
A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Legislative findings. The legislature finds
2 that:

3 (1) For more than twenty years, the Government of Uganda
4 has been engaged in an armed conflict with the Lord's
5 Resistance Army, an armed rebel group backed by the
6 government of Uganda; and

7 (2) United Nations relief officials have repeatedly
8 expressed concern about the neglected humanitarian
9 crisis in northern Uganda, which has resulted in ten
10 thousand people murdered, at least twice that number
11 of children abducted, and over 1.6 million people
12 displaced; and

13 (3) The Secretary of State Condoleezza Rice has labeled
14 the Lord's Resistance Army "vicious and cult-like" and
15 designates it as a terrorist organization under the
16 Immigration and Nationality Act;

17 (4) On October 20, 2006, the Congressional Research
18 Service reported that "a number of attempts in the



1 past at a negotiated settlement with the Lord's
2 Resistance Army failed, in large part due to Lord's
3 Resistance Army intransigence and the government of
4 Uganda's inconsistent positions";

5 (5) On March 6, 2007, the Department of State released its
6 2006 Country Reports on Human Rights Practices, which
7 declared that the Ugandan "government's human rights
8 record remained poor" and cited a long list of serious
9 problems, including the following: unlawful killings
10 by security forces; disappearances; security forces
11 use of torture and abuse of suspects; vigilante
12 justice; harsh prison conditions; official impunity;
13 arbitrary arrest; abuse of internally displaced
14 persons; restrictions on opposition parties;
15 government corruption; restrictions on the right to a
16 fair trial and on freedoms of speech, the press, and
17 association; limited freedom of religion; violence and
18 abuse of children, particularly sexual abuse;
19 trafficking in persons; violence and discrimination
20 against people with disabilities; forced labor,
21 including by children;



- 1 (6) The 110th United States Congress introduced legislation
2 in 2007 calling on the government of Uganda and the
3 Lord's Resistance Army to recommit to a political
4 solution to the conflict in northern Uganda and to
5 recommence vital peace talks;
- 6 (7) On September 5, 2007, the Assistant Secretary of State
7 for African Affairs stated that the United States
8 supports "an internal [peace] process and African-led
9 mediation" as the best way to end the conflict in
10 northern Uganda;
- 11 (8) On October 30, 2007, President George W. Bush
12 discussed the long-running conflict in northern Uganda
13 with Ugandan President Yoweri Museveni, stressing that
14 the situation needs to move toward peace;
- 15 (9) A 2006 United States House of Representatives report
16 states that "a company's association with sponsors of
17 terrorism and human rights abuses, no matter how large
18 or small, can have a materially adverse result on a
19 public company's operations, financial condition,
20 earnings, and stock prices, all of which can
21 negatively affect the value of an investment";



1 (10) It is a fundamental responsibility of the State to
2 decide where, how, and by whom financial resources in
3 its control should be invested, taking into account
4 numerous pertinent factors;

5 (11) It is the prerogative and desire of the State, in
6 respect to investment resources in its control and to
7 the extent reasonable, with due consideration for,
8 among other things, return on investment, on behalf of
9 itself and its investment beneficiaries, not to
10 participate in an ownership or capital-providing
11 capacity with entities that provide significant
12 practical support for genocide and other violence,
13 including certain non-United States companies
14 presently doing business in Uganda;

15 (12) It is the judgment of the legislature that this Act
16 should remain in effect only insofar as it continues
17 to be consistent with, and does not unduly interfere
18 with, the foreign policy of the United States as
19 determined by the federal government; and

20 (13) It is the judgment of this legislature that mandatory
21 divestment of public funds from certain companies is a
22 measure that should be employed sparingly and



1 judiciously. A Congressional and presidential
2 declaration of genocide satisfies this high threshold.

3 SECTION 2. Definitions. As used in this Act, the
4 following definitions shall apply:

5 "Active business operations" means all business operations
6 that are not inactive business operations.

7 "Business operations" means engaging in commerce in any
8 form in Uganda, including by acquiring, developing, maintaining,
9 owning, selling, possessing, leasing, or operating equipment,
10 facilities, personnel, products, services, personal property,
11 real property, or any other apparatus of business or commerce.

12 "Company" means any sole proprietorship, organization,
13 association, corporation, partnership, joint venture, limited
14 partnership, limited liability partnership, limited liability
15 company, or other entity or business association, including all
16 wholly-owned subsidiaries, majority-owned subsidiaries, parent
17 companies, or affiliates of such entities or business
18 associations, that exists for profit-making purposes.

