



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director *EB*

RE: S.F. xxxx (Bonoff); H.F. xxxx, in the Form of Delete-All Amendment RD0001-2: State Board of Investment to Monitor State Investments in Companies Doing Business in Sudan

DATE: March 23, 2006

#### Summary of S.F. xxxx (Bonoff); H.F. xxxx

S.F. xxxx (Bonoff); H.F. xxxx, in the form of delete-all amendment RD0001-2, would require the State Board of Investment (SBI) to identify companies in which it invests which own business equipment or facilities and related property in the Sudan. The SBI is encouraged to sponsor and support shareholder resolutions encouraging these corporations to divest of their Sudan operations, and the SBI would be encouraged to develop and implement a strategy to directly request corporations to divest. Nothing in this section should be interpreted as requiring the SBI to hold and make investments that violate sound investment policy. Twice each year, the SBI would provide a report to the Legislature, including a report to each member of the Legislative Commission on Pensions and Retirement, listing the applicable corporations and any resolutions or other actions that were made to encourage these corporations to divest.

#### Background

There is a provision in statute, Section 11A.241, which requires the SBI to review its stock and bond investments in the Basic and Post Retirement Fund and to determine which corporations are doing business in Northern Ireland. The SBI is required to determine which of these corporations has taken affirmative action in the preceding year to eliminate religious and ethnic discrimination in Northern Ireland, to follow non-discriminatory employment policies, and to encourage skill development of disadvantaged worker groups. Whenever feasible, the SBI is to support shareholder resolutions to encourage corporations to pursue a policy of affirmative action in Northern Ireland. Nothing in this section should be interpreted as requiring the SBI to hold and make investments that violate sound investment policy.

Delete-all amendment RD0001-2 takes a different approach. Rather than encouraging companies doing business in the Sudan to directly create safe workplaces and to follow non-discriminatory policies, the amendment seeks to encourage companies to cease all activity in the Sudan.

#### Discussion and Analysis

Delete-all amendment RD0001-2 to S.F. xxxx (Bonoff); H.F. xxxx, raises the following policy issues:

1. Alternative of a Resolution. The issue is whether this matter might be better handled by a resolution rather than by legislation.
2. Investment Issues. The proposal does not directly raise State Board of Investment pension fund asset or rate-of-return concerns because the SBI is not required to revise its investments.
3. Nature of the Proposed Change. The issue is the approach taken in the draft, encouraging companies to divest of their operations in Sudan. That may lead to more poverty. Perhaps the Commission may wish to consider an approach similar to the Northern Ireland provision in law, which encourages companies doing business in that area to follow non-discriminatory practices and provide a safe worker environment.
4. Proper Organization. The issue is which organization is best suited to carry out the responsibilities imposed by the bill. The bill imposes requirements on the SBI which conflict with its central mission of overseeing the investment of pension plan assets. Perhaps the necessary reviews and reports could be performed by another state agency, the Department of Employee Relations (DOER) using data provided by the SBI, and DOER could then provide a report to the Legislature or other interested parties.

5. Frequency of Reports. The issue is the frequency of the required reports. The reports would be required twice each year. This may be too often. The Commission may wish to consider an annual report or a report every other year.
6. Report Recipients. The amendment requires report copies to be sent to each member of the Commission. The Commission may wish to consider a single report to the Executive Director of the Legislative Commission on Pensions and Retirement, who would make that information available to members at a Commission meeting.
7. Issue of Codification. The issue is whether this provision should be codified in statute. While the draft attempts to address what is clearly a serious issue in the Sudan, that crisis is unlikely to be permanent. The Commission may wish to consider recommending the provision as a special law, with an expiration date.

Potential Amendments for Commission Consideration

Amendment RD0001-2-1A adds an expiration date to be determined by the Commission.

Amendment RD0001-2-2A makes the report due every other year, and the Commission Executive Director would be copied rather than each Commission member.

Amendment RD0001-2-3A is an alternative to any of these amendments and would redraft the provision to be comparable to the Northern Ireland provision in current statute.

1.1 ..... moves to amend delete everything amendment RD0001-2 to S.F.

1.2 No. ....; H. F. No. ...., as follows:

1.3 Page 1, after line 28, insert:

1.4 "Subd. 6. **Expiration.** This section expires on ....."

