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1 A bill to be entitled
2 An act relating to economic sanctions related to Sudan;
3 providing legislative findings; providing definitions;
4 requiring the State Board of Administration to identify
5 all companies doing certain types of business in or with
6 Sudan in which public moneys are invested; requiring the
7 board to create and maintain a Scrutinized Company List
8 which names all such companies; requiring the board to
9 periodically contact all scrutinized companies and
10 encourage them to refrain from engaging in certain types
11 of business in or with Sudan; requiring the board to
12 inform scrutinized companies of their status as a
13 scrutinized company and to ask for clarification as to the
14 nature of each company's business activities; providing
15 that a company may be removed from the list under certain
16 conditions; providing for reintroduction of a company onto
17 the list; requiring the board to divest of all publicly
18 traded securities of a scrutinized company under certain
19 conditions; providing exceptions to the divestment
20 requirement; prohibiting the board from acquiring
21 securities of scrutinized companies that have active
22 business operations; providing exceptions to the
23 investment prohibition; providing an additional exception
24 from the divestment requirement and the investment
25 prohibition to certain indirect holdings in actively
26 managed investment funds; requiring the board to request
27 that the managers of such investment funds consider
28 removing scrutinized companies from the fund or create a

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 similar fund that excludes such companies; requiring the
30 board to file a report with the Governor, the Legislature,
31 and Attorney General within a specified period after
32 creation of the Scrutinized Company List; requiring the
33 annual filing of an updated report; requiring that all
34 such reports be made available to the public; requiring
35 that the report include certain information; providing for
36 the expiration of the act; exempting the board from
37 certain statutory or common law obligations; authorizing
38 the board to cease divesting or to reinvest in certain
39 scrutinized companies if the value for all assets under
40 management by the board becomes equal to or less than a
41 specified amount; requiring the board to provide a written
42 report to the Governor, the Legislature, and Attorney
43 General before such reinvestment; requiring that the
44 report contain certain information; requiring semiannual
45 updates to such reports when applicable; requiring the
46 Attorney General to enforce the divestment requirements
47 and investment prohibitions; authorizing the Attorney
48 General to bring enforcement actions in court through any
49 lawful designee; providing for severability; providing an
50 effective date.

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52 Be It Enacted by the Legislature of the State of Florida:

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54 Section 1. (1) LEGISLATIVE FINDINGS.--

55 (a) On July 23, 2004, the United States Congress declared
56 that "the atrocities unfolding in Darfur, Sudan, are genocide."

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57 (b) On September 9, 2004, Secretary of State Colin L.
58 Powell told the United States Senate Foreign Relations Committee
59 that "genocide has occurred and may still be occurring in
60 Darfur" and "the Government of Sudan and the Janjaweed bear
61 responsibility."

62 (c) On September 21, 2004, addressing the United Nations
63 General Assembly, President George W. Bush affirmed the
64 Secretary of State's finding and stated, "At this hour, the
65 world is witnessing terrible suffering and horrible crimes in
66 the Darfur region of Sudan, crimes my government has concluded
67 are genocide."

68 (d) On December 7, 2004, the United States Congress noted
69 that the genocidal policy in Darfur has led to reports of
70 "systematic rape of thousands of women and girls, the abduction
71 of women and children, and the destruction of hundreds of
72 ethnically African villages, including the poisoning of their
73 wells and the plunder of their crops and cattle upon which the
74 people of such villages sustain themselves."

75 (e) Also on December 7, 2004, Congress found that "the
76 Government of Sudan has restricted access by humanitarian and
77 human rights workers to the Darfur area through intimidation by
78 military and security forces, and through bureaucratic and
79 administrative obstruction, in an attempt to inflict the most
80 devastating harm on those individuals displaced from their
81 villages and homes without any means of sustenance or shelter."

