

By: Ellis

S.B. No. 121

A BILL TO BE ENTITLED

AN ACT

relating to certain state purchases from entities doing business in Sudan; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2155, Government Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. PURCHASES FROM VENDORS DOING
BUSINESS WITH THE COUNTRY OF SUDAN

Sec. 2155.551. DEFINITIONS. In this subchapter:

(1) "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.

(2) "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.

(3) "Complicit" means taking actions that have directly supported or promoted the genocidal campaign in Darfur,

1 including:

2 (A) preventing members of Darfur's victimized
3 population from communicating with each other;

4 (B) encouraging Sudanese citizens to speak out
5 against an internationally approved security force for Darfur; or

6 (C) actively working to deny, cover up, or alter
7 the record on human rights abuses in Darfur.

8 (4) "Government of Sudan" means the government in
9 Khartoum, Sudan, which is led by the National Congress Party,
10 formerly known as the National Islamic Front, or any successor
11 government formed on or after October 13, 2006, including the
12 coalition National Unity Government agreed upon in the
13 Comprehensive Peace Agreement for Sudan. The term does not include
14 the regional government of southern Sudan.

15 (5) "Marginalized populations of Sudan" includes:

16 (A) the portion of the population in the Darfur
17 region that has been genocidally victimized;

18 (B) the portion of the population of southern
19 Sudan victimized by Sudan's north-south civil war;

20 (C) the Beja, Rashidiya, and other similarly
21 underserved groups of eastern Sudan;

22 (D) the Nubian and other similarly underserved
23 groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain
24 regions; and

25 (E) the Amri, Hamadab, Manasir, and other
26 similarly underserved groups of northern Sudan.

27 (6) "Military equipment" means weapons, arms,

1 military supplies, and equipment that readily may be used for
2 military purposes, including radar systems or military-grade
3 transport vehicles or supplies or services sold or provided
4 directly or indirectly to any force actively participating in armed
5 conflict in Sudan.

6 (7) "Mineral extraction activities" includes
7 exploring, extracting, processing, transporting, or wholesale
8 selling or trading of elemental minerals or associated metal alloys
9 or oxides (ore), including gold, copper, chromium, chromite,
10 diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as
11 well as facilitating those activities, including by providing
12 supplies or services in support of those activities.

13 (8) "Oil-related activities" includes:

14 (A) owning rights to oil blocks;

15 (B) exporting, extracting, producing, refining,
16 processing, exploring for, transporting, selling, or trading of
17 oil;

18 (C) constructing, maintaining, or operating a
19 pipeline, refinery, or other oil-field infrastructure; or

20 (D) facilitating oil-related activities,
21 including by providing supplies or services in support of the
22 activities, except that the mere retail sale of gasoline and
23 related consumer products is not an oil-related activity.

24 (9) "Power production activities" means any business
25 operation that involves a project commissioned by the National
26 Electricity Corporation of Sudan or another similar Government of
27 Sudan entity whose purpose is to facilitate power generation and

1 delivery, including establishing power-generating plants or
2 hydroelectric dams, selling or installing components for the
3 project, and providing service contracts related to the
4 installation or maintenance of the project, as well as facilitating
5 those activities, including by providing supplies or services in
6 support of those activities.

7 (10) "Scrutinized company" means a company that:

8 (A) engages in scrutinized business operations
9 described by Section 806.002; or

10 (B) has been complicit in the Darfur genocide
11 during any preceding 20-month period.

12 (11) "Substantial action" has the meaning assigned by
13 Section 806.001.

14 Sec. 2155.552. PURCHASES FROM CERTAIN BUSINESSES DOING
15 BUSINESS IN SUDAN. (a) Except as provided by Subsection (b), a
16 state agency may not purchase goods or services from a scrutinized
17 company.

18 (b) A state agency may purchase goods or services from a
19 scrutinized company if the governor determines and publicly
20 certifies in writing to the comptroller that it is in the best
21 interests of the state to permit the state agency to purchase goods
22 or services from the scrutinized company. In making this
23 determination, the governor may consider the following
24 information:

25 (1) verification by an independent third party or
26 nonprofit organization that the scrutinized company is:

27 (A) undertaking significant humanitarian efforts

1 in conjunction with an international organization, the Government
2 of Sudan, the regional government of southern Sudan, or a nonprofit
3 organization to benefit one or more marginalized populations of
4 Sudan; or

5 (B) through engagement with the Government of
6 Sudan, materially improving conditions for the genocidally
7 victimized population in Darfur; or

8 (2) whether the president of the United States waived
9 application of the federal contract prohibition provisions of the
10 Sudan Accountability and Divestment Act of 2007 (Pub. L. No.
11 110-174) for the scrutinized company.

12 (c) The entity providing the verification under Subsection
13 (b)(1) must evaluate and certify that the significant humanitarian
14 efforts are substantial in relation to the scrutinized company's
15 Sudan business operations.

16 (d) Except as provided by Subsection (e), a company must
17 provide as part of its bid or proposal to a state agency to provide
18 goods or services a sworn statement certifying that the company is
19 not a scrutinized company if the company at any time during the
20 three years preceding the date of the bid or proposal had business
21 activities or other operations outside of the United States.

22 (e) A scrutinized company that is authorized to contract
23 with a state agency to supply goods or services under Subsection (b)
24 is exempt from the certification requirements of Subsection (d).

25 Sec. 2155.553. CIVIL PENALTY; TERMINATION OF CONTRACT. (a)
26 A company that submits a false certification under Section
27 2155.552(d) is liable for a civil penalty in an amount equal to the

1 greater of \$250,000 or twice the dollar value of the contract for
2 which a bid or proposal was submitted.

3 (b) If a state agency determines that a company holding a
4 state contract was ineligible to have the bid accepted or contract
5 awarded under Section 2155.552, the state agency may immediately
6 terminate the contract without further obligation to the company.

7 SECTION 2. Subchapter J, Chapter 2155, Government Code, as
8 added by this Act, applies only to a contract entered into or
9 renewed on or after the effective date of this Act. A contract in
10 existence on the effective date of this Act is governed by the law
11 as it existed when the contract was made.

12 SECTION 3. This Act takes effect September 1, 2009.