

Calendar No. 458

110TH CONGRESS
1ST SESSION

S. 2271

[Report No. 110-213]

To authorize State and local governments to divest assets in companies that conduct business operations in Sudan, to prohibit United States Government contracts with such companies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 31, 2007

Mr. DODD, from the Committee on Banking, Housing, and Urban Affairs, reported the following original bill; which was read twice and placed on the calendar

A BILL

To authorize State and local governments to divest assets in companies that conduct business operations in Sudan, to prohibit United States Government contracts with such companies, and for other purposes.

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 Accountability
5 and Divestment Act of 2007”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**
4 **TEES.**—The term “appropriate congressional com-
5 mittees” means—

6 (A) the Committee on Banking, Housing,
7 and Urban Affairs, the Committee on Foreign
8 Relations, and the Select Committee on Intel-
9 ligence of the Senate; and

10 (B) the Committee on Financial Services,
11 the Committee on Foreign Affairs, and the Per-
12 manent Select Committee on Intelligence of the
13 House of Representatives.

14 (2) **BUSINESS OPERATIONS.**—The term “busi-
15 ness operations” means engaging in commerce in
16 any form in Sudan, including by acquiring, devel-
17 oping, maintaining, owning, selling, possessing, leas-
18 ing, or operating equipment, facilities, personnel,
19 products, services, personal property, real property,
20 or any other apparatus of business or commerce.

21 (3) **EXECUTIVE AGENCY.**—The term “executive
22 agency” has the meaning given the term in section
23 4 of the Office of Federal Procurement Policy Act
24 (41 U.S.C. 403).

25 (4) **GOVERNMENT OF SUDAN.**—The term “Gov-
26 ernment of Sudan”—

1 (A) means the government in Khartoum,
2 Sudan, which is led by the National Congress
3 Party (formerly known as the National Islamic
4 Front) or any successor government formed on
5 or after October 13, 2006 (including the coali-
6 tion National Unity Government agreed upon in
7 the Comprehensive Peace Agreement for
8 Sudan); and

9 (B) does not include the regional govern-
10 ment of southern Sudan.

11 (5) MARGINALIZED POPULATIONS OF SUDAN.—

12 The term “marginalized populations of Sudan” re-
13 fers to—

14 (A) adversely affected groups in regions
15 authorized to receive assistance under section
16 8(c) of the Darfur Peace and Accountability
17 Act (Public Law 109–344; 50 U.S.C. 1701
18 note); and

19 (B) marginalized areas in Northern Sudan
20 described in section 4(9) of such Act.

21 (6) MILITARY EQUIPMENT.—The term “mili-
22 tary equipment” means—

23 (A) weapons, arms, military supplies, and
24 equipment that readily may be used for military

1 purposes, including radar systems or military-
2 grade transport vehicles; or

3 (B) supplies or services sold or provided di-
4 rectly or indirectly to any force actively partici-
5 pating in armed conflict in Sudan.

6 (7) MINERAL EXTRACTION ACTIVITIES.—The
7 term “mineral extraction activities” means explor-
8 ing, extracting, processing, transporting, or whole-
9 sale selling or trading of elemental minerals or asso-
10 ciated metal alloys or oxides (ore), including gold,
11 copper, chromium, chromite, diamonds, iron, iron
12 ore, silver, tungsten, uranium, and zinc.

13 (8) OIL-RELATED ACTIVITIES.—

14 (A) IN GENERAL.—Except as provided in
15 subparagraph (B), the term “oil-related activi-
16 ties” means—

17 (i) exporting, extracting, producing,
18 refining, processing, exploring for, trans-
19 porting, selling, or trading oil; and

20 (ii) constructing, maintaining, or op-
21 erating a pipeline, refinery, or other oilfield
22 infrastructure.

23 (B) EXCLUSIONS.—A person shall not be
24 considered to be involved in an oil-related activi-
25 ty if—

1 (i) the person is involved in the retail
2 sale of gasoline or related consumer prod-
3 ucts in Sudan but is not involved in any
4 other activity described in subparagraph
5 (A); or

6 (ii) the person is involved in leasing,
7 or owns, rights to an oil block in Sudan
8 but is not involved in any other activity de-
9 scribed in subparagraph (A).

10 (9) PERSON.—The term “person” means—

11 (A) a natural person, corporation, com-
12 pany, business association, partnership, society,
13 trust, any other nongovernmental entity, orga-
14 nization, or group;

15 (B) any governmental entity or instrumen-
16 tality of a government, including a multilateral
17 development institution (as defined in section
18 1701(c)(3) of the International Financial Insti-
19 tutions Act (22 U.S.C. 262r(c)(3))); and

20 (C) any successor, subunit, or subsidiary of
21 any entity described in subparagraph (A) or
22 (B).