82 (f) On September 25, 2006, Congress reaffirmed that "the
83 genocide unfolding in the Darfur region of Sudan is
84 characterized by acts of terrorism and atrocities directed

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85 against civilians, including mass murder, rape, and sexual
86 violence committed by the Janjaweed and associated militias with
87 the complicity and support of the National Congress Party-led
88 faction of the Government of Sudan."

89 (g) On September 26, 2006, the United States House of
90 Representatives stated that "an estimated 300,000 to 400,000
91 people have been killed by the Government of Sudan and its
92 Janjaweed allies since the crisis began in 2003, more than
93 2,000,000 people have been displaced from their homes, and more
94 than 250,000 people from Darfur remain in refugee camps in
95 Chad."

96 (h) The Darfur crisis represents the first time the United
97 States Government has labeled ongoing atrocities as genocide.

98 (i) The Federal Government has imposed sanctions against
99 the Government of Sudan since 1997. These sanctions are
100 monitored through the United States Treasury Department's Office
101 of Foreign Assets Control (OFAC).

102 (j) According to a former chair of the United States
103 Securities and Exchange Commission, "the fact that a foreign
104 company is doing material business with a country, government,
105 or entity on OFAC's sanctions list is, in the SEC staff's view,
106 substantially likely to be significant to a reasonable
107 investor's decision about whether to invest in that company."

108 (k) Since 1993, the United States Secretary of State has
109 determined that Sudan is a country whose government has
110 repeatedly provided support for acts of international terrorism,
111 and, as a result, the United States has restricted assistance,
112 defense exports, defense sales, financial transactions, and

113 various other transactions with the Government of Sudan.

114 (l) A 2006 report by United States House of
115 Representatives states that "a company's association with
116 sponsors of terrorism and human rights abuses, no matter how
117 large or small, can have a materially adverse result on a public
118 company's operations, financial condition, earnings, and stock
119 prices, all of which can negatively affect the value of an
120 investment."

121 (m) In response to the financial risk posed by investments
122 in companies doing business with a state that sponsors
123 terrorists, the Securities and Exchange Commission established
124 its Office of Global Security Risk to provide for enhanced
125 disclosure of material information regarding such companies.

126 (n) The current Sudan divestment movement encompasses
127 nearly 100 universities, municipalities, states, and private
128 pension plans.

129 (o) Companies facing such widespread divestment present
130 further material risk to remaining investors.

131 (p) It is a fundamental responsibility of the State of
132 Florida to decide where, how, and by whom financial resources in
133 its control should be invested, taking into account numerous
134 pertinent factors.

135 (q) It is the prerogative and desire of the State of
136 Florida with respect to investment resources in its control and
137 to the extent reasonable, with due consideration for return on
138 investment on behalf of the state and its investment
139 beneficiaries, not to participate in an ownership or capital-
140 providing capacity with entities that provide significant

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141 practical support for genocide, including certain non-United
142 States companies presently doing business in Sudan.

143 (r) The Legislature finds that this act should remain in
144 effect only insofar as it continues to be consistent with and
145 does not unduly interfere with the foreign policy of the United
146 States as determined by the Federal Government.

147 (s) The Legislature finds that mandatory divestment of
148 public funds from certain companies is a measure that should be
149 employed sparingly and judiciously. A Congressional and
150 Presidential declaration of genocide satisfies this high
151 threshold.

152 (2) DEFINITIONS.--As used in this act, the term:

153 (a) "Active business operations" means all business
154 operations that are not inactive business operations.

155 (b) "Business operations" means engaging in commerce in
156 any form in Sudan, including, but not limited to, acquiring,
157 developing, maintaining, owning, selling, possessing, leasing,
158 or operating equipment, facilities, personnel, products,
159 services, personal property, real property, or any other
160 apparatus of business or commerce.

161 (c) "Company" means any sole proprietorship, organization,
162 association, corporation, partnership, joint venture, limited
163 partnership, limited liability partnership, limited liability
164 company, or other entity or business association, including all
165 wholly owned subsidiaries, majority-owned subsidiaries, parent
166 companies, or affiliates of such entities or business
167 associations, which exists for the purpose of making profit.