19 "Complicit" means taking actions during any preceding
20 twenty-month period which have directly supported or promoted
21 the genocidal campaign in Uganda, including but not limited to
22 preventing Uganda's victimized population from communicating



1 with each other, actively working to deny, cover up, or alter
2 the record on human rights abuses in Uganda, or other similar
3 actions.

4 "Direct holdings" in a company means all securities of that
5 company held directly by the public fund or in an account or
6 fund in which the public fund owns all shares or interests.

7 "Government of Uganda" means the government, which is led
8 by President Yoweri Museveni and its armed forces, the Uganda
9 People's Defense Forces.

10 "Inactive business operations" means the mere continued
11 holding or renewal of rights to property previously operated for
12 the purpose of generating revenues but not presently deployed
13 for such purpose.

14 "Indirect holdings" in a company means all securities of
15 that company held in an account or fund, such as a mutual fund,
16 managed by one or more persons not employed by the public fund,
17 in which the public fund owns shares or interests together with
18 other investors not subject to this Act.

19 "Marginalized populations of Uganda" include but are not
20 limited to the population in northern Uganda that has been
21 genocidally victimized, trafficked, and displaced.



1 "Military equipment" means weapons, arms, military
2 supplies, and equipment that readily may be used for military
3 purposes, including but not limited to radar systems or
4 military-grade transport vehicles; or supplies or services sold
5 or provided directly or indirectly to any force actively
6 participating in armed conflict in Uganda.

7 "Mineral extraction activities" include exploring,
8 extracting, processing, transporting, or wholesale selling or
9 trading of elemental minerals or associated metal alloys or
10 oxides (ore), including gold, copper, chromium, chromite,
11 diamonds, iron, iron ore, silver, tungsten, uranium, and zinc,
12 as well as facilitating such activities, including by providing
13 supplies or services in support of such activities.

14 "Oil-related activities" include but are not limited to
15 owning rights to oil blocks; exporting, extracting, producing,
16 refining, processing, exploring for, transporting, selling, or
17 trading of oil; constructing, maintaining, or operating a
18 pipeline, refinery, or other oil-field infrastructure; and
19 facilitating such activities, including by providing supplies or
20 services in support of such activities; provided that the mere
21 retail sale of gasoline and related consumer products shall not
22 be considered oil-related activities.



1 "Power production activities" means any business operation
2 that involves a project commissioned by the Uganda Electricity
3 Generation Company or other similar government of Uganda entity
4 whose purpose is to facilitate power generation and delivery,
5 including but not limited to establishing power-generating
6 plants or hydroelectric dams, selling or installing components
7 for the project, providing service contracts related to the
8 installation or maintenance of the project, as well as
9 facilitating such activities, including by providing supplies or
10 services in support of such activities.

11 "Public fund" means the employees' retirement system of the
12 State of Hawaii or the board of trustees in charge of the
13 employees' retirement system.

14 "Scrutinized company" means any company that meets any of
15 the following criteria:

- 16 (1) The company has business operations that involve
17 contracts with or provision of supplies or services to
18 the government of Uganda; companies in which the
19 government of Uganda has any direct or indirect equity
20 share; government of Uganda-commissioned consortiums
21 or projects; or companies involved in government of
22 Uganda-commissioned consortiums or projects:



1 (A) A material portion of the company's revenues or
2 assets linked to Uganda involve oil-related
3 activities or mineral extraction activities; the
4 company does not contract directly with the
5 regional government of southern Uganda or a
6 project or consortium created exclusively by that
7 regional government; and the company has failed
8 to take substantial action; or

9 (B) A material portion of the company's revenues or
10 assets linked to Uganda involve power production
11 activities; most of such activities do not
12 include projects whose intent is to provide power
13 or electricity to the marginalized populations of
14 Uganda; and the company has failed to take
15 substantial action;

16 (2) The company is complicit in the Uganda genocide; or
17 (3) The company supplies military equipment within Uganda,
18 unless it clearly shows that the military equipment
19 cannot be used to facilitate offensive military
20 actions in Uganda or the company implements rigorous
21 and verifiable safeguards to prevent use of that
22 equipment by forces actively participating in armed

1 conflict, for example, through post-sale tracking of
2 the equipment by the company, certification from a
3 reputable and objective third party that the equipment
4 is not being used by a party participating in armed
5 conflict in Uganda, or sale of the equipment solely to
6 the regional government of southern Uganda or any
7 internationally-recognized peacekeeping force or
8 humanitarian organization.

9 Notwithstanding anything in this Act to the contrary, a social
10 development company which is not complicit in the Ugandan
11 genocide shall not be considered a scrutinized company.

