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HOUSE BILL NO. 2234

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to prohibit companies that have certain business operations in Sudan from bidding on contracts with state agencies.

Patrons—Valentine and Hull; Senator: Petersen

Referred to Committee on General Laws

Whereas, on July 23, 2004, the United States Congress declared "the atrocities unfolding in Darfur, Sudan, are genocide"; and

Whereas, on December 31, 2007, United States President George W. Bush signed the Sudan Accountability and Divestment Act (S. 2271); and

Whereas the legislation passed the United States Senate and House of Representatives unanimously; and

Whereas, the law authorizes state and local governments to adopt targeted Sudan divestment policies and Sudan-related contract prohibition policies, and prohibits federal contracts with problematic companies that operate in Sudan's oil, power, mineral and military sectors; and

Whereas, it is the judgment of the General Assembly that this act should remain in effect only insofar as it continues to be consistent with, and does not unduly interfere with, the foreign policy of the United States as determined by the federal government; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. Definitions.

As used in this act, the following definitions shall apply:

"Business operations" means engaging in commerce in any form in Sudan, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce. Business operations described in this definition shall not include business operations that the company can demonstrate: (i) are exclusively conducted under contract directly and exclusively with the regional Government of Southern Sudan; (ii) are exclusively conducted under a license from the Office of Foreign Assets Control, or are expressly exempted under federal law from the requirement to be conducted under such a license; (iii) consist exclusively of providing goods or services to marginalized populations of Sudan; (iv) consist exclusively of providing goods or services to a humanitarian organization or an internationally recognized peacekeeping force; (v) consist exclusively of providing goods or services that are used only to promote health or education; (vi) have been voluntarily suspended for a period of time covering the duration of the contract for goods or services for which the company has submitted a bid or proposal; (vii) are those for which the company has adopted, publicized, and is implementing a formal plan to cease within one year and to refrain from conducting any new business operations; or (viii) are conducted upon receiving a waiver, under § 6(c) of the Sudan Accountability and Divestment Act of 2007 (P.L. No. 110-174), of that Act's federal contract prohibition provisions.

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

"Government of Sudan" means the government in Khartoum, Sudan, which is led by the National Congress Party, formerly known as the National Islamic Front, or any successor government formed on or after October 13, 2006, including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan, but does not include the regional Government of Southern Sudan.

"Marginalized populations of Sudan" includes, but are not limited to (i) the portion of the population in the Darfur region that has been genocidally victimized; (ii) the portion of the population of Southern Sudan victimized by Sudan's North-South civil war; (iii) the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; (iv) the Nubian and other similarly underserved groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain regions; and (v) the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

"Military equipment" means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including, but not limited to, radar systems or military-grade transport

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59 vehicles, or supplies or services sold or provided directly or indirectly to any force actively participating
60 in armed conflict in Sudan.

61 "Mineral extraction activities" means the following activities: exploring, extracting, processing,
62 transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides
63 (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium,
64 and zinc.

65 "Oil-related activities" means activities that include exporting, extracting, producing, refining,
66 processing, exploring for, transporting, selling, or trading oil, or constructing, maintaining, or operating
67 a pipeline, refinery, or other oilfield infrastructure. A company shall not be considered to be involved in
68 oil-related activities if either of the following applies: (i) the company is involved in the retail sale of
69 gasoline or related consumer products in Sudan, but is not involved in any other activity described in
70 this definition, or (ii) the company is involved in leasing, or owns, rights to an oil block in Sudan, but is
71 not involved in any other activity described in this definition.

72 "Power production activities" means any business operation that involves a project commissioned by
73 the National Electricity Corporation of Sudan or other similar entity of the Government of Sudan, whose
74 purpose is to facilitate power generation and delivery, including establishing power-generating plants or
75 hydroelectric dams, selling or installing components for the project, or providing service contracts
76 related to the installation or maintenance of the project.

77 "Scrutinized company" means a company with business operations in Sudan involving military
78 equipment, power production activities, mineral extraction activities, or oil-related activities.

79 "State agency" means any authority, board, department, instrumentality, institution, agency, or other
80 unit of state government. "State agency" shall not include any county, city, or town.

81 § 2. Scrutinized companies ineligible for state contracts.

82 A. Unless exempted by the Director of the Department of General Services pursuant to § 3 of this
83 act, no scrutinized company shall be eligible to bid on or submit a proposal to a state public body for
84 the provision of goods, services, or construction.

85 B. All state public bodies shall require a company that submits a bid for goods, services, or
86 construction to certify that the company is not a scrutinized company. Such certification shall not be
87 required if the company has obtained an exemption from the Director of the Department of General
88 Services pursuant to § 3 of this act.

89 C. A state public body shall deny prequalification to any company that is a scrutinized company or
90 has not been granted an exemption from the Director of the Department of General Services pursuant to
91 § 3 of this act.

92 D. If the state public body determines that the company has submitted a false certification, the
93 company shall be subject to the following:

94 1. The state public body may terminate the contract with the company.

95 2. The company shall be debarred from contracting with any state public body for a period of one
96 year from the date that the certification is determined to be false.

97 § 3. Exemptions.

98 A. The Director of the Department of General Services may grant an exemption to a scrutinized
99 company to allow such company to bid on or submit a proposal for the provision of goods, services, or
100 construction to a state public body if it is in the best interest of the Commonwealth to permit the
101 scrutinized company to bid on or submit a proposal for one or more contracts with a state public body
102 for goods or services.

103 B. In making his determination, the Director may utilize the following resources:

104 1. Verification by an independent third party or nonprofit organization that a company is (i)
105 undertaking significant humanitarian efforts in conjunction with an international organization, the
106 government of Sudan, the regional government of Southern Sudan, or a nonprofit organization to benefit
107 one or more of the marginalized populations of the Sudan or (ii) through engagement with the
108 government of Sudan, materially improving the conditions for the Darfur region of Sudan.

109 2. Consideration of the National Interest Waiver issued by the President of the United States
110 excluding a company from the federal contract prohibitions provision of the Sudan Accountability and
111 Divestment Act, P.L. 110-174.

112 § 4. Termination.

113 This act shall be repealed upon affirmative action of the General Assembly, provided, that in
114 determining whether to repeal this act, by way of suggestion and guidance only and without binding or
115 in any way inhibiting the discretion of future sessions of the General Assembly, it is submitted that the
116 occurrence of any of the following should be construed and deemed to be a basis for repealing this act:

117 1. The Congress or President of the United States declares the Darfur genocide has been halted for
118 at least 12 months.

119 2. The United States revokes all sanctions imposed against the Government of Sudan.

120 3. The President of the United States has certified to Congress that the Government of Sudan has

121 honored its commitments to do all of the following:
122 a. Abide by United Nations Security Council Resolution 1769 (2007).
123 b. Cease attacks on civilians.
124 c. Demobilize and demilitarize the Janjaweed and associated militias.
125 d. Grant free and unfettered access for delivery of humanitarian assistance.
126 e. Allow for the safe and voluntary return of refugees and internally displaced persons.
127 4. The Congress or President of the United States, through legislation or executive order, declares
128 the contract prohibition of the type provided for in this act interferes with the conduct of United States
129 foreign policy.
130 5. Such other circumstances that the General Assembly determines to warrant the discontinuance of
131 the provisions of this act.

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