

Oregon Human Rights and Anti-Genocide Act of 2005
Annual Report to the Legislative Assembly
February 20, 2014

Pursuant to ORS 293.811 to 293.828

State Treasurer Ted Wheeler

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”), and investment funds subject to the Act include 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 the following:

- 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- Requiring the State Treasurer to notify any company that OIC’s investments will be withdrawn for as long as that company does business in Sudan and the atrocities continue; and
- 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.”

The State's external equity managers regularly contact target companies, and divest when prudent and when divestment can be achieved without monetary loss to the Funds. The Office of the State Treasurer works with a third party research firm to continually update the list of companies potentially subject to divestiture under Oregon law. Implementation of the program in 2013 resulted in a net divestiture from Sudan-related companies of \$37.4 million.

It is nearly impossible to evaluate independently the accuracy of the subject list or the degree to which it conforms to Oregon's statutory mandate. Moreover, evaluation by money managers as to whether or not it is appropriate to change their normal investment activities in response to received information is complicated and may detract from their ability to divest or invest efficiently. For example, there are many companies that are likely to be in the investment portfolios of various managers well before they appear on the subject list, which itself changes over time. Choosing to divest from such investments ahead of, or to a degree different from, what would be the normal fiduciary approach may increase both transactional and opportunity costs as well as risk (in the form of heightened volatility). Choosing not to invest in identified companies also may present additional opportunity costs and increased volatility. Finally, definitively quantifying such costs and risks is problematic at best.

Oregon Human Rights and Anti-Genocide Act of 2005 Modification

Effective January 1, 2014, the Oregon Human Rights and Anti-Genocide Act of 2005, ORS 293.811 to 293.832 is inactive pending legislative action in accordance with ORS.293.832, which states:

293.832 Applicability of ORS 293.825 and 293.828; sufficient appropriation. ORS 293.825 (2) to (5) and 293.828 apply only if the Legislative Assembly appropriates sufficient moneys to the State Treasurer, other than moneys described by ORS 293.718 or moneys in the Public Employees' Retirement Fund, to administer ORS 293.825 (2) to (5) and 293.828. [2013 c.722 §72]

Pending any separate legislation for ORS 293.825 and 293.828 reinstatement, this will be the last report to the legislature on the Oregon Human Rights and Anti-Genocide Act of 2005.