12 "Social development company" means a company whose primary
13 purpose in Uganda is to provide humanitarian goods or services,
14 including medicine or medical equipment, agricultural supplies
15 or infrastructure, educational opportunities, journalism-related
16 activities, information or information materials, spiritual-
17 related activities, services of a purely clerical or reporting
18 nature, food, clothing, or general consumer goods that are
19 unrelated to oil-related activities, mineral extraction
20 activities, or power production activities.

21 "Substantial action" means adopting, publicizing, and
22 implementing a formal plan to cease scrutinized business



1 operations within one year and to refrain from any new business
2 operations; undertaking significant humanitarian efforts on
3 behalf of one or more marginalized populations of Uganda; or
4 through engagement with the government of Uganda, materially
5 improving conditions for the genocidally victimized population
6 in Uganda.

7 SECTION 3. Identification of companies. (a) Within one
8 hundred eighty days following passage of this Act, the public
9 fund shall make its best efforts to identify all scrutinized
10 companies in which the public fund has direct holdings. Those
11 efforts shall include, as appropriate:

12 (1) Reviewing publicly available information regarding
13 companies with business operations in Uganda. In
14 conducting the review, the public fund may rely on
15 information provided by nonprofit organizations,
16 research firms, international organizations, and
17 government entities;

18 (2) Contacting asset managers contracted by the public
19 fund that invest in companies with business operations
20 in Uganda; and



1 (3) Contacting other institutional investors that have
2 divested from or engaged with companies that have
3 business operations in Uganda.

4 (b) By the first meeting of the public fund following the
5 one hundred eighty-day period described in subsection (a), the
6 public fund shall assemble, into a "scrutinized companies list",
7 all scrutinized companies identified in which the public fund
8 has direct holdings.

9 (c) The public fund shall update the scrutinized companies
10 list on a quarterly basis based on evolving information from,
11 among other sources, those listed in subsection (a).

12 SECTION 4. Required actions. (a) The public fund shall
13 adhere to the following procedures for companies on the
14 scrutinized companies list:

15 (1) The public fund shall determine the companies on the
16 scrutinized companies list in which the public fund
17 owns direct holdings;

18 (2) For each company newly identified with active business
19 operations in which the public fund owns direct
20 holdings, the public fund shall send a written notice
21 informing the company of its scrutinized company
22 status and that it may become subject to divestment by



1 the public fund. The notice shall offer the company
2 the opportunity to clarify its Uganda-related
3 activities and shall encourage the company, within
4 ninety days, to either cease its scrutinized business
5 operations or convert such operations to inactive
6 business operations to avoid qualifying for divestment
7 by the public fund;

8 (3) If, within ninety days following the public fund's
9 first engagement with a company, that company ceases
10 scrutinized business operations, the company shall be
11 removed from the scrutinized companies list and this
12 section shall cease to apply to it unless it resumes
13 scrutinized business operations. If, within ninety
14 days following the public fund's first engagement, the
15 company converts its scrutinized active business
16 operations to inactive business operations, the
17 company shall be subject to all provisions relating
18 thereto; and

19 (4) If, after ninety days following the public fund's
20 first engagement with a company following the
21 effective date of this Act, that company continues to
22 have scrutinized active business operations, the



1 company shall be subject to subsection (b), unless the
2 board of trustees of the public fund determines that
3 the company has made sufficient progress towards
4 ceasing its scrutinized business operations or
5 converting such operations to inactive business
6 operations. The public fund shall continue to monitor
7 and review the progress of the company on a quarterly
8 basis until that company has ceased its scrutinized
9 business operations or converted such operations to
10 inactive business operations. A company that fails to
11 cease its scrutinized business operations, to convert
12 such operations to inactive business operations, or to
13 continue to make sufficient progress towards cessation
14 or conversion by the next time interval shall be
15 subject to subsection (b).

16 (b) If a company on the scrutinized companies list fails
17 to cease scrutinized active business operations in the time
18 described in subsection (a)(4), the public fund shall sell,
19 redeem, divest, or withdraw all publicly-traded securities of
20 the company, except as provided below, within eighteen months
21 after the company becomes subject to this subsection. The
22 public fund may relax the divestment schedule if the public fund



1 determines divestment from particular companies or funds will
2 likely, in the good faith judgment of the board of trustees of
3 the public fund, result in public fund losses exceeding the
4 99.50 per cent mark described in section 7. If such a
5 circumstance arises, the public fund shall submit a report to
6 the legislature setting forth the reasons and justification,
7 accompanied by supporting documentation that includes objective
8 numerical estimates, for its decision to relax the divestment
9 schedule. The report shall be updated annually thereafter as
10 applicable.

11 (c) At no time shall the public fund acquire securities of
12 companies on the scrutinized companies list that have active
13 business operations, except as provided below.

