

Bill No. SB 2142

Barcode 563686

CHAMBER ACTION

Senate

House

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The Committee on Governmental Operations (Oelrich) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. (1) LEGISLATIVE FINDINGS.--

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

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

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

Bill No. SB 2142

Barcode 563686

1 concluded are genocide."

2 (d) On December 7, 2004, the United States Congress
3 noted that the genocidal policy in Darfur has led to reports
4 of "systematic rape of thousands of women and girls, the
5 abduction of women and children, and the destruction of
6 hundreds of ethnically African villages, including the
7 poisoning of their wells and the plunder of their crops and
8 cattle upon which the people of such villages sustain
9 themselves."

10 (e) Also on December 7, 2004, Congress found that "the
11 Government of Sudan has restricted access by humanitarian and
12 human rights workers to the Darfur area through intimidation
13 by military and security forces, and through bureaucratic and
14 administrative obstruction, in an attempt to inflict the most
15 devastating harm on those individuals displaced from their
16 villages and homes without any means of sustenance or
17 shelter."

18 (f) On September 25, 2006, Congress reaffirmed that
19 "the genocide unfolding in the Darfur region of Sudan is
20 characterized by acts of terrorism and atrocities directed
21 against civilians, including mass murder, rape, and sexual
22 violence committed by the Janjaweed and associated militias
23 with the complicity and support of the National Congress
24 Party-led faction of the Government of Sudan."

25 (g) On September 26, 2006, the United States House of
26 Representatives stated that "an estimated 300,000 to 400,000
27 people have been killed by the Government of Sudan and its
28 Janjaweed allies since the crisis began in 2003, more than
29 2,000,000 people have been displaced from their homes, and
30 more than 250,000 people from Darfur remain in refugee camps
31 in Chad."

Bill No. SB 2142

Barcode 563686

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

4 (i) The Federal Government has imposed sanctions
5 against the Government of Sudan since 1997. These sanctions
6 are monitored through the United States Treasury Department's
7 Office of Foreign Assets Control (OFAC).

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

14 (k) Since 1993, the United States Secretary of State
15 has determined that Sudan is a country whose government has
16 repeatedly provided support for acts of international
17 terrorism, and, as a result, the United States has restricted
18 assistance, defense exports, defense sales, financial
19 transactions, and various other transactions with the
20 Government of Sudan.

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

28 (m) In response to the financial risk posed by
29 investments in companies doing business with a state that
30 sponsors terrorists, the Securities and Exchange Commission
31 established its Office of Global Security Risk to provide for

Bill No. SB 2142

Barcode 563686

1 enhanced disclosure of material information regarding such
2 companies.

3 (n) The current Sudan divestment movement encompasses
4 nearly 100 universities, municipalities, states, and private
5 pension plans.

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

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

12 (q) It is the prerogative and desire of the State of
13 Florida with respect to investment resources in its control
14 and to the extent reasonable, with due consideration for
15 return on investment on behalf of the state and its investment
16 beneficiaries, not to participate in an ownership or
17 capital-providing capacity with entities that provide
18 significant practical support for genocide, including certain
19 non-United States companies presently doing business in Sudan,
20 Cuba, Venezuela, North Korea, Iran, or Syria.

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

25 (s) The Legislature finds that mandatory divestment of
26 public funds from certain companies is a measure that should
27 be employed sparingly and judiciously. A Congressional and
28 Presidential declaration of genocide satisfies this high
29 threshold.

30 (t) The Legislature finds that egregious violations of
31 human rights and significant acts detrimental to the existence

Bill No. SB 2142

Barcode 563686

1 and proliferation of basic human liberty have also occurred
 2 and continue to occur unfettered in Cuba, Venezuela, North
 3 Korea, Iran, and Syria. The Legislature further finds that
 4 such acts also warrant the mandatory divestment of public
 5 funds.

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

7 (a) "Active business operations" means all business
 8 operations that are not inactive business operations.

9 (b) "Business operations" means engaging in commerce
 10 in any form in Sudan, Cuba, Venezuela, North Korea, Iran, or
 11 Syria, including, but not limited to, acquiring, developing,
 12 maintaining, owning, selling, possessing, leasing, or
 13 operating equipment, facilities, personnel, products,
 14 services, personal property, real property, or any other
 15 apparatus of business or commerce.