168 (d) "Complicit" means taking actions during any preceding

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169 20-month period which have directly supported or promoted the
170 genocidal campaign in Darfur, including, but not limited to,
171 preventing Darfur's victimized population from communicating
172 with each other, encouraging Sudanese citizens to speak out
173 against an internationally approved security force for Darfur,
174 actively working to deny, cover up, or alter the record on human
175 rights abuses in Darfur, or other similar actions.

176 (e) "Direct holdings" in a company means all securities of
177 that company which are held directly by the Public Fund or in an
178 account or fund in which the Public Fund owns all shares or
179 interests.

180 (f) "Government of Sudan" means the government in
181 Khartoum, Sudan, which is led by the National Congress Party,
182 formerly known as the National Islamic Front, or any successor
183 government formed on or after October 13, 2006, including the
184 coalition National Unity Government agreed upon in the
185 Comprehensive Peace Agreement for Sudan, and does not include
186 the regional government of southern Sudan.

187 (g) "Inactive business operations" means the mere
188 continued holding or renewal of rights to property previously
189 operated for the purpose of generating revenues but not
190 presently deployed for such purpose.

191 (h) "Indirect holdings" in a company means all securities
192 of that company which are held in an account or fund, such as a
193 mutual fund, managed by one or more persons not employed by the
194 Public Fund, in which the Public Fund owns shares or interests
195 together with other investors not subject to the provisions of
196 this act.

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197 (i) "Marginalized populations of Sudan" include, but are
198 not limited to, the portion of the population in the Darfur
199 region who have been genocidally victimized; the portion of the
200 population of southern Sudan victimized by Sudan's north-south
201 civil war; the Beja, Rashidiya, and other similarly underserved
202 groups of eastern Sudan; the Nubian and other similarly
203 underserved groups in Sudan's Abyei, Southern Blue Nile, and
204 Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other
205 similarly underserved groups of northern Sudan.

206 (j) "Military equipment" means weapons, arms, military
207 supplies, and equipment that readily may be used for military
208 purposes, including, but not limited to, radar systems,
209 military-grade transport vehicles, or supplies or services sold
210 or provided directly or indirectly to any force actively
211 participating in armed conflict in Sudan.

212 (k) "Mineral-extraction activities" include exploring,
213 extracting, processing, transporting, or wholesale selling or
214 trading of elemental minerals or associated metal alloys or
215 oxides (ore), including gold, copper, chromium, chromite,
216 diamonds, iron, iron ore, silver, tungsten, uranium, and zinc,
217 as well as facilitating such activities, including, providing
218 supplies or services in support of such activities.

219 (l) "Oil-related activities" include, but are not limited
220 to, owning rights to oil blocks; exporting, extracting,
221 producing, refining, processing, exploring for, transporting,
222 selling, or trading of oil; constructing, maintaining, or
223 operating a pipeline, refinery, or other oil-field
224 infrastructure; and facilitating such activities, including

225 providing supplies or services in support of such activities,
 226 except that the mere retail sale of gasoline and related
 227 consumer products is not considered oil-related activities.

228 (m) "Power-production activities" means any business
 229 operation that involves a project commissioned by the National
 230 Electricity Corporation (NEC) of Sudan or other similar entity
 231 of the Government of Sudan whose purpose is to facilitate power
 232 generation and delivery, including, but not limited to,
 233 establishing power-generating plants or hydroelectric dams,
 234 selling or installing components for the project, providing
 235 service contracts related to the installation or maintenance of
 236 the project, as well as facilitating such activities, including
 237 providing supplies or services in support of such activities.

238 (n) "Public Fund" means all funds, assets, trustees, and
 239 other designates under the State Board of Administration.

