

Bill No. 3-08
Concerning: Personnel – Retirement –
Sudan Investments - Restrictions
Revised: 4/1/08 Draft No. 12
Introduced: February 12, 2008
Enacted: April 1, 2008
Executive: April 10, 2008
Effective: July 10, 2008
Sunset Date: See §33-60A(h)
Ch. 2, Laws of Mont. Co. 2008

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Elrich, Ervin, Floreen, Leventhal and Berliner

AN ACT to:

- (1) prohibit the Employees' Retirement System from investing in certain businesses conducting operations in Sudan under certain circumstances; and
- (2) generally amend the law governing retirement and investments.

By adding

Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-60A

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-61A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 Sec. 1. Section 33-60A is added as follows:

2 33-60A. Sudan Investments – Restrictions

3 (a) Definitions. In this Section, the following words have the meanings
4 indicated:

5 Actively managed separate account means assets held in a separate
6 account by an investment manager hired by the Board. Actively
7 managed separate account does not include an indexed fund, private
8 equity fund, real estate fund, mutual fund, or other commingled or
9 passively managed fund.

10 Board means the Board of Investment Trustees established by Section
11 33-59.

12 Company means any sole proprietorship, organization, association,
13 corporation, partnership, joint venture, limited partnership, limited
14 liability partnership, limited liability company, or other entity or
15 business association, including any wholly-owned subsidiary, majority-
16 owned subsidiary, and parent company of any of them, or business
17 association, that exists for profit-making purposes.

18 Divestment action means selling, redeeming, transferring, exchanging,
19 or otherwise disposing of, and refraining from further buying of, certain
20 investments.

21 Doing or does business in Sudan means maintaining equipment,
22 facilities, personnel, or other apparatus of business or commerce in
23 Sudan, including ownership of real or personal property in Sudan:

24 (1) for the purpose of:

25 (A) engaging in any business activity with the Government of
26 Sudan; or

27 (B) conducting business with any company in which the
 28 Government of Sudan has a direct or indirect equity share;
 29 or

30 (C) participating in a Government of Sudan-commissioned
 31 consortium or project; and

32 (2) if the business operation includes:

33 (A) supplying military equipment in Sudan; or

34 (B) oil-related activities constituting more than 10% of the
 35 entity's operations in Sudan; or

36 (C) mineral extraction activities constituting more than 10% of
 37 the entity's operations in Sudan; or

38 (D) power production activities constituting more than 10% of
 39 the entity's operations in Sudan.

40 Government of Sudan means the government in Khartoum, Sudan, led
 41 by the National Congress Party (formerly known as the National Islamic
 42 Front), or any successor government formed on or after October 13,
 43 2006 (including the coalition National Unity Government agreed upon
 44 in the Comprehensive Peace Agreement for Sudan). Government of
 45 Sudan does not include the regional government of southern Sudan.

46 Marginalized populations of Sudan means adversely affected groups in
 47 regions authorized to receive assistance under section 8(c) of the Darfur
 48 Peace and Accountability Act (Public Law 109-344) or areas in
 49 Northern Sudan described in section 4(9) of that Act.

50 Military equipment means:

51 (1) weapons, arms, military supplies, and equipment that readily may
 52 be used for military purposes, including radar systems or
 53 military-grade transport vehicles; or

54 (2) supplies or services sold or provided directly or indirectly to any
 55 force actively participating in armed conflict in Sudan.

56 Mineral extraction activity means exploring, extracting, processing,
 57 transporting, or wholesale selling or trading any elemental mineral or
 58 associated metal alloy or oxide (ore), including gold, copper, chromium,
 59 chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc.

60 Oil-related activity means exporting, extracting, producing, refining,
 61 processing, exploring for, transporting, selling, or trading oil; or
 62 constructing, maintaining, or operating a pipeline, refinery, or other
 63 oilfield infrastructure. Oil-related activity does not include the retail
 64 sale of gasoline or related consumer products in Sudan or leasing or
 65 owning rights to an oil block in Sudan.

66 Power production activity means any business operation that involves a
 67 project commissioned by the National Electricity Corporation of Sudan
 68 or any similar Government of Sudan entity whose purpose is to
 69 facilitate power generation and delivery, including establishing any
 70 power-generating plant or hydroelectric dam, selling or installing
 71 components of any such plant or dam, or providing service contracts
 72 related to installing or maintaining any such plant or dam.

73 Substantial action means:

74 (1) adopting, publicizing, and implementing a formal plan to cease
 75 business operations in Sudan within one year and to refrain from
 76 any such new business operations;

77 (2) undertaking significant humanitarian efforts in conjunction with
 78 an international organization, the Government of Sudan, the
 79 regional government of southern Sudan, or a non-profit entity
 80 that is evaluated and certified by an independent third party to be

81 substantial in relationship to the company's business operations
 82 in Sudan and of benefit to one or more marginalized populations
 83 of Sudan; or

84 (3) engaging the Government of Sudan for the purpose of materially
 85 improving conditions for the victimized populations in Darfur.