16 (c) "Company" means any sole proprietorship,
 17 organization, association, corporation, partnership, joint
 18 venture, limited partnership, limited liability partnership,
 19 limited liability company, or other entity or business
 20 association, including all wholly owned subsidiaries,
 21 majority-owned subsidiaries, parent companies, or affiliates
 22 of such entities or business associations, which exists for
 23 the purpose of making profit.

24 (d) "Complicit" means taking actions during any
 25 preceding 20-month period which have directly supported or
 26 promoted the genocidal campaign in Darfur or any violation of
 27 human rights by a regime in power in Cuba, Venezuela, North
 28 Korea, Iran, or Syria, including, but not limited to,
 29 preventing the victimized population of any of the governments
 30 or countries listed in this section from communicating with
 31 each other, encouraging citizens to speak out against an

Bill No. SB 2142

Barcode 563686

1 internationally approved security force, actively working to
2 deny, cover up, or alter the record on human rights abuses, or
3 other similar actions.

4 (e) "Direct holdings" in a company means all
5 securities of that company which are held directly by the
6 Public Fund or in an account or fund in which the Public Fund
7 owns all shares or interests.

8 (f) "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, and does not include
14 the regional government of southern Sudan.

15 (g) "Inactive business operations" means the mere
16 continued holding or renewal of rights to property previously
17 operated for the purpose of generating revenues but not
18 presently deployed for such purpose.

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

25 (i) "Marginalized populations" include, but are not
26 limited to, the portion of the population in any country
27 listed in this section who have been victimized by genocide or
28 other acts that violate human rights or liberty.

29 (j) "Military equipment" means weapons, arms, military
30 supplies, and equipment that readily may be used for military
31 purposes, including, but not limited to, radar systems,

Bill No. SB 2142

Barcode 563686

1 military-grade transport vehicles, or supplies or services
2 sold or provided directly or indirectly to any force actively
3 participating in armed conflict of any kind.

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

11 (l) "Oil-related activities" include, but are not
12 limited to, owning rights to oil blocks; exporting,
13 extracting, producing, refining, processing, exploring for,
14 transporting, selling, or trading of oil; constructing,
15 maintaining, or operating a pipeline, refinery, or other
16 oil-field infrastructure; and facilitating such activities,
17 including providing supplies or services in support of such
18 activities, except that the mere retail sale of gasoline and
19 related consumer products is not considered oil-related
20 activities.

21 (m) "Power-production activities" means any business
22 operation that involves a project commissioned by the National
23 Electricity Corporation (NEC) of Sudan or other similar entity
24 of the Government of Sudan, Cuba, Venezuela, North Korea,
25 Iran, or Syria whose purpose is to facilitate power generation
26 and delivery, including, but not limited to, establishing
27 power-generating plants or hydroelectric dams, selling or
28 installing components for the project, providing service
29 contracts related to the installation or maintenance of the
30 project, as well as facilitating such activities, including
31 providing supplies or services in support of such activities.

Bill No. SB 2142

Barcode 563686

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

3 (o) "Scrutinized company" means any company that meets
4 any of the following criteria:

5 1. The company has business operations that involve
6 contracts with or provision of supplies or services to the
7 Government of Sudan, Cuba, Venezuela, North Korea, Iran, or
8 Syria, companies in which the Government of Sudan, Cuba,
9 Venezuela, North Korea, Iran, or Syria has any direct or
10 indirect equity share, consortiums or projects commissioned by
11 the Government of Sudan, Cuba, Venezuela, North Korea, Iran,
12 or Syria or companies involved in consortiums or projects
13 commissioned by the Government of Sudan, Cuba, Venezuela,
14 North Korea, Iran, or Syria and:

15 a. More than 10 percent of the company's revenues or
16 assets linked to Sudan, Cuba, Venezuela, North Korea, Iran, or
17 Syria involve oil-related activities or mineral-extraction
18 activities; less than 75 percent of the company's revenues or
19 assets linked to such countries involve contracts with or
20 provision of oil-related or mineral-extracting products or
21 services to the regional government of southern Sudan or a
22 project or consortium created exclusively by that regional
23 government; and the company has failed to take substantial
24 action; or

25 b. More than 10 percent of the company's revenues or
26 assets linked to Sudan involve power-production activities;
27 less than 75 percent of the company's power-production
28 activities include projects whose intent is to provide power
29 or electricity to the marginalized populations of Sudan; and
30 the company has failed to take substantial action.