240 (o) "Scrutinized company" means any company that meets any
 241 of the following criteria:

242 1. The company has business operations that involve
 243 contracts with or provision of supplies or services to the
 244 Government of Sudan, companies in which the Government of Sudan
 245 has any direct or indirect equity share, consortiums or projects
 246 commissioned by the Government of Sudan, or companies involved
 247 in consortiums or projects commissioned by the Government of
 248 Sudan and:

249 a. More than 10 percent of the company's revenues or
 250 assets linked to Sudan involve oil-related activities or
 251 mineral-extraction activities; less than 75 percent of the
 252 company's revenues or assets linked to Sudan involve contracts

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253 with or provision of oil-related or mineral-extracting products
254 or services to the regional government of southern Sudan or a
255 project or consortium created exclusively by that regional
256 government; and the company has failed to take substantial
257 action; or

258 b. More than 10 percent of the company's revenues or
259 assets linked to Sudan involve power-production activities; less
260 than 75 percent of the company's power-production activities
261 include projects whose intent is to provide power or electricity
262 to the marginalized populations of Sudan; and the company has
263 failed to take substantial action.

264 2. The company is complicit in the Darfur genocide.

265 3. The company supplies military equipment within Sudan,
266 unless it clearly shows that the military equipment cannot be
267 used to facilitate offensive military actions in Sudan or the
268 company implements rigorous and verifiable safeguards to prevent
269 use of that equipment by forces actively participating in armed
270 conflict. Examples of safeguards include post-sale tracking of
271 such equipment by the company, certification from a reputable
272 and objective third party that such equipment is not being used
273 by a party participating in armed conflict in Sudan, or sale of
274 such equipment solely to the regional government of southern
275 Sudan or any internationally recognized peacekeeping force or
276 humanitarian organization.

277
278 Notwithstanding the provisions of this act, a social-development
279 company that is not complicit in the Darfur genocide is not
280 considered a scrutinized company.

281 (p) "Social-development company" means a company whose
 282 primary purpose in Sudan is to provide humanitarian goods or
 283 services, including medicine or medical equipment; agricultural
 284 supplies or infrastructure, educational opportunities;
 285 journalism-related activities; information or information
 286 materials; spiritual-related activities; services of a purely
 287 clerical or reporting nature; food, clothing, or general
 288 consumer goods that are unrelated to oil-related activities;
 289 mineral-extraction activities; or power-production activities.

290 (q) "Substantial action" means adopting, publicizing, and
 291 implementing a formal plan to cease scrutinized business
 292 operations within 1 year and to refrain from any such new
 293 business operations; undertaking significant humanitarian
 294 efforts on behalf of one or more marginalized populations of
 295 Sudan; or, through engagement with the Government of Sudan,
 296 materially improving conditions for the genocidally victimized
 297 population in Darfur.

298 (3) IDENTIFICATION OF COMPANIES.--

299 (a) Within 90 days after the effective date of this act,
 300 the Public Fund shall make its best efforts to identify all
 301 scrutinized companies in which the Public Fund has direct or
 302 indirect holdings or could possibly have such holdings in the
 303 future. Such efforts include:

- 304 1. Reviewing and relying, as appropriate in the Public
 305 Fund's judgment, on publicly available information regarding
 306 companies having business operations in Sudan, including
 307 information provided by nonprofit organizations, research firms,
 308 international organizations, and government entities;

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309 2. Contacting asset managers contracted by the Public Fund
310 which invest in companies having business operations in Sudan;
311 or

312 3. Contacting other institutional investors that have
313 divested from or engaged with companies that have business
314 operations in Sudan.

315 (b) By the first meeting of the Public Fund following the
316 90-day period described in paragraph (a), the Public Fund shall
317 assemble all scrutinized companies identified into a
318 "Scrutinized Companies List."

319 (c) The Public Fund shall update the Scrutinized Companies
320 List quarterly based on evolving information from, among other
321 sources, those listed in paragraph (a).

