

---

---

## 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 110<sup>th</sup> 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

INTRODUCED BY:

Shianne Chun Oakland



**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.