23 (10) POWER PRODUCTION ACTIVITIES.—The
24 term “power production activities” means any busi-
25 ness operation that involves a project commissioned

1 by the National Electricity Corporation of Sudan or
2 other similar entity of the Government of Sudan
3 whose purpose is to facilitate power generation and
4 delivery, including establishing power-generating
5 plants or hydroelectric dams, selling or installing
6 components for the project, or providing service con-
7 tracts related to the installation or maintenance of
8 the project.

9 (11) STATE.—The term “State” means each of
10 the several States, the District of Columbia, the
11 Commonwealth of Puerto Rico, the United States
12 Virgin Islands, Guam, American Samoa, and the
13 Commonwealth of the Northern Mariana Islands.

14 (12) STATE OR LOCAL GOVERNMENT.—The
15 term “State or local government” includes—

16 (A) any State and any agency or instru-
17 mentality thereof;

18 (B) any local government within a State,
19 and any agency or instrumentality thereof;

20 (C) any other governmental instrumen-
21 tality; and

22 (D) any public institution of higher edu-
23 cation within the meaning of the Higher Edu-
24 cation Act of 1965 (20 U.S.C. 1001 et seq.).

1 (13) SIGNIFICANT HUMANITARIAN EFFORTS.—

2 The term “significant humanitarian efforts”
3 means—

4 (A) efforts—

5 (i) undertaken in conjunction with an
6 international development or humanitarian
7 organization, the regional government of
8 southern Sudan, or a nonprofit entity;

9 (ii) that are substantial in relationship
10 to the size and scope of the business oper-
11 ations with respect to Sudan; and

12 (iii) that benefit 1 or more marginal-
13 ized populations of Sudan; or

14 (B) materially improving conditions for the
15 marginalized population in Darfur.

16 **SEC. 3. AUTHORITY OF STATE AND LOCAL GOVERNMENTS**
17 **TO DIVEST FROM CERTAIN COMPANIES DI-**
18 **RECTLY INVESTED IN CERTAIN SUDANESE**
19 **SECTORS.**

20 (a) SENSE OF CONGRESS.—It is the sense of Con-
21 gress that the United States Government should support
22 the decision of any State or local government to divest
23 from, or to prohibit the investment of assets of the State
24 or local government in, a person that the State or local

1 government determines poses a financial or reputational
2 risk.

3 (b) AUTHORITY TO DIVEST.—Notwithstanding any
4 other provision of law, a State or local government may
5 adopt and enforce measures that meet the requirements
6 of subsection (e) to divest the assets of the State or local
7 government from, or prohibit investment of the assets of
8 the State or local government in, persons that the State
9 or local government determines, using credible information
10 available to the public, are conducting or have direct in-
11 vestments in business operations described in subsection
12 (d).

13 (c) NOTICE TO DEPARTMENT OF JUSTICE.—Not
14 later than 30 days after adopting a measure pursuant to
15 subsection (b), a State or local government shall submit
16 written notice to the Attorney General describing the
17 measure.

18 (d) BUSINESS OPERATIONS DESCRIBED.—

19 (1) IN GENERAL.—Business operations de-
20 scribed in this subsection are business operations in
21 Sudan that include power production activities, min-
22 eral extraction activities, oil-related activities, or the
23 production of military equipment.

24 (2) EXCEPTIONS.—Business operations de-
25 scribed in this subsection do not include business op-

1 erations that the person conducting the business op-
2 erations can demonstrate—

3 (A) are conducted under contract directly
4 and exclusively with the regional government of
5 southern Sudan;

6 (B) are conducted under a license from the
7 Office of Foreign Assets Control, or are ex-
8 pressly exempted under Federal law from the
9 requirement to be conducted under such a li-
10 cense;

11 (C) consist of providing goods or services
12 to marginalized populations of Sudan;

13 (D) consist of providing goods or services
14 to an internationally recognized peacekeeping
15 force or humanitarian organization;

16 (E) consist of providing goods or services
17 that are used only to promote health or edu-
18 cation;

19 (F) are conducted by a person that has
20 also undertaken significant humanitarian ef-
21 forts; or

22 (G) have been voluntarily suspended.

