

By the Committee on Governmental Operations; and Senators Deutch, Joyner, Rich, Gaetz, Wilson, Atwater, Margolis, Aronberg, Baker, Bullard, Storms and Hill

585-2525-07

1	A bill to be entitled
2	An act relating to investments of the State
3	Board of Administration; creating s. 215.442,
4	F.S.; providing reporting requirements for the
5	executive director of the State Board of
6	Administration; requiring the State Board of
7	Administration to publish certain quarterly
8	reports on its website; creating s. 215.473,
9	F.S.; providing legislative findings; providing
10	definitions; requiring the State Board of
11	Administration to identify all companies in
12	which public moneys are invested that are doing
13	certain types of business in or with Sudan and
14	Iran; requiring the board to create and
15	maintain certain scrutinized companies lists
16	that name all such companies; requiring the
17	board to periodically contact all scrutinized
18	companies and encourage them to refrain from
19	engaging in certain types of business in or
20	with Sudan or Iran; requiring the board to
21	inform scrutinized companies of their status as
22	a scrutinized company and to ask for
23	clarification as to the nature of each
24	company's business activities; providing that a
25	company may be removed from the list under
26	certain conditions; providing for
27	reintroduction of a company onto the list;
28	requiring the board to divest of all publicly
29	traded securities of a scrutinized company
30	under certain conditions; providing exceptions
31	to the divestment requirement; prohibiting the

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

1 board from acquiring securities of scrutinized
2 companies that have active business operations;
3 providing exceptions to the investment
4 prohibition; providing an additional exception
5 from the divestment requirement and the
6 investment prohibition to certain indirect
7 holdings in actively managed investment funds;
8 requiring the board to request that the
9 managers of such investment funds consider
10 removing scrutinized companies from the fund or
11 create a similar fund that excludes such
12 companies; requiring the board to file a report
13 with the Governor, the Legislature, and
14 Attorney General within a specified period
15 after creation of each scrutinized companies
16 list; requiring the annual filing of an updated
17 report; requiring that all such reports be made
18 available to the public; requiring that the
19 report include certain information; providing
20 for the expiration of the act; exempting the
21 board from certain statutory or common law
22 obligations; authorizing the board to cease
23 divesting or to reinvest in certain scrutinized
24 companies if the value for all assets under
25 management by the board becomes equal to or
26 less than a specified amount; requiring the
27 board to provide a written report to the
28 Governor, the Legislature, and Attorney General
29 before such reinvestment; requiring that the
30 report contain certain information; requiring
31 semiannual updates to such reports when

1 applicable; providing for severability;
2 providing an effective date.

3
4 WHEREAS, on July 23, 2004, the United States Congress
5 declared that "the atrocities unfolding in Darfur, Sudan, are
6 genocide," and

7 WHEREAS, on December 7, 2004, the United States
8 Congress noted that the genocidal policy in Darfur has led to
9 reports of "systematic rape of thousands of women and girls,
10 the abduction of women and children, and the destruction of
11 hundreds of ethnically African villages, including the
12 poisoning of their wells and the plunder of their crops and
13 cattle upon which the people of such villages sustain
14 themselves," and

15 WHEREAS, on December 7, 2004, Congress found that "the
16 Government of Sudan has restricted access by humanitarian and
17 human rights workers to the Darfur area through intimidation
18 by military and security forces, and through bureaucratic and
19 administrative obstruction, in an attempt to inflict the most
20 devastating harm on those individuals displaced from their
21 villages and homes without any means of sustenance or
22 shelter," and

23 WHEREAS, on September 25, 2006, Congress reaffirmed
24 that "the genocide unfolding in the Darfur region of Sudan is
25 characterized by acts of terrorism and atrocities directed
26 against civilians, including mass murder, rape, and sexual
27 violence committed by the Janjaweed and associated militias
28 with the complicity and support of the National Congress
29 Party-led faction of the Government of Sudan," and