86 Trust [[fund]] funds means the assets held for the Employees'
 87 Retirement System and the assets held for the Retiree Health Benefits
 88 Trust.

89 (b) Review of investments. The Board must review the investment holdings
 90 in each actively managed separate account of the trust [[fund]] funds
 91 and identify each investment in any company that does business in
 92 Sudan. The Board must review its investment holdings in these
 93 accounts periodically and update the list of companies doing business in
 94 Sudan at least every 6 months.

95 (c) Divestment. The Board:

96 (1) must take divestment action with regard to investments in any
 97 company doing business in Sudan within 12 months after the
 98 Board finds that the company is doing business in Sudan; and

99 (2) must not make any new investments in an actively managed
 100 separate account in any company that does business in Sudan.

101 (d) Research. In determining if any company does business in Sudan, the
 102 Board may:

103 (1) retain a professional consultant; and

104 (2) review publicly available information regarding companies doing
 105 business in Sudan, including information provided by a non-
 106 profit organization, research firm, international organization, or
 107 government.

- 108 (e) Exemption. The divestment or investment prohibition under this
 109 Section must not apply to a company that can demonstrate that its
 110 business operations in Sudan:
- 111 (1) are conducted under contract directly and exclusively with the
 112 regional government of southern Sudan;
 - 113 (2) are conducted under a license from the federal Office of Foreign
 114 Assets Control, or are expressly exempted under Federal law
 115 from the requirement to be conducted under such a license;
 - 116 (3) consist of providing goods or services to marginalized
 117 populations of Sudan for at least 75% of its business operations in
 118 Sudan;
 - 119 (4) consist of providing goods or services to an internationally
 120 recognized peacekeeping force or humanitarian organization;
 - 121 (5) consist of providing goods or services that are used only to
 122 promote health or education; or
 - 123 (6) have been voluntarily suspended.
- 124 (f) Notice. The Board:
- 125 (1) before taking any divestment action under this Section, must
 126 provide written notice and an opportunity to comment in writing
 127 to each company subject to the action;
 - 128 (2) must not take the divestment action until 90 days after written
 129 notice is provided to the company; and
 - 130 (3) must not take the divestment action if the company shows that it:
 - 131 (A) is not doing business in Sudan;
 - 132 (B) has taken substantial action, as defined in subsection (a); or
 - 133 (C) is exempt from divestment under subsection (e).

- 134 (g) Report. The Board must report annually to the Council and Executive
 135 on the operation of and compliance with this Section. The report must:
 136 (1) identify each investment in a company doing business in Sudan
 137 held in an actively managed separate account of the trust [[fund]]
 138 funds;
 139 (2) list each divestment action taken under this Section; and
 140 (3) calculate the administrative cost of compliance.
- 141 (h) Sunset. This Section expires 30 days after the President of the United
 142 States certifies to Congress that the government of Sudan has honored
 143 its commitments to:
 144 (1) abide by United Nations Security Council Resolution 1769
 145 (2007);
 146 (2) cease attacks on civilians;
 147 (3) demobilize and demilitarize the Janjaweed and associated
 148 militias;
 149 (4) grant free and unfettered access for delivery of humanitarian
 150 assistance; and
 151 (5) allow for the safe and voluntary return of refugees and internally
 152 displaced persons.

153 **Sec. 2. Section 33-61A is amended as follows:**

154 **33-61A. Indemnification of trustees**

- 155 (a) *Authorized.* The County must indemnify every member of the Board
 156 who is or may become a party to any action, suit, or proceeding,
 157 including administrative and investigative proceedings, [by reasons]
 158 because of service as a member of the Board, including any action taken
 159 to comply with Section 33-60A, subject to the conditions stated in this
 .0 Section.

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Sec. 3. Initial review. The Board of Investment Trustees must complete its initial review of the investment holdings in all actively managed separate accounts of the trust ~~[[fund]]~~ funds and identify all investments in companies doing business in Sudan within 90 days after the effective date of this Act.

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167 *Approved:*

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<i>Michael J. Knapp</i>	<i>2 April 08</i>
Michael J. Knapp, President, County Council	Date

169 *Approved:*

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<i>Isiah Leggett</i>	<i>April 10, 2008</i>
Isiah Leggett, County Executive	Date

. 1 *This is a correct copy of Council action.*

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<i>Linda M. Lauer</i>	<i>April 15, 2008</i>
Linda M. Lauer, Clerk of the Council	Date