

BILL ANALYSIS

H.B. 801
By: Guillen
Pensions, Investments & Financial Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under current law, the permanent university fund is not restricted from investing in certain companies operating in Sudan that are indirectly facilitating the genocide occurring in Darfur, Sudan. In 2007, the 80th Legislature enacted S.B. 247, which effectively restricted the state pension funds of the Texas Retirement System (TRS) and the Employees Retirement System (ERS) from investing in such companies but did not address similar investments of the permanent university fund.

The permanent university fund is an endowment fund managed by The University of Texas Investment Management Company (UTIMCO) for the majority of the component institutions of The University of Texas System and The Texas A&M University System. Without restrictions on the investments of the permanent university fund, UTIMCO, and any other entity managing the fund, is permitted to make investments that inadvertently contribute to the humanitarian crisis in Sudan.

H.B. 801 prohibits the investment of the permanent university fund in certain entities doing business in Sudan. The bill requires the same restrictions on investments imposed on the TRS and ERS pension funds by S.B. 247 in 2007 to be applied to the investments of the permanent university fund. H.B. 801 requires the managing company for the permanent university fund, under certain circumstances, to divest from companies operating in Sudan that substantially benefit the government of Sudan, provide little benefit to traditionally marginalized Sudanese civilians, and have failed to adopt a policy that recognizes and accounts for the company indirectly facilitating the Darfur genocide.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 801 amends the Education Code to make the temporary provisions regarding the prohibition against a state governmental entity's investment in business entities doing business in Sudan applicable in the same manner to The University of Texas System board of regents and to any entity acting on the board's behalf with regard to the investment of the permanent university fund. The bill provides for the application of these temporary provisions to the board to expire on the date the temporary provisions expire.

H.B. 801 requires the state, in a cause of action based on an action, inaction, decision, divestment, investment, company communication, report, or other determination made or taken in connection with the investment prohibition, regardless of whether the person performed services for compensation, to indemnify and hold harmless for actual damages, court costs, and attorney's fees adjudged against, and defend an employee or member of the board, an employee or officer of any entity acting on the board's behalf, a contractor of the board, a former board

employee, a former board member, or a former employee or officer of an entity acting on the board's behalf who was serving in that capacity when the act or omission on which the damages are based occurred, and a former contractor of the board who was a contractor when the act or omission on which the damages are based occurred.

H.B. 801 prohibits a person from suing or pursuing a private cause of action against the state, the board, an employee or member of the board, an employee or officer of any entity acting on the board's behalf, or a contractor of the board for any claim or cause of action, including breach of fiduciary duty, or for violation of any constitutional, statutory, or regulatory requirement in connection with any action, inaction, decision, divestment, investment, company communication, report, or other determination made or taken in connection with the investment prohibition. The bill makes a person who files such a suit liable for paying the costs and attorney's fees of a person sued in violation of the prohibition against pursuing a private cause of action.

H.B. 801 authorizes the attorney general to bring any action to enforce the provisions relating to the prohibition against the board's investment of the permanent university fund in business entities doing business in Sudan.

H.B. 801 requires the comptroller of public accounts to provide the current list of scrutinized companies to the board as soon as practicable after September 1, 2009, and makes the board subject to the duties regarding investment in business entities doing business in Sudan imposed on a state governmental entity when the board receives the initial list. The bill provides that these provisions expire January 1, 2010.

H.B. 801 reaffirms the legislative findings set out in Section 1, Chapter 1375 (S.B. No. 247), Acts of the 80th Legislature, Regular Session, 2007, relating to the genocide in Darfur, Sudan, and the prohibition against the investment of state funds in certain private business entities doing business in Sudan.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.