322 (4) REQUIRED ACTIONS.--The Public Fund shall adhere to the
323 following procedure for companies on the Scrutinized Companies
324 List:

325 (a) Engagement.--

326 1. The Public Fund shall immediately determine the
327 companies on the Scrutinized Companies List in which the Public
328 Fund owns direct or indirect holdings.

329 2. For each company identified in this paragraph which has
330 only inactive business operations, the Public Fund shall send a
331 written notice informing the company of this act and encouraging
332 it to continue to refrain from initiating active business
333 operations in Sudan until it is able to avoid scrutinized
334 business operations. The Public Fund shall continue such
335 correspondence semiannually.

336 3. For each company newly identified under this paragraph

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337 which has active business operations, the Public Fund shall send
338 a written notice informing the company of its scrutinized
339 company status and that it may become subject to divestment by
340 the Public Fund. The notice must inform the company of the
341 opportunity to clarify its Sudan-related activities and
342 encourage the company, within 90 days, to cease its scrutinized
343 business operations or convert such operations to inactive
344 business operations in order to avoid qualifying for divestment
345 by the Public Fund.

346 4. If, within 90 days after the Public Fund's first
347 engagement with a company pursuant to this paragraph, that
348 company ceases scrutinized business operations, the company
349 shall be removed from the Scrutinized Companies List and the
350 provisions of this act shall cease to apply to it unless it
351 resumes scrutinized business operations. If, within 90 days
352 after the Public Fund's first engagement, the company converts
353 its scrutinized active business operations to inactive business
354 operations, the company is subject to all provisions relating
355 thereto.

356 (b) Divestment.--

357 1. If, after 90 days following the Public Fund's first
358 engagement with a company pursuant to paragraph (a), the company
359 continues to have scrutinized active business operations, and
360 only while such company continues to have scrutinized active
361 business operations, the Public Fund shall sell, redeem, divest,
362 or withdraw all publicly traded securities of the company,
363 except as provided in paragraph (d), according to the following
364 schedule:

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365 a. At least 50 percent of such assets shall be removed
366 from the Public Fund's assets under management by 9 months after
367 the company's most recent appearance on the Scrutinized
368 Companies List.

369 b. One hundred percent of such assets shall be removed
370 from the Public Fund's assets under management within 15 months
371 after the company's most recent appearance on the Scrutinized
372 Companies List.

373 2. If a company that ceased scrutinized active business
374 operations following engagement pursuant to paragraph (a)
375 resumes such operations, this paragraph immediately applies, and
376 the Public Fund shall send a written notice to the company. The
377 company shall also be immediately reintroduced onto the
378 Scrutinized Companies List.

379 (c) Prohibition.--The Public Fund may not acquire
380 securities of companies on the Scrutinized Companies List which
381 have active business operations, except as provided in paragraph
382 (d).

383 (d) Exemption.--A company that the United States
384 Government affirmatively declares to be excluded from its
385 present or any future federal sanctions regime relating to Sudan
386 is not subject to divestment or the investment prohibition
387 pursuant to paragraphs (b) and (c).

388 (e) Excluded securities.--Notwithstanding the provisions
389 of this act, paragraphs (b) and (c) do not apply to indirect
390 holdings in actively managed investment funds. However, the
391 Public Fund shall submit letters to the managers of such
392 investment funds containing companies that have scrutinized

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393 active business operations requesting that they consider
394 removing such companies from the fund or create a similar
395 actively managed fund having indirect holdings devoid of such
396 companies. If the manager creates a similar fund, the Public
397 Fund shall replace all applicable investments with investments
398 in the similar fund in an expedited timeframe consistent with
399 prudent investing standards. For the purposes of this section, a
400 private equity fund is deemed to be an actively managed
401 investment fund.

402 (5) REPORTING.--

403 (a) The Public Fund shall file a report with the Governor,
404 the President of the Senate, the Speaker of the House of
405 Representatives, and the Attorney General that includes the
406 Scrutinized Companies List within 30 days after the list is
407 created. This report shall be made available to the public.