14 (d) No company which the United States affirmatively
15 declares to be excluded from its present or any future federal
16 sanctions regime relating to Uganda shall be subject to
17 divestment or investment prohibition pursuant to subsections (b)
18 and (c).

19 (e) Notwithstanding anything in this Act to the contrary,
20 subsections (b) and (c) shall not apply to indirect holdings in
21 actively managed investment funds.



1 SECTION 5. Reporting. (a) The public fund shall file a
2 publicly-available report to the legislature that includes the
3 scrutinized companies list within ninety days after the list is
4 created.

5 (b) Annually thereafter, the public fund shall file a
6 publicly-available report to the legislature that includes:

7 (1) A summary of correspondence with companies engaged by
8 the public fund under section 4;

9 (2) All investments sold, redeemed, divested, or withdrawn
10 in compliance with section 4;

11 (3) All prohibited investments under section 4; and

12 (4) Any progress made under section 4.

13 SECTION 6. Other legal obligations. With respect to
14 actions taken in compliance with this Act, including all good
15 faith determinations regarding companies as required by this
16 Act, the public fund shall be exempt from any conflicting
17 statutory or common law obligations, including any obligations
18 in respect to choice of asset managers, investment funds, or
19 investments for the public fund's securities portfolios.
20 Nothing in this Act shall require the public fund to take action
21 as described in this Act unless the board of trustees of the
22 public fund determines, in good faith, that the action is



1 consistent with the responsibilities of the board as described
2 in section 88-22.5(a)(1), Hawaii Revised Statutes.

3 SECTION 7. Reinvestment in certain companies with
4 scrutinized active business operations. Notwithstanding
5 anything in this Act to the contrary, the public fund shall be
6 permitted to cease divesting from certain scrutinized companies
7 pursuant to section 4 and reinvest in certain scrutinized
8 companies from which it divested pursuant to section 4 if, in
9 the good faith judgment of the board of trustees of the public
10 fund, the value for all assets under management by the public
11 fund becomes equal to or less than 99.50 per cent (50 basis
12 points) of the hypothetical value of all assets under management
13 by the public fund assuming no divestment for any company had
14 occurred under section 4. Cessation of divestment,
15 reinvestment, or any subsequent ongoing investment authorized by
16 this section shall be strictly limited to the minimum steps
17 necessary to avoid the contingency set forth in the preceding
18 sentence. For any cessation of divestment, reinvestment, or
19 subsequent ongoing investment authorized by this section, the
20 public fund shall provide a written report to the legislature,
21 accompanied by supporting documentation that includes objective
22 numerical estimates, for its decisions to cease divestment,



1 reinvest, or remain invested in companies with scrutinized
2 active business operations. The report shall be updated
3 annually thereafter as applicable. This section has no
4 application to reinvestment in companies on the ground that they
5 have ceased to have scrutinized active business operations.

6 SECTION 8. Provisions for expiration of this Act. This
7 Act shall be repealed upon the occurrence of any of the
8 following:

- 9 (1) The Congress or President of the United States
10 declares that the Uganda genocide has been halted for
11 at least twelve months;
- 12 (2) The United States revokes all sanctions imposed
13 against the government of Uganda;
- 14 (3) The Congress or President of the United States
15 declares that the government of Uganda has honored its
16 commitments to cease attacks on civilians, grant free
17 and unfettered access for deliveries of humanitarian
18 assistance, and allow for the safe and voluntary
19 return of refugees and internally displaced persons;
20 or
- 21 (4) The Congress or President of the United States,
22 through legislation or executive order, declares that



1 mandatory divestment of the type provided for in this
2 chapter interferes with the conduct of United States
3 foreign policy.

4 SECTION 9. If any one or more provisions, sections,
5 subsections, sentences, clauses, phrases, or words of this Act or
6 the application to any person or circumstance is found to be
7 invalid, illegal, unenforceable, or unconstitutional, the same is
8 declared to be severable and the balance of this Act shall remain
9 effective and functional notwithstanding the invalidity,
10 illegality, unenforceability, or unconstitutionality.

11 The legislature declares that it would have passed this Act,
12 and each provision, section, subsection, sentence, clause, phrase
13 or word thereof, irrespective of the fact that any one or more
14 provisions, sections, subsections, sentences, clauses, phrases,
15 or words be declared invalid, illegal, unenforceable or
16 unconstitutional, including but not limited to each of the
17 engagement, divestment, and prohibition provisions of this Act.

18 SECTION 10. This Act shall take effect on July 1, 2008.
19

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Report Title:

Employees' Retirement System; Uganda Divestment

Description:

Prohibits the employees' retirement system from acquiring securities of companies that have active business operations with Uganda.

