

Oregon Human Rights and Anti-Genocide Act of 2005
Annual Report to the Legislative Assembly
January 15, 2010

Pursuant to ORS 293.811 to 293.817

State Treasurer Ben Westlund

Background

The Oregon Legislative Assembly passed Senate Bill 1089 during the 2005 session, setting guidelines for divestiture from companies doing business in the Republic of Sudan. The bill was codified as the Oregon Human Rights and Anti-Genocide Act of 2005, ORS 293.811 to 293.817 (“the Act”). The investment funds subject to the Act are the Oregon Public Employees Retirement Fund, the State Accident Insurance Fund, the Common School Fund, the Oregon War Veterans Fund, and the Higher Education Endowment Fund.

The Act was effective on August 23, 2005, and requires an annual report to the Legislative Assembly by January 15 on actions taken by the State Treasurer and Oregon Investment Council (OIC) under the Act.

Provisions of the Act

The Legislative Assembly made a number of findings regarding genocide and other atrocities in the Republic of Sudan in the first section of the Act. The remaining sections set forth provisions specifically related to investment matters, including:

- Requiring the OIC and the State Treasurer to act reasonably to try to ensure that funds are not invested in any company the OIC knows is doing business in Sudan for as long as the Sudanese government’s campaign of human rights violations, atrocities or genocide continues.
- Requiring any divestment to be accomplished without monetary loss to the funds.
- Requiring the OIC and State Treasurer to make reasonable efforts to investigate all companies in which the OIC has invested to determine whether any of the companies are doing business in Sudan.
- Requiring the Treasurer to notify any company that investments will be withdrawn for as long as the company does business in Sudan and the atrocities continue.
- Establishing that the Act does not apply to entities engaged in human relief activities or social welfare, companies engaged in journalism, or U.S. companies authorized by the federal government to do business in Sudan.

Implementation of the Act

The statute stipulates that the OIC shall divest consistent with the prudent investor standard and “without monetary loss to the funds through reasonable, prudent and productive investments in companies and institutions generating returns that are comparable to the returns generated by the companies subject to the divestment.”

Below is a chronological summary of actions taken to date by the OIC and the Treasurer in the implementation of the Act:

Prior to enactment

- Began information-gathering from a variety of sources on the general topic of fund divestiture from Sudan.
- Reviewed proxy voting policy on Sudan.
- Researched work of California Public Employees' Retirement System (CalPERS) on its divestiture initiative.
- Reviewed news articles on divestiture in various general interest and trade periodicals.
- Reviewed report on the impact of South African divestiture from CalPERS.
- Contacted State of New Jersey to discuss its planned approach to divestiture.

December 2005

- Policy 4.01.15 approved by OIC.
- Compiled summary of active holdings in the specific companies identified in OIC policy.
- Letter sent from Treasurer to managers of the State's funds.

During 2006

- Conferred with Barclay's Global Investors (BGI) regarding the development, progress, and relative suitability of possible BGI Sudan-free funds.
- Monitored responses to Treasurer's divestiture letter received from money managers, which included indications that the managers were contacting the target companies, divesting or intending to divest when prudent and without loss to the fund, and setting screens in place to prevent re-investment.
- Evaluated ease and effectiveness of implementation process for external managers and Treasurer's staff.
- Researched additional options and resources for determination of which companies are "doing business in Sudan" as defined by Oregon law.
- Revised OIC policy to permit hiring of a separate research manager to develop a list of companies subject to the Act (see Attachment A).
- Engaged Institutional Investor Services' (now RiskMetrics) Custom Sudan Research Service.
- Received first list of additional companies potentially subject to divestiture under Oregon law.

During 2007

- Received monthly lists from Custom Sudan Research Service.
- Distributed lists of identified companies doing business in Sudan to external managers.
- Monitored proposed federal legislation related to divestment from Sudan.

During 2008

- Continued to receive monthly lists from Custom Sudan Research Service, and distributed lists to external managers.
- Improved methods of calculating fund exposure and amounts divested, and improved directions to managers about the divestiture program.

During 2009

- Continued to receive monthly lists from Custom Sudan Research Service, and distributed lists to external managers.
- Identified and engaged a new custom research service to provide better identifiers and better research on subject companies.

The process of directing our external managers on the Sudan program has improved greatly, and the engagement letters are going out to subject companies with more regularity. These improvements, combined with a better analysis and more comprehensive list, have significantly broadened the impact of Oregon's divestment program.

In 2009, staff identified a custom research service that provides better data on subject companies, and better identifiers to help our managers execute the program.

In spite of the improvements to the divestment program, there are factors that detract from the managers' ability to divest. For example, the list of subject companies includes approximately two and one-half percent of the Morgan Stanley Capital International All Country World Index, easily the broadest of all world indexes. These companies were highly likely to be in the managers' portfolios before they appeared on the list. They are extremely difficult to replace without sustaining a loss to the fund; therefore, under the statute, managers are not to divest until they are able to find a replacement. Second, in late 2007 and early 2008, the OIC approved several steps intended to increase OPERF's exposure to international public equities, which places a premium on the large companies mentioned previously. Despite these structural changes in the portfolio, the program resulted in a net divestiture from Sudan-related companies of \$70 million in 2009 alone.

Conclusion

The heart of the implementation of the Act is contained in the OIC policy, which outlines the procedures to be executed in fulfillment of the statutory provisions. Implementation of the policy has resulted in a significant divestment from companies doing business in Sudan. The Oregon Investment Council and State Treasurer will continue execution of this policy and monitor the results of the actions taken.