30 WHEREAS, on September 26, 2006, the United States House
31 of Representatives stated that "an estimated 300,000 to

1 400,000 people have been killed by the Government of Sudan and
2 its Janjaweed allies since the crisis began in 2003, more than
3 2,000,000 people have been displaced from their homes, and
4 more than 250,000 people from Darfur remain in refugee camps
5 in Chad," and

6 WHEREAS, the Darfur crisis represents the first time
7 the United States Government has labeled ongoing atrocities as
8 genocide, and

9 WHEREAS, the Federal Government has imposed sanctions
10 against the Government of Sudan since 1997. These sanctions
11 are monitored through the United States Treasury Department's
12 Office of Foreign Assets Control (OFAC), and

13 WHEREAS, according to a former chair of the United
14 States Securities and Exchange Commission, the fact that a
15 foreign company is doing material business with a country,
16 government, or entity on OFAC's sanctions list is, in the SEC
17 staff's view, substantially likely to be significant to a
18 reasonable investor's decision about whether to invest in that
19 company, and

20 WHEREAS, since 1993, the United States Secretary of
21 State has determined that Sudan is a country whose government
22 has repeatedly provided support for acts of international
23 terrorism, and, as a result, the United States has restricted
24 assistance, defense exports, defense sales, financial
25 transactions, and various other transactions with the
26 Government of Sudan, and

27 WHEREAS, a 2006 report by United States House of
28 Representatives states that "a company's association with
29 sponsors of terrorism and human rights abuses, no matter how
30 large or small, can have a materially adverse result on a
31 public company's operations, financial condition, earnings,

1 and stock prices, all of which can negatively affect the value
2 of an investment," and

3 WHEREAS, in response to the financial risk posed by
4 investments in companies doing business with a state that
5 sponsors terrorists, the Securities and Exchange Commission
6 established its Office of Global Security Risk to provide for
7 enhanced disclosure of material information regarding such
8 companies, and

9 WHEREAS, the current Sudan divestment movement
10 encompasses nearly 100 universities, municipalities, states,
11 and private pension plans, and

12 WHEREAS, companies facing such widespread divestment
13 present further material risk to remaining investors, and

14 WHEREAS, it is a fundamental responsibility of the
15 State of Florida to decide where, how, and by whom financial
16 resources in its control should be invested, taking into
17 account numerous pertinent factors, and

18 WHEREAS, it is the prerogative and desire of the State
19 of Florida, with respect to investment resources in its
20 control and to the extent reasonable, with due consideration
21 for return on investment on behalf of the state and its
22 investment beneficiaries, not to participate in an ownership
23 or capital-providing capacity with entities that provide
24 significant practical support for genocide, including certain
25 non-United States companies presently doing business in Sudan,
26 and

27 WHEREAS, a resolution of the United Nations Security
28 Council imposes sanctions on Iran for its failure to suspend
29 its uranium-enrichment activities, and

30 WHEREAS, the United Nations Security Council voted
31 unanimously for an additional embargo on Iranian arms exports,

1 | which is a freeze on assets abroad of an expanded list of
2 | individuals and companies involved in Iran's nuclear and
3 | ballistic missile programs, and calls for nations and
4 | institutions to bar new grants or loans to Iran except for
5 | humanitarian and developmental purposes, and

6 | WHEREAS, Iran's financial ability to pay its debts to
7 | foreign entities involved in the petroleum-energy sector
8 | amounting to more than \$20 million is put at risk by the Iran
9 | and Libya Sanctions Act embargo and sanctions, and

10 | WHEREAS, foreign entities have invested in Iran's
11 | petroleum-energy sector despite United States and United
12 | Nations sanctions against Iran, and

13 | WHEREAS, all United States and foreign entities that
14 | have invested more than \$20 million in Iran's energy sector
15 | since August 5, 1996, are subject to sanctions under United
16 | States law pursuant to the Iran and Libya Sanctions Act of
17 | 1996, and

18 | WHEREAS, the United States renewed the Iran and Libya
19 | Sanctions Act of 1996 in 2001 and 2006, and

