this chapter, the board is exempt from any conflicting statutory or common law obligations, including any obligation in respect to choice of asset managers, investment funds, or investments for the board's securities portfolios, in taking any action in compliance with this section, including making any good faith determination regarding any company as required by this section.

(12) ATTORNEY GENERAL REPRESENTATION. The attorney general may represent this state or assist a district attorney in prosecuting any case arising under this section.

(END)

Duerst, Christina

From: Woebke, Matt
Sent: Wednesday, February 14, 2007 9:26 AM
To: LRB.Legal
Subject: Draft Review: LRB 07-1928/1 Topic: SWIB divestment from Sudan

Please Jacket LRB 07-1928/1 for the SENATE.