23 (e) REQUIREMENTS.—Any measure taken by a State
24 or local government under subsection (b) shall meet the
25 following requirements:

1 (1) NOTICE.—The State or local government
2 shall provide written notice and an opportunity to
3 comment in writing to each person to whom a meas-
4 ure is to be applied.

5 (2) TIMING.—The measure shall apply to a per-
6 son not earlier than the date that is 90 days after
7 the date on which written notice is provided to the
8 person under paragraph (1).

9 (f) DEFINITIONS.—In this section:

10 (1) INVESTMENT.—The “investment” of assets,
11 with respect to a State or local government, in-
12 cludes—

13 (A) a commitment or contribution of as-
14 sets;

15 (B) a loan or other extension of credit of
16 assets; and

17 (C) the entry into or renewal of a contract
18 for goods or services.

19 (2) ASSETS.—

20 (A) IN GENERAL.—Except as provided in
21 subparagraph (B), the term “assets” refers to
22 public monies and includes any pension, retire-
23 ment, annuity, or endowment fund, or similar
24 instrument, that is controlled, directly or indi-
25 rectly, by a State or local government.

1 (B) EXCEPTION.—The term “assets” does
2 not include employee benefit plans covered by
3 title I of the Employee Retirement Income Se-
4 curity Act of 1974 (29 U.S.C. 1001 et seq.).

5 (g) NONPREEMPTION.—A measure of a State or local
6 government authorized under subsection (b) is not pre-
7 empted by any Federal law or regulation.

8 (h) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (2), this section applies to measures adopted
11 by a State or local government before, on, or after
12 the date of the enactment of this Act.

13 (2) NOTICE REQUIREMENTS.—Subsections (c)
14 and (e) apply to measures adopted by a State or
15 local government on or after the date of the enact-
16 ment of this Act.

17 **SEC. 4. SAFE HARBOR FOR CHANGES OF INVESTMENT**
18 **POLICIES BY ASSET MANAGERS.**

19 (a) IN GENERAL.—Section 13 of the Investment
20 Company Act of 1940 (15 U.S.C. 80a–13) is amended by
21 adding at the end the following:

22 “(c) LIMITATION ON ACTIONS.—

23 “(1) IN GENERAL.—Notwithstanding any other
24 provision of Federal or State law, no person may
25 bring any civil, criminal, or administrative action

1 against any registered investment company, or any
2 employee, officer, director, or investment adviser
3 thereof, based solely upon the investment company
4 divesting from, or avoiding investing in, securities
5 issued by persons that the investment company de-
6 termines, using credible information that is available
7 to the public, conduct or have direct investments in
8 business operations in Sudan described in section
9 3(d) of the Sudan Accountability and Divestment
10 Act of 2007.

11 “(2) APPLICABILITY.—

12 “(A) ACTIONS FOR BREACHES OF FIDU-
13 CIARY DUTIES.—Paragraph (1) does not pre-
14 vent a person from bringing an action based on
15 a breach of a fiduciary duty owed to that per-
16 son with respect to a divestment or non-invest-
17 ment decision, other than as described in para-
18 graph (1).

19 “(B) DISCLOSURES.—Paragraph (1) shall
20 not apply to a registered investment company,
21 or any employee, officer, director, or investment
22 adviser thereof, unless the investment company
23 makes disclosures in accordance with regula-
24 tions prescribed by the Commission.

1 “(3) PERSON DEFINED.—For purposes of this
2 subsection the term ‘person’ includes the Federal
3 Government and any State or political subdivision of
4 a State.”.

5 (b) SEC REGULATIONS.—Not later than 120 days
6 after the date of the enactment of this Act, the Securities
7 and Exchange Commission shall prescribe regulations, in
8 the public interest and for the protection of investors, to
9 require disclosure by each registered investment company
10 that divests itself of securities in accordance with section
11 13(c) of the Investment Company Act of 1940. Such rules
12 shall require the disclosure to be included in the next peri-
13 odic report filed with the Commission under section 30
14 of such Act (15 U.S.C. 80a–29) following such divestiture.

15 **SEC. 5. SENSE OF CONGRESS REGARDING CERTAIN ERISA**
16 **PLAN INVESTMENTS.**

17 It is the sense of Congress that a fiduciary of an em-
18 ployee benefit plan, as defined in section 3(3) of the Em-
19 ployee Retirement Income Security Act of 1974 (29
20 U.S.C. 1002(3)), may divest plan assets from, or avoid
21 investing plan assets in, any person the fiduciary deter-
22 mines is conducting or has direct investments in business
23 operations in Sudan described in section 3(d) of this Act,
24 without breaching the responsibilities, obligations, or du-
25 ties imposed upon the fiduciary by section 404 of the Em-

1 ployee Retirement Income Security Act of 1974 (29
2 U.S.C. 1104), if—

3 (1) the fiduciary makes such determination
4 using credible information that is available to the
5 public; and

6 (2) such divestment or avoidance of investment
7 is conducted in accordance with section 2509.94–1
8 of title 29, Code of Federal Regulations (as in effect
9 on the day before the date of the enactment of this
10 Act).