20 | WHEREAS, while divestiture should be considered with
21 | the intent to improve investment performance and, by the rules
22 | of prudence, fiduciaries must take into account all relevant
23 | substantive factors in arriving at an investment decision, and

24 | WHEREAS, the State of Florida is deeply concerned about
25 | investments in publicly traded companies that have business
26 | activities in and ties to Iran's petroleum-energy sector as a
27 | financial risk to the shareholders, and

28 | WHEREAS, by investing in publicly traded companies
29 | having ties to Iran's petroleum-energy sector, the Florida
30 | State Board of Administration is putting the funds it oversees
31 | at substantial financial risk, and

1 WHEREAS, divestiture from markets that are vulnerable
2 to embargo, loan restrictions, and sanctions from the United
3 States and the international community, including the United
4 Nations Security Council, is in accordance with the rules of
5 prudence, and

6 WHEREAS, the Legislature finds that this act should
7 remain in effect only insofar as it continues to be consistent
8 with and does not unduly interfere with the foreign policy of
9 the United States as determined by the Federal Government, and

10 WHEREAS, to protect Florida's assets, it is in the best
11 interest of the state to enact a statutory prohibition
12 regarding the investments managed by the State Board of
13 Administration doing business in Sudan or in Iran's
14 petroleum-energy sector, NOW, THEREFORE,

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Section 215.442, Florida Statutes, is
19 created to read:

20 215.442 Executive director; reporting requirements;
21 public meeting.--

22 (1) Beginning October 2007 and quarterly thereafter,
23 the executive director shall present to the Board of Trustees
24 of the State Board of Administration a quarterly report to
25 include the following:

26 (a) The name of each equity in which the State Board
27 of Administration has invested for the quarter.

28 (b) The industry category of each equity.

29 (2) The executive director shall present each
30 quarterly report at a meeting of the board of trustees, which
31 shall be open and noticed to the public pursuant to the

1 requirements of s. 286.011 and s. 24(b), Art. I of the State
2 Constitution.

3 (3) The State Board of Administration shall publish a
4 copy of each quarterly report on its website prior to
5 presenting the report at each quarterly meeting of the board
6 of trustees.

7 Section 2. Section 215.473, Florida Statutes, is
8 created to read:

9 215.473 Divestiture by the State Board of
10 Administration; Sudan; Iran.--

11 (1) DEFINITIONS.--As used in this act, the term:

12 (a) "Active business operations" means all business
13 operations that are not inactive business operations.

14 (b) "Business operations" means engaging in commerce
15 in any form in Sudan or Iran, including, but not limited to,
16 acquiring, developing, maintaining, owning, selling,
17 possessing, leasing, or operating equipment, facilities,
18 personnel, products, services, personal property, real
19 property, or any other apparatus of business or commerce.

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

28 (d) "Complicit" means taking actions during any
29 preceding 20-month period which have directly supported or
30 promoted the genocidal campaign in Darfur, including, but not
31 limited to, preventing Darfur's victimized population from

1 communicating with each other, encouraging Sudanese citizens
2 to speak out against an internationally approved security
3 force for Darfur, actively working to deny, cover up, or alter
4 the record on human rights abuses in Darfur, or other similar
5 actions.

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

10 (f) "Government of Iran" means the government of Iran,
11 its instrumentalities, and companies owned or controlled by
12 the government of Iran.

13 (g) "Government of Sudan" means the government in
14 Khartoum, Sudan, that is led by the National Congress Party,
15 formerly known as the National Islamic Front, or any successor
16 government formed on or after October 13, 2006, including the
17 coalition National Unity Government agreed upon in the
18 Comprehensive Peace Agreement for Sudan, and does not include
19 the regional government of southern Sudan.

20 (h) "Inactive business operations" means the mere
21 continued holding or renewal of rights to property previously
22 operated for the purpose of generating revenues but not
23 presently deployed for such purpose.

24 (i) "Indirect holdings" in a company means all
25 securities of that company that are held in an account or
26 fund, such as a mutual fund, managed by one or more persons
27 not employed by the public fund, in which the public fund owns
28 shares or interests together with other investors not subject
29 to the provisions of this act.