31 2. The company is complicit in the Darfur genocide, or

Bill No. SB 2142

Barcode 563686

1 any acts occurring in Cuba, Venezuela, North Korea, Iran, or
2 Syria that violate human rights or liberty.

3 3. The company supplies military equipment within
4 Sudan, Cuba, Venezuela, North Korea, Iran, or Syria, unless it
5 clearly shows that the military equipment cannot be used to
6 facilitate offensive military actions in any of those nations
7 or the company implements rigorous and verifiable safeguards
8 to prevent use of that equipment by forces actively
9 participating in armed conflict. Examples of safeguards
10 include post-sale tracking of such equipment by the company,
11 certification from a reputable and objective third party that
12 such equipment is not being used by a party participating in
13 armed conflict in Sudan, Cuba, Venezuela, North Korea, Iran,
14 or Syria, or sale of such equipment solely to the regional
15 government of southern Sudan or any internationally recognized
16 peacekeeping force or humanitarian organization.

17
18 Notwithstanding the provisions of this act, a
19 social-development company that is not complicit in the Darfur
20 genocide or any acts occurring in Cuba, Venezuela, North
21 Korea, Iran, or Syria that violate human rights or liberty is
22 not considered a scrutinized company.

23 (p) "Social-development company" means a company whose
24 primary purpose in Sudan, Cuba, Venezuela, North Korea, Iran,
25 or Syria is to provide humanitarian goods or services,
26 including medicine or medical equipment; agricultural supplies
27 or infrastructure, educational opportunities;
28 journalism-related activities; information or information
29 materials; spiritual-related activities; services of a purely
30 clerical or reporting nature; food, clothing, or general
31 consumer goods that are unrelated to oil-related activities;

Bill No. SB 2142

Barcode 563686

1 mineral-extraction activities; or power-production activities.

2 (g) "Substantial action" means adopting, publicizing,
3 and implementing a formal plan to cease scrutinized business
4 operations within 1 year and to refrain from any such new
5 business operations; undertaking significant humanitarian
6 efforts on behalf of one or more marginalized populations of
7 Sudan, Cuba, Venezuela, North Korea, Iran, or Syria; or,
8 through engagement with the government of any of these
9 nations, materially improving conditions for a victimized
10 population.

11 (3) IDENTIFICATION OF COMPANIES.--

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

17 1. Reviewing and relying, as appropriate in the Public
18 Fund's judgment, on publicly available information regarding
19 companies having business operations in Sudan, including
20 information provided by nonprofit organizations, research
21 firms, international organizations, and government entities;

22 2. Contacting asset managers contracted by the Public
23 Fund which invest in companies having business operations in
24 Sudan; or

25 3. Contacting other institutional investors that have
26 divested from or engaged with companies that have business
27 operations in Sudan, Cuba, Venezuela, North Korea, Iran, or
28 Syria.

29 (b) By the first meeting of the Public Fund following
30 the 90-day period described in paragraph (a), the Public Fund
31 shall assemble all scrutinized companies identified into a

Bill No. SB 2142

Barcode 563686

1 "Scrutinized Companies List."

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

5 (4) REQUIRED ACTIONS.--The Public Fund shall adhere to
6 the following procedure for companies on the Scrutinized
7 Companies List:

8 (a) Engagement.--

9 1. The Public Fund shall immediately determine the
10 companies on the Scrutinized Companies List in which the
11 Public Fund owns direct or indirect holdings.

12 2. For each company identified in this paragraph which
13 has only inactive business operations, the Public Fund shall
14 send a written notice informing the company of this act and
15 encouraging it to continue to refrain from initiating active
16 business operations in Sudan, Cuba, Venezuela, North Korea,
17 Iran, or Syria until it is able to avoid scrutinized business
18 operations. The Public Fund shall continue such correspondence
19 semiannually.

20 3. For each company newly identified under this
21 paragraph which has active business operations, the Public
22 Fund shall send a written notice informing the company of its
23 scrutinized company status and that it may become subject to
24 divestment by the Public Fund. The notice must inform the
25 company of the opportunity to clarify its Sudan-related
26 activities and encourage the company, within 90 days, to cease
27 its scrutinized business operations or convert such operations
28 to inactive business operations in order to avoid qualifying
29 for divestment by the Public Fund.