11 **SEC. 6. PROHIBITION ON UNITED STATES GOVERNMENT**
12 **CONTRACTS.**

13 (a) **CERTIFICATION REQUIREMENT.**—The head of
14 each executive agency shall ensure that each contract en-
15 tered into by such executive agency for the procurement
16 of goods or services includes a clause that requires the
17 contractor to certify to the contracting officer that the
18 contractor does not conduct business operations in Sudan
19 described in section 3(d).

20 (b) **REMEDIES.**—

21 (1) **IN GENERAL.**—The head of an executive
22 agency may impose remedies as provided in this sub-
23 section if the head of the executive agency deter-
24 mines that the contractor has submitted a false cer-
25 tification under subsection (a) after the date the

1 Federal Acquisition Regulation is amended under
2 subsection (e) to implement the requirements of this
3 section.

4 (2) TERMINATION.—The head of an executive
5 agency may terminate a covered contract upon the
6 determination of a false certification under para-
7 graph (1).

8 (3) SUSPENSION AND DEBARMENT.—The head
9 of an executive agency may debar or suspend a con-
10 tractor from eligibility for Federal contracts upon
11 the determination of a false certification under para-
12 graph (1). The debarment period may not exceed 3
13 years.

14 (4) INCLUSION ON LIST OF PARTIES EXCLUDED
15 FROM FEDERAL PROCUREMENT AND NONPROCURE-
16 MENT PROGRAMS.—The Administrator of General
17 Services shall include on the List of Parties Ex-
18 cluded from Federal Procurement and Nonprocure-
19 ment Programs maintained by the Administrator
20 under part 9 of the Federal Acquisition Regulation
21 issued under section 25 of the Office of Federal Pro-
22 curement Policy Act (41 U.S.C. 421) each con-
23 tractor that is debarred, suspended, proposed for de-
24 barment or suspension, or declared ineligible by the
25 head of an executive agency on the basis of a deter-

1 mination of a false certification under paragraph
2 (1).

3 (5) RULE OF CONSTRUCTION.—This section
4 shall not be construed to limit the use of other rem-
5 edies available to the head of an executive agency or
6 any other official of the Federal Government on the
7 basis of a determination of a false certification
8 under paragraph (1).

9 (c) EXCEPTION FOR PROCUREMENT OF CERTAIN
10 PRODUCTS.—The certification requirement under sub-
11 section (a) does not apply to contracts for the procurement
12 of eligible products (as that term is defined in section
13 308(4) of the Trade Agreements Act of 1979 (19 U.S.C.
14 2518(4)) of any foreign country or instrumentality des-
15 ignated under section 301(b)(1) of such Act (19 U.S.C.
16 2511(b)(1)).

17 (d) WAIVER.—

18 (1) IN GENERAL.—The President may waive
19 the requirement of subsection (a) on a case-by-case
20 basis if the President determines and certifies in
21 writing to the appropriate congressional committees
22 that it is in the national interest to do so.

23 (2) REPORTING REQUIREMENT.—Not later than
24 April 15, 2008, and semi-annually thereafter, the
25 Administrator for Federal Procurement Policy shall

1 submit to the appropriate congressional committees
2 a report on waivers granted under paragraph (1).

3 (e) IMPLEMENTATION THROUGH THE FEDERAL AC-
4 QUISSION REGULATION.—Not later than 120 days after
5 the date of the enactment of this Act, the Federal Acquisi-
6 tion Regulatory Council shall amend the Federal Acquisi-
7 tion Regulation issued pursuant to section 25 of the Office
8 of Federal Procurement Policy Act (41 U.S.C. 421) to
9 provide for the implementation of the requirements of this
10 section.

11 (f) REPORT.—Not later than one year after the date
12 the Federal Acquisition Regulation is amended under sub-
13 section (e) to implement the requirements of this section,
14 the Administrator of General Services, with the assistance
15 of other executive agencies, shall submit to the Office of
16 Management and Budget and the appropriate congress-
17 sional committees a report on the actions taken under this
18 section.