30 (j) "Iran" means the Islamic Republic of Iran.
31

1 (k) "Marginalized populations of Sudan" include, but
2 are not limited to, the portion of the population in the
3 Darfur region that has been genocidally victimized; the
4 portion of the population of southern Sudan victimized by
5 Sudan's north-south civil war; the Beja, Rashidiya, and other
6 similarly underserved groups of eastern Sudan; the Nubian and
7 other similarly underserved groups in Sudan's Abyei, Southern
8 Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab,
9 Manasir, and other similarly underserved groups of northern
10 Sudan.

11 (l) "Military equipment" means weapons, arms, military
12 supplies, and equipment that may readily be used for military
13 purposes, including, but not limited to, radar systems,
14 military-grade transport vehicles, or supplies or services
15 sold or provided directly or indirectly to any force actively
16 participating in armed conflict in Sudan.

17 (m) "Mineral-extraction activities" include the
18 exploring, extracting, processing, transporting, or wholesale
19 selling or trading of elemental minerals or associated metal
20 alloys or oxides (ore), including gold, copper, chromium,
21 chromite, diamonds, iron, iron ore, silver, tungsten, uranium,
22 and zinc, as well as facilitating such activities, including
23 providing supplies or services in support of such activities.

24 (n) "Oil-related activities" include, but are not
25 limited to, owning rights to oil blocks; exporting,
26 extracting, producing, refining, processing, exploring for,
27 transporting, selling, or trading of oil; constructing,
28 maintaining, or operating a pipeline, refinery, or other
29 oil-field infrastructure; and facilitating such activities,
30 including providing supplies or services in support of such
31 activities, except that the mere retail sale of gasoline and

1 related consumer products is not considered an oil-related
2 activity.

3 (o) "Petroleum resources" means petroleum, petroleum
4 byproducts, or natural gas.

5 (p) "Power-production activities" means any business
6 operation that involves a project commissioned by the National
7 Electricity Corporation (NEC) of Sudan or other similar entity
8 of the Government of Sudan whose purpose is to facilitate
9 power generation and delivery, including, but not limited to,
10 establishing power-generating plants or hydroelectric dams,
11 selling or installing components for the project, providing
12 service contracts related to the installation or maintenance
13 of the project, as well as facilitating such activities,
14 including providing supplies or services in support of such
15 activities.

16 (q) "Public fund" means all funds, assets, trustee,
17 and other designates under the State Board of Administration
18 pursuant to chapter 121.

19 (r) "Scrutinized active business operations" means
20 active business operations that have resulted in a company
21 becoming a scrutinized company.

22 (s) "Scrutinized business operations" means business
23 operations that have resulted in a company becoming a
24 scrutinized company.

25 (t) "Scrutinized company" means any company that meets
26 any of the following criteria:

27 1. The company has business operations that involve
28 contracts with or provision of supplies or services to the
29 Government of Sudan, companies in which the Government of
30 Sudan has any direct or indirect equity share, consortiums or
31 projects commissioned by the Government of Sudan, or companies

1 involved in consortiums or projects commissioned by the
2 Government of Sudan, and:
3 a. More than 10 percent of the company's revenues or
4 assets linked to Sudan involve oil-related activities or
5 mineral-extraction activities; less than 75 percent of the
6 company's revenues or assets linked to Sudan involve contracts
7 with or provision of oil-related or mineral-extracting
8 products or services to the regional government of southern
9 Sudan or a project or consortium created exclusively by that
10 regional government; and the company has failed to take
11 substantial action; or
12 b. More than 10 percent of the company's revenues or
13 assets linked to Sudan involve power-production activities;
14 less than 75 percent of the company's power-production
15 activities include projects whose intent is to provide power
16 or electricity to the marginalized populations of Sudan; and
17 the company has failed to take substantial action.
18 2. The company is complicit in the Darfur genocide.
19 3. The company supplies military equipment within
20 Sudan, unless it clearly shows that the military equipment
21 cannot be used to facilitate offensive military actions in
22 Sudan or the company implements rigorous and verifiable
23 safeguards to prevent use of that equipment by forces actively
24 participating in armed conflict. Examples of safeguards
25 include post-sale tracking of such equipment by the company,
26 certification from a reputable and objective third party that
27 such equipment is not being used by a party participating in
28 armed conflict in Sudan, or sale of such equipment solely to
29 the regional government of southern Sudan or any
30 internationally recognized peacekeeping force or humanitarian
31 organization.