408 (b) Annually thereafter, the Public Fund shall file a
409 report, which shall be made available to the public, with the
410 Governor, the President of the Senate, the Speaker of the House
411 of Representatives, and the Attorney General and send a copy of
412 that report to the United States Presidential Special Envoy to
413 Sudan, or an appropriate designee or successor, which includes:

414 1. A summary of correspondence with companies engaged by
415 the Public Fund under subparagraphs (4) (a)2. and 3.;

416 2. All investments sold, redeemed, divested, or withdrawn
417 in compliance with paragraph (4) (b);

418 3. All prohibited investments under paragraph (4) (c); and

419 4. Any progress made under paragraph (4) (e).

420 (6) EXPIRATION.--This act expires upon the occurrence of

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421 any of the following:

422 (a) The Congress or President of the United States
423 declares that the Darfur genocide has been halted for at least
424 12 months;

425 (b) The United States revokes all sanctions imposed
426 against the Government of Sudan;

427 (c) The Congress or President of the United States
428 declares that the Government of Sudan has honored its
429 commitments to cease attacks on civilians, demobilize and
430 demilitarize the Janjaweed and associated militias, grant free
431 and unfettered access for deliveries of humanitarian assistance,
432 and allow for the safe and voluntary return of refugees and
433 internally displaced persons; or

434 (d) The Congress or President of the United States,
435 through legislation or executive order, declares that mandatory
436 divestment of the type provided for in this act interferes with
437 the conduct of United States foreign policy.

438 (7) OTHER LEGAL OBLIGATIONS.--With respect to actions
439 taken in compliance with this act, including all good faith
440 determinations regarding companies as required by this act, the
441 Public Fund is exempt from any conflicting statutory or common
442 law obligations, including any such obligations with respect to
443 choice of asset managers, investment funds, or investments for
444 the Public Fund's securities portfolios.

445 (8) REINVESTMENT IN CERTAIN COMPANIES HAVING SCRUTINIZED
446 ACTIVE BUSINESS OPERATIONS.--Notwithstanding any other provision
447 of this act to the contrary, the Public Fund may cease divesting
448 from certain scrutinized companies pursuant to paragraph (4) (b)

449 or reinvest in certain scrutinized companies from which it
450 divested pursuant to paragraph (4) (b) if clear and convincing
451 evidence shows that the value of all assets under management by
452 the Public Fund becomes equal to or less than 99.50 percent, or
453 50 basis points, of the hypothetical value of all assets under
454 management by the Public Fund assuming no divestment for any
455 company had occurred under paragraph (4) (b). Cessation of
456 divestment, reinvestment, or any subsequent ongoing investment
457 authorized by this act is limited to the minimum steps necessary
458 to avoid the contingency set forth in this subsection. For any
459 cessation of divestment, reinvestment, or subsequent ongoing
460 investment authorized by this act, the Public Fund shall provide
461 a written report to the Governor, the President of the Senate,
462 the Speaker of the House of Representatives, and the Attorney
463 General in advance of initial reinvestment, updated semiannually
464 thereafter as applicable, setting forth the reasons and
465 justification, supported by clear and convincing evidence, for
466 its decisions to cease divestment, reinvest, or remain invested
467 in companies having scrutinized active business operations. This
468 act does not apply to reinvestment in companies on the grounds
469 that they have ceased to have scrutinized active business
470 operations.

471 (9) ENFORCEMENT.--The Attorney General shall enforce the
472 provisions of this act and may bring any necessary actions in
473 court through any lawful designee.

474 Section 2. If any provision of this act or its application
475 to any person or circumstance is held invalid, the invalidity
476 does not affect other provisions or applications of the act

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477 which can be given effect without the invalid provision or
478 application, and to this end the provisions of this act are
479 severable.

480 Section 3. This act shall take effect upon becoming a law.