

092421760

## HOUSE BILL NO. 2234

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws  
on February 5, 2009)

(Patron Prior to Substitute—Delegate Valentine)

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

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

*"Mineral extraction activities" means the following activities: exploring, extracting, processing,*

60 *transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides*  
61 *(ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium,*  
62 *and zinc.*

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

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

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

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

79 *§ 2. Scrutinized companies ineligible for state contracts.*

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

83 *B. All state agencies shall require a company that submits a bid for goods, services, or construction*  
84 *to certify that the company is not a scrutinized company.*

85 *C. A state agency shall deny prequalification to any company that is a scrutinized company or has*  
86 *not been granted an exemption from the Director of the Department of General Services pursuant to § 3*  
87 *of this act.*

88 *D. If the state agency determines that the company has submitted a false certification, the company*  
89 *shall be subject to the following:*

90 *1. The state agency may terminate the contract with the company.*

91 *2. The company shall be debarred from contracting with any state agency for a period of one year*  
92 *from the date that the certification is determined to be false.*

93 *E. Any action taken by a state agency in accordance with this act shall comply with the requirements*  
94 *set forth in § 3(e) of the Sudan Accountability and Divestment Act.*

95 *§ 3. Exemptions.*

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

101 *B. In making his determination, the Director may utilize as a resource a National Interest Waiver*  
102 *issued by the President of the United States excluding a company from the federal contract prohibitions*  
103 *provision of the Sudan Accountability and Divestment Act, P.L. 110-174.*

104 *§ 4. Termination.*

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

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

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

112 *3. The Congress or President of the United States, through legislation or executive order, declares*  
113 *the contract prohibition of the type provided for in this act interferes with the conduct of United States*  
114 *foreign policy.*

115 *4. Such other circumstances that the General Assembly determines to warrant the discontinuance of*  
116 *the provisions of this act.*

117 *B. In accordance with the Sudan Accountability and Divestment Act, this act shall automatically*  
118 *terminate 30 days after the date on which the President of the United States has certified to Congress*  
119 *that the Government of Sudan has honored its commitments to do all of the following:*

120 *1. Abide by United Nations Security Council Resolution 1769 (2007);*

121 *2. Cease attacks on civilians;*

- 122**     *3. Demobilize and demilitarize the Janjaweed and associated militias;*  
**123**     *4. Grant free and unfettered access for delivery of humanitarian assistance; and*  
**124**     *5. Allow for the safe and voluntary return of refugees and internally displaced persons.*