1 4. The company has business operations that involve
2 contracts with or provision of supplies or services to the
3 Government of Iran, companies in which the Government of Iran
4 has any direct or indirect equity share, consortiums, or
5 projects commissioned by the Government of Iran, or companies
6 involved in consortiums or projects commissioned by the
7 Government of Iran and:

8 a. More than 10 percent of the company's total
9 revenues or assets are linked to Iran and involve oil-related
10 activities or mineral-extraction activities; and the company
11 has failed to take substantial action; or

12 b. The company has, with actual knowledge, on or after
13 August 5, 1996, made an investment of \$20 million or more, or
14 any combination of investments of at least \$10 million each,
15 which in the aggregate equals or exceeds \$20 million in any
16 12-month period, and which directly or significantly
17 contributes to the enhancement of Iran's ability to develop
18 the petroleum resources of Iran.

19 (u) "Social-development company" means a company whose
20 primary purpose in Sudan is to provide humanitarian goods or
21 services, including medicine or medical equipment;
22 agricultural supplies or infrastructure; educational
23 opportunities; journalism-related activities; information or
24 information materials; spiritual-related activities; services
25 of a purely clerical or reporting nature; food, clothing, or
26 general consumer goods that are unrelated to oil-related
27 activities; mineral-extraction activities; or power-production
28 activities.

29 (v) "Substantial action specific to Iran" means
30 adopting, publicizing, and implementing a formal plan to cease
31

1 scrutinized business operations within 1 year and to refrain
2 from any such new business operations.

3 (w) "Substantial action specific to Sudan" means
4 adopting, publicizing, and implementing a formal plan to cease
5 scrutinized business operations within 1 year and to refrain
6 from any such new business operations; undertaking
7 humanitarian efforts in conjunction with an international
8 organization, the government of Sudan, the regional government
9 of Southern Sudan, or a nonprofit entity evaluated and
10 certified by an independent third party to be substantially in
11 a relationship to the company's Sudan business operations and
12 of benefit to one or more marginalized populations of Sudan;
13 or, through engagement with the Government of Sudan,
14 materially improving conditions for the genocidally victimized
15 population in Darfur.

16 (2) IDENTIFICATION OF COMPANIES.--

17 (a) Within 90 days after the effective date of this
18 act, the public fund shall make its best efforts to identify
19 all scrutinized companies in which the public fund has direct
20 or indirect holdings or could possibly have such holdings in
21 the future. Such efforts include:

22 1. Reviewing and relying, as appropriate in the public
23 fund's judgment, on publicly available information regarding
24 companies having business operations in Sudan, including
25 information provided by nonprofit organizations, research
26 firms, international organizations, and government entities;

27 2. Contacting asset managers contracted by the public
28 fund that invest in companies having business operations in
29 Sudan; or

30
31

1 3. Contacting other institutional investors that have
2 divested from or engaged with companies that have business
3 operations in Sudan.

4 4. Laws of the United States regarding the levels of
5 business activity that would cause application of sanctions
6 for companies conducting business or investing in countries
7 that are designated state sponsors of terror.

8 (b) By the first meeting of the public fund following
9 the 90-day period described in paragraph (a), the public fund
10 shall assemble all scrutinized companies that fit criteria
11 specified in subparagraphs (1)(t)1., 2., and 3. into a
12 "Scrutinized Companies with Activities in Sudan List" and
13 shall assemble all scrutinized companies that fit criteria
14 specified in subparagraph (1)(t)4. into a "Scrutinized
15 Companies with Activities in the Iran Petroleum Energy Sector
16 List."