1.1 ..... moves to amend delete everything amendment RD0001-2 to S.F.

1.2 No. ....; H. F. No. ...., as follows:

1.3 Page 1, line 23, delete "January 15 and" and after "each" insert "odd-numbered"

1.4 Page 1, line 27, delete "each"

1.5 Page 1, line 28, delete "member" and insert "the executive director"

1.1 ..... moves to amend delete everything amendment RD0001-2 to S.F.

1.2 No. ....; H. F. No. ...., as follows:

1.3 Page 1, delete lines 4 to 28 and insert:

1.4 "Subdivision 1. **List of investments.** (a) By January 1 of each year, the state board  
1.5 shall:

1.6 (1) compile a list of corporations that, directly or through a subsidiary, do business  
1.7 in Sudan and in whose stocks or obligations the board has invested under section 11A.24,  
1.8 subdivision 3 or 5; and

1.9 (2) determine whether each corporation on the list has, during the preceding year,  
1.10 taken affirmative action to improve the human rights situation in Sudan.

1.11 (b) In making the determination required by paragraph (a), clause (2), the state board  
1.12 shall consider whether a corporation doing business in Sudan has, during the preceding  
1.13 year, taken substantial action designed to lead toward the achievement of the following  
1.14 goals:

1.15 (1) increasing representation of persons from underrepresented religious or ethnic  
1.16 groups at all levels in its work force;

1.17 (2) providing adequate security for employees who are members of minority  
1.18 religious groups, both at the workplace and while traveling to and from work; and

1.19 (3) placing pressure on the government of Sudan to end the crisis and genocide  
1.20 in Sudan's Darfur region.

1.21 Subd. 2. **Affirmative action policy.** Whenever feasible, the board shall sponsor,  
1.22 cosponsor, or support shareholder resolutions designed to encourage corporations in  
1.23 which the board has invested to pursue a policy of affirmative action to improve the  
1.24 human rights situation in Sudan.

1.25 Subd. 3. **Divestment not required.** Nothing in this section may be construed to  
1.26 require the state board to dispose of existing investments or to make future investments  
1.27 that violate sound investment policy for public pensions."

1.1 Senator ..... moves to amend S.F. No. 0000 as follows:

1.2 Delete everything after the enacting clause and insert:

1.3 "Section 1. [11A.243] INVESTMENT IN SUDAN.

1.4 Subdivision 1. (a) For the purposes of this section, the following item shall have  
1.5 the meaning given to it in this subdivision.

1.6 (b) "Equity tie" means:

1.7 (1) ownership of equipment, facilities, or property; or

1.8 (2) maintenance of employees or any other apparatus of business or commerce.

1.9 Subd. 2. **List of investments.** By January 15 and July 15 of each year, the state  
1.10 board shall:

1.11 (1) compile a list of corporations with an equity tie to Sudan and in whose stocks or  
1.12 obligations the board has invested under section 11A.24, subdivision 3 or 5; and

1.13 (2) determine in writing whether each corporation on the list has, during the  
1.14 preceding 12 months, taken steps to divest equity ties to Sudan.

1.15 Subd. 3. **Shareholder policy.** Whenever feasible, the board shall:

1.16 (1) sponsor, cosponsor, or support shareholder resolutions designed to encourage  
1.17 corporations listed under subdivision 2 to divest equity ties to Sudan; and

1.18 (2) develop and implement a strategy to directly request corporations listed under  
1.19 subdivision 2 to divest equity ties to Sudan.

1.20 Subd. 4. **Divestment not required.** Nothing in this section may be construed to  
1.21 require the state board to dispose of existing investments or to make future investments  
1.22 that violate sound investment policy for public pensions.

1.23 Subd. 5. **Report.** By January 15 and July 15 of each year, the board shall  
1.24 provide a report to the legislature, as provided in section 3.195, that contains the list of  
1.25 corporations required under subdivision 2, together with any relevant determinations and  
1.26 considerations, and a description of any actions taken under subdivision 3. The board  
1.27 shall also post a copy of the report on its Web site and provide a copy of the report to each  
1.28 member of the Legislative Commission on Pensions and Retirement."

1.29 Amend the title accordingly