30 4. If, within 90 days after the Public Fund's first
31 engagement with a company pursuant to this paragraph, that

Bill No. SB 2142

Barcode 563686

1 company ceases scrutinized business operations, the company
 2 shall be removed from the Scrutinized Companies List and the
 3 provisions of this act shall cease to apply to it unless it
 4 resumes scrutinized business operations. If, within 90 days
 5 after the Public Fund's first engagement, the company converts
 6 its scrutinized active business operations to inactive
 7 business operations, the company is subject to all provisions
 8 relating thereto.

9 (b) Divestment.--

10 1. If, after 90 days following the Public Fund's first
 11 engagement with a company pursuant to paragraph (a), the
 12 company continues to have scrutinized active business
 13 operations, and only while such company continues to have
 14 scrutinized active business operations, the Public Fund shall
 15 sell, redeem, divest, or withdraw all publicly traded
 16 securities of the company, except as provided in paragraph
 17 (d), according to the following schedule:

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

22 b. One hundred percent of such assets shall be removed
 23 from the Public Fund's assets under management within 15
 24 months after the company's most recent appearance on the
 25 Scrutinized Companies List.

26 2. If a company that ceased scrutinized active
 27 business operations following engagement pursuant to paragraph
 28 (a) resumes such operations, this paragraph immediately
 29 applies, and the Public Fund shall send a written notice to
 30 the company. The company shall also be immediately
 31 reintroduced onto the Scrutinized Companies List.

Bill No. SB 2142

Barcode 563686

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

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

10 (e) Excluded securities.--Notwithstanding the
 11 provisions of this act, paragraphs (b) and (c) do not apply to
 12 indirect holdings in actively managed investment funds.
 13 However, the Public Fund shall submit letters to the managers
 14 of such investment funds containing companies that have
 15 scrutinized active business operations requesting that they
 16 consider removing such companies from the fund or create a
 17 similar actively managed fund having indirect holdings devoid
 18 of such companies. If the manager creates a similar fund, the
 19 Public Fund shall replace all applicable investments with
 20 investments in the similar fund in an expedited timeframe
 21 consistent with prudent investing standards. For the purposes
 22 of this section, a private equity fund is deemed to be an
 23 actively managed investment fund.

24 (5) REPORTING.--

25 (a) The Public Fund shall file a report to the
 26 Governor, the President of the Senate, the Speaker of the
 27 House of Representatives, and the Attorney General that
 28 includes the Scrutinized Companies List within 30 days after
 29 the list is created. This report shall be made available to
 30 the public.

31 (b) Annually thereafter, the Public Fund shall file a

Bill No. SB 2142

Barcode 563686

1 report, which shall be made available to the public, to the
 2 Governor, the President of the Senate, the Speaker of the
 3 House of Representatives, and the Attorney General and send a
 4 copy of that report to the United States Presidential Special
 5 Envoy to Sudan, or an appropriate designee or successor, which
 6 includes:

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

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

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

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

14 (6) EXPIRATION.--This act expires upon the occurrence
 15 of any of the following:

16 (a) The Congress or President of the United States
 17 declares that the Darfur genocide has been halted for at least
 18 12 months;

19 (b) The United States revokes all sanctions imposed
 20 against each of the countries or governments listed in this
 21 section;

22 (c) The Congress or President of the United States
 23 declares that each of the countries or governments listed in
 24 this section has honored its commitments to cease attacks on
 25 civilians, demobilize and demilitarize any associated
 26 militias, grant free and unfettered access for deliveries of
 27 humanitarian assistance, and allow for the safe and voluntary
 28 return of refugees and internally displaced persons; or

29 (d) The Congress or President of the United States,
 30 through legislation or executive order, declares that
 31 mandatory divestment of the type provided for in this act

Bill No. SB 2142

Barcode 563686

1 interferes with the conduct of United States foreign policy.