17 (c) The public fund shall update and make publicly
18 available quarterly the Scrutinized Companies with Activities
19 in Sudan List and the Scrutinized Companies with Activities in
20 the Iran Petroleum Energy Sector List based on evolving
21 information from, among other sources, those listed in
22 paragraph (a).

23 (d) Notwithstanding the provisions of this act, a
24 social-development company that is not complicit in the Darfur
25 genocide is not considered a scrutinized company under
26 subparagraph (1)(t)1., subparagraph (1)(t)2., subparagraph
27 (1)(t)3., or subparagraph (1)(t)4.

28 (3) REQUIRED ACTIONS.--The public fund shall adhere to
29 the following procedure for assembling companies on the
30 Scrutinized Companies with Activities in Sudan List and the
31

1 Scrutinized Companies with Activities in the Iran Petroleum

2 Energy Sector List:

3 (a) Engagement.--

4 1. The public fund shall immediately determine the
5 companies on the Scrutinized Companies with Activities in
6 Sudan List and the Scrutinized Companies with Activities in
7 the Iran Petroleum Energy Sector List in which the public fund
8 owns direct or indirect holdings.

9 2. For each company identified in this paragraph that
10 has only inactive business operations, the public fund shall
11 send a written notice informing the company of this act and
12 encouraging it to continue to refrain from initiating active
13 business operations in Sudan or Iran until it is able to avoid
14 scrutinized business operations. The public fund shall
15 continue such correspondence semiannually.

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

26 4. If, within 90 days after the public fund's first
27 engagement with a company pursuant to this paragraph, that
28 company ceases scrutinized business operations, the company
29 shall be removed from the Scrutinized Companies with
30 Activities in Sudan List and the Scrutinized Companies with
31 Activities in the Iran Petroleum Energy Sector List, and the

1 provisions of this act shall cease to apply to that company
2 unless that company resumes scrutinized business operations.
3 If, within 90 days after the public fund's first engagement,
4 the company converts its scrutinized active business
5 operations to inactive business operations, the company is
6 subject to all provisions relating to inactive business
7 operations. A company may be removed from one list but remain
8 on the other list, in which case the company shall be subject
9 to the provisions applicable to the list on which the company
10 remains.

11 (b) Divestment.--

12 1. If, after 90 days following the public fund's first
13 engagement with a company pursuant to paragraph (a), the
14 company continues to have scrutinized active business
15 operations, and only while such company continues to have
16 scrutinized active business operations, the public fund shall
17 sell, redeem, divest, or withdraw all publicly traded
18 securities of the company, except as provided in paragraph
19 (d), from the public fund's assets under management within 12
20 months after the company's most recent appearance on the
21 Scrutinized Companies with Activities in Sudan List or on the
22 Scrutinized Companies with Activities in the Iran Petroleum
23 Energy Sector List.

24 2. If a company that ceased scrutinized active
25 business operations following engagement pursuant to paragraph
26 (a) resumes such operations, this paragraph immediately
27 applies, and the public fund shall send a written notice to
28 the company. The company shall also be immediately
29 reintroduced onto the Scrutinized Companies with Activities in
30 Sudan List or on the Scrutinized Companies with Activities in
31 the Iran Petroleum Energy Sector List, as applicable.

1 (c) Prohibition.--The public fund may not acquire
2 securities of companies on the Scrutinized Companies with
3 Activities in Sudan List or the Scrutinized Companies with
4 Activities in the Iran Petroleum Energy Sector List that have
5 active business operations, except as provided in paragraph
6 (d).

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

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

26 (f) Further exclusions.--Notwithstanding any other
27 provision of this act, the public fund, when discharging its
28 responsibility for operation of a defined contribution plan,
29 shall engage the manager of the investment offerings in such
30 plans requesting that they consider removing scrutinized
31 companies from the investment offerings or create an

1 alternative investment offering devoid of scrutinized
2 companies. If the manager creates an alternative investment
3 offering and the offering is deemed by the public fund to be
4 consistent with prudent investor standards, the public fund
5 shall consider including such investment offering in the plan.

