

Section by Section on S. 2271

S. 2271: The Sudan Accountability and Divestment Act

SECTION 1: SHORT TITLE

- Designates the title of the Act as the “Sudan Accountability and Divestment Act”.

SECTION 2: DEFINITIONS

- Includes extensive definitions of “person” (including subsidiary, subunit or parent company), “State or local governments”, “business operations”, “Government of Sudan”, targeted industries, etc.

SECTION 3: AUTHORITY OF STATE AND LOCAL GOVERNMENTS TO DIVEST FROM CERTAIN COMPANIES DIRECTLY INVESTED IN CERTAIN SUDANESE SECTORS

- Includes Sense of Congress supporting divestment tied to a determination of “financial or reputational risk”
- Provides the specific authority to State or local governments to divest from targeted companies in the military, power production, oil-related and mineral extraction industries (with exceptions) using credible information available to the public provided that divestment measures meet prior notice and 90 day timing requirements.
- Includes a definition of “investment” and “assets” controlled by a State or local government, and includes the “entry into or renewal of a contract for goods or services”.
- States that Federal law or regulation does not preempt State or local government divestment measures authorized in this section.

SECTION 4: SAFE HARBOR FOR CHANGES OF INVESTMENT POLICIES BY ASSET MANAGERS

- Amends the Investment Company Act of 1940 to protect investment companies or companies providing services to investment companies from civil, criminal, or administrative action for divesting from or avoiding investing in securities issued by companies in targeted industries, based on a determination by the investment company using credible, publicly available information of such companies direct investments or business operations in Sudan.
- Requires the SEC to develop regulations to allow investment companies to register their decision to divest based on this section.

SECTION 5: SENSE OF CONGRESS REGARDING CERTAIN ERISA PLAN INVESTMENTS

- Includes Sense of Congress that employee benefit plans subject to ERISA that choose to divest or avoid investing—due to a determination by the fiduciary using credible, publicly available information of direct investments or business operations in Sudan—are not breaching their fiduciary responsibilities, obligations, or duties imposed under ERISA.

SECTION 6: PROHIBITION ON UNITED STATES GOVERNMENT CONTRACTS

- Requires each executive agency to ensure that contracts contain a clause requiring certification by the contractor that they do not conduct business operations in Sudan.

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- Provides certain remedies that executive agencies may impose in the event of a false certification.
- Waiver authority granted to President through certification of national security interest.
- Requires the Federal Acquisition Regulatory Council to amend procurement regulations to implement this section no later than 120 days after enactment.
- Requires report by GSA to OMB and appropriate Congressional committees on the actions taken under this section.

SECTION 7: SENSE OF CONGRESS ON EFFORTS BY OTHER COUNTRIES

- Expresses the Sense of Congress that other countries should authorize similar divestment measures with respect to companies doing business in Sudan.

SECTION 8: SENSE OF CONGRESS ON PEACEKEEPING EFFORTS IN SUDAN

- Expresses the Sense of Congress to encourage the President to work with multilateral partners to facilitate deployment of peacekeepers, and bring before the UN Security Council and call for a vote on a resolution requiring meaningful multilateral sanctions on Sudan in response to its acts of genocide against the people of Darfur and its continued refusal to allow the implementation of a peacekeeping force.

SECTION 9: SENSE OF CONGRESS ON THE INTERNATIONAL OBLIGATIONS OF THE UNITED STATES

- Expresses the Sense of Congress that nothing in this act conflicts with international obligations or commitments of the US, or affects article VI clause 2 of the Constitution (Supremacy clause).

SECTION 10: REPORTS ON SANCTIONS IN SUPPORT OF PEACE IN DARFUR

- Requires a report from the State and Treasury Departments assessing the effectiveness of sanctions imposed on Sudan concurrently with previously required reports.
- Requires the Treasury Department to submit an additional report on the effectiveness of sanctions on Sudan imposed under the International Emergency Economic Powers Act.

SECTION 11: REPEAL OF REPORTING REQUIREMENT

- Repeals enacted language from the Iraq Supplemental bill (P.L. 110-28) requiring the SEC to develop a list of companies doing business in Sudan and report to Congress.

SECTION 12: TERMINATION

- Terminates sections 3, 4, 5, 6 and 10, within 30 days after the date on which the President certifies that Sudan has honored its commitments to:
 - Abide by UN Security Council Resolution 1769
 - Cease attacks on civilians
 - Demobilize and demilitarize the Janjaweed and associated militias
 - Grant free and unfettered access for delivery of humanitarian assistance
 - Allow for the safe and voluntary return of refugees and internally displaced persons.