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

9 (8) REINVESTMENT IN CERTAIN COMPANIES HAVING
10 SCRUTINIZED ACTIVE BUSINESS OPERATIONS.--Notwithstanding any
11 other provision of this act to the contrary, the Public Fund
12 may cease divesting from certain scrutinized companies
13 pursuant to paragraph (4)(b) or reinvest in certain
14 scrutinized companies from which it divested pursuant to
15 paragraph (4)(b) if clear and convincing evidence shows that
16 the value of all assets under management by the Public Fund
17 becomes equal to or less than 99.50 percent, or 50 basis
18 points, of the hypothetical value of all assets under
19 management by the Public Fund assuming no divestment for any
20 company had occurred under paragraph (4)(b). Cessation of
21 divestment, reinvestment, or any subsequent ongoing investment
22 authorized by this act is limited to the minimum steps
23 necessary to avoid the contingency set forth in this
24 subsection. For any cessation of divestment, reinvestment, or
25 subsequent ongoing investment authorized by this act, the
26 Public Fund shall provide a written report to the Governor,
27 the President of the Senate, the Speaker of the House of
28 Representatives, and the Attorney General in advance of
29 initial reinvestment, updated semiannually thereafter as
30 applicable, setting forth the reasons and justification,
31 supported by clear and convincing evidence, for its decisions

Bill No. SB 2142

Barcode 563686

1 to cease divestment, reinvest, or remain invested in companies
 2 having scrutinized active business operations. This act does
 3 not apply to reinvestment in companies on the grounds that
 4 they have ceased to have scrutinized active business
 5 operations.

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

9 Section 2. If any provision of this act or its
 10 application to any person or circumstance is held invalid, the
 11 invalidity does not affect other provisions or applications of
 12 the act which can be given effect without the invalid
 13 provision or application, and to this end the provisions of
 14 this act are severable.

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

17
 18
 19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 Delete everything before the enacting clause

22
 23 and insert:

24 A bill to be entitled
 25 An act relating to economic sanctions related
 26 to Sudan, Cuba, Venezuela, North Korea, Iran,
 27 or Syria; providing legislative findings;
 28 providing definitions; requiring the State
 29 Board of Administration to identify all
 30 companies doing certain types of business in or
 31 with specified nations or governments in which

Bill No. SB 2142

Barcode 563686

1 public moneys are invested; requiring the board
2 to create and maintain a Scrutinized Company
3 List which names all such companies; requiring
4 the board to periodically contact all
5 scrutinized companies and encourage them to
6 refrain from engaging in certain types of
7 business in or with Sudan, Cuba, Venezuela,
8 North Korea, Iran, or Syria; requiring the
9 board to inform scrutinized companies of their
10 status as a scrutinized company and to ask for
11 clarification as to the nature of each
12 company's business activities; providing that a
13 company may be removed from the list under
14 certain conditions; providing for
15 reintroduction of a company onto the list;
16 requiring the board to divest of all publicly
17 traded securities of a scrutinized company
18 under certain conditions; providing exceptions
19 to the divestment requirement; prohibiting the
20 board from acquiring securities of scrutinized
21 companies that have active business operations;
22 providing exceptions to the investment
23 prohibition; providing an additional exception
24 from the divestment requirement and the
25 investment prohibition to certain indirect
26 holdings in actively managed investment funds;
27 requiring the board to request that the
28 managers of such investment funds consider
29 removing scrutinized companies from the fund or
30 create a similar fund that excludes such
31 companies; requiring the board to file a report

Bill No. SB 2142

Barcode 563686

1 to the Governor, the Legislature, and Attorney
2 General within a specified period after
3 creation of the Scrutinized Company List;
4 requiring the annual filing of an updated
5 report; requiring that all such reports be made
6 available to the public; requiring that the
7 report include certain information; providing
8 for the expiration of the act; exempting the
9 board from certain statutory or common law
10 obligations; authorizing the board to cease
11 divesting or to reinvest in certain scrutinized
12 companies if the value for all assets under
13 management by the board becomes equal to or
14 less than a specified amount; requiring the
15 board to file a written report to the Governor,
16 the Legislature, and Attorney General before
17 such reinvestment; requiring that the report
18 contain certain information; requiring
19 semiannual updates to such reports when
20 applicable; requiring the Attorney General to
21 enforce the divestment requirements and
22 investment prohibitions; authorizing the
23 Attorney General to bring enforcement actions
24 in court through any lawful designee; providing
25 for severability; providing an effective date.

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