19 **SEC. 7. SENSE OF CONGRESS ON EFFORTS BY OTHER**
20 **COUNTRIES.**

21 It is the sense of Congress that the governments of
22 all other countries should adopt measures, similar to those
23 contained in this Act, to publicize the activities of all per-
24 sons that, through their financial dealings, knowingly or
25 unknowingly enable the Government of Sudan to continue

1 to oppress and commit genocide against people in the
2 Darfur region and other regions of Sudan, and to author-
3 ize divestment from, and the avoidance of further invest-
4 ment in, such persons.

5 **SEC. 8. SENSE OF CONGRESS ON PEACEKEEPING EFFORTS**
6 **IN SUDAN.**

7 It is the sense of Congress that the President
8 should—

9 (1) continue to work with other members of the
10 international community, including the Permanent
11 Members of the United Nations Security Council,
12 the African Union, the European Union, the Arab
13 League, and the Government of Sudan to facilitate
14 the urgent deployment of a peacekeeping force to
15 Sudan; and

16 (2) bring before the United Nations Security
17 Council, and call for a vote on, a resolution requir-
18 ing meaningful multilateral sanctions against the
19 Government of Sudan in response to its acts of
20 genocide against the people of Darfur and its contin-
21 ued refusal to allow the implementation of a peace-
22 keeping force in Sudan.

23 **SEC. 9. SENSE OF CONGRESS ON THE INTERNATIONAL OB-**
24 **LIGATIONS OF THE UNITED STATES.**

25 It is the sense of Congress that nothing in this Act—

1 (1) conflicts with the international obligations
2 or commitments of the United States; or

3 (2) affects article VI, clause 2, of the Constitu-
4 tion of the United States.

5 **SEC. 10. REPORTS ON SANCTIONS IN SUPPORT OF PEACE**
6 **IN DARFUR.**

7 (a) IN GENERAL.—The Secretary of State and the
8 Secretary of the Treasury shall submit to the appropriate
9 congressional committees a report assessing the effective-
10 ness of sanctions imposed with respect to Sudan at the
11 time the Secretary of State and the Secretary of the
12 Treasury submits reports required under—

13 (1) the Sudan Peace Act (Public Law 107–245;
14 50 U.S.C. 1701 note);

15 (2) the Comprehensive Peace in Sudan Act of
16 2004 (Public Law 108–497; 50 U.S.C. 1701 note);
17 and

18 (3) the Darfur Peace and Accountability Act of
19 2006 (Public Law 109–344; 50 U.S.C. 1701 note).

20 (b) ADDITIONAL REPORT BY THE SECRETARY OF
21 THE TREASURY.—The Secretary of the Treasury shall
22 submit to the appropriate congressional committees a re-
23 port assessing the effectiveness of sanctions imposed with
24 respect to Sudan under the International Emergency Eco-
25 nomic Powers Act (50 U.S.C. 1701 et seq.) at the time

1 the President submits the reports required by section
2 204(e) of such Act (50 U.S.C. 1703(e)) with respect to
3 Executive Order 13,067 (50 U.S.C. 1701 note; relating
4 to blocking property of persons in connection with the con-
5 flict in Sudan's region of Darfur).

6 (c) CONTENTS.—The reports required by subsections
7 (a) and (b) shall include—

8 (1) a description of each sanction imposed
9 under a law or executive order described in sub-
10 section (a) or (b);

11 (2) the name of the person subject to the sanc-
12 tion, if any; and

13 (3) whether or not the person subject to the
14 sanction is also subject to sanctions imposed by the
15 United Nations.

16 **SEC. 11. REPEAL OF REPORTING REQUIREMENT.**

17 Section 6305 of the U.S. Troop Readiness, Veterans'
18 Care, Katrina Recovery, and Iraq Accountability Appro-
19 priations Act, 2007 (Public Law 110–28; 121 Stat. 172)
20 is repealed.

21 **SEC. 12. TERMINATION.**

22 The provisions of sections 3, 4, 5, 6, and 10 shall
23 terminate 30 days after the date on which the President
24 has certified to Congress that the Government of Sudan
25 has honored its commitments to—

- 1 (1) abide by United Nations Security Council
- 2 Resolution 1769 (2007);
- 3 (2) cease attacks on civilians;
- 4 (3) demobilize and demilitarize the Janjaweed
- 5 and associated militias;
- 6 (4) grant free and unfettered access for delivery
- 7 of humanitarian assistance; and
- 8 (5) allow for the safe and voluntary return of
- 9 refugees and internally displaced persons.

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A BILL

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