6 (4) REPORTING.--

7 (a) The public fund shall file a report with each
8 member of the Board of Trustees of the State Board of
9 Administration, the President of the Senate, and the Speaker
10 of the House of Representatives that includes the Scrutinized
11 Companies with Activities in Sudan List and the Scrutinized
12 Companies with Activities in the Iran Petroleum Energy Sector
13 List within 30 days after the list is created. This report
14 shall be made available to the public.

15 (b) At each quarterly meeting of the Board of Trustees
16 thereafter, the public fund shall file a report, which shall
17 be made available to the public and to each member of the
18 Board of Trustees of the State Board of Administration, the
19 President of the Senate, and the Speaker of the House of
20 Representatives, and send a copy of that report to the United
21 States Presidential Special Envoy to Sudan and the United
22 States Presidential Special Envoy to Iran, or an appropriate
23 designee or successor, which includes:

24 1. A summary of correspondence with companies engaged
25 by the public fund under subparagraphs (3)(a)2. and 3.;

26 2. All investments sold, redeemed, divested, or
27 withdrawn in compliance with paragraph (3)(b);

28 3. All prohibited investments under paragraph (3)(c);

29 4. Any progress made under paragraph (3)(e); and

30 5. A list of all publicly traded securities held
31 directly by this state.

1 (5) EXPIRATION.--This act expires upon the occurrence
2 of all of the following:

3 (a) If any of the following occur, the public fund
4 shall no longer scrutinize companies according to
5 subparagraphs (1)(t)1., 2., and 3. and shall no longer
6 assemble the Scrutinized Companies with Activities in Sudan
7 List, shall cease engagement and divestment of such companies,
8 and may reinvest in such companies as long as such companies
9 do not satisfy the criteria for inclusion in the Scrutinized
10 Companies with Activities in the Iran Petroleum Energy Sector
11 List:

12 1. The Congress or President of the United States,
13 affirmatively and unambiguously states, by means including,
14 but not limited to, legislation, executive order, or written
15 certification from the President to Congress, that the Darfur
16 genocide has been halted for at least 12 months;

17 2. The United States revokes all sanctions imposed
18 against the Government of Sudan;

19 3. The Congress or President of the United States
20 affirmatively and unambiguously states, by means including,
21 but not limited to, legislation, executive order, or written
22 certification from the President to Congress, that the
23 government of Sudan has honored its commitments to cease
24 attacks on civilians, demobilize and demilitarize the
25 Janjaweed and associated militias, grant free and unfettered
26 access for deliveries of humanitarian assistance, and allow
27 for the safe and voluntary return of refugees and internally
28 displaced persons; or

29 4. The Congress or President of the United States
30 affirmatively and unambiguously states, by means including,
31 but not limited to, legislation, executive order, or written

1 certification from the President to Congress, that mandatory
2 divestment of the type provided for in this act interferes
3 with the conduct of United States foreign policy.

4 (b) If any of the following occur, the public fund
5 shall no longer scrutinize companies according to subparagraph
6 (1)(t)4. and shall no longer assemble the Scrutinized
7 Companies with Activities in the Iran Petroleum Energy Sector
8 List and shall cease engagement, investment prohibitions, and
9 divestment. The public fund may reinvest in such companies as
10 long as such companies do not satisfy the criteria for
11 inclusion in the Scrutinized Companies with Activities in
12 Sudan List:

13 1. The Congress or President of the United States
14 affirmatively and unambiguously states, by means including,
15 but not limited to, legislation, executive order, or written
16 certification from the President to Congress, that the
17 government of Iran has ceased to acquire weapons of mass
18 destruction and support international terrorism;

19 2. The United States revokes all sanctions imposed
20 against the government of Iran; or

21 3. The Congress or President of the United States
22 affirmatively and unambiguously declares, by means including,
23 but not limited to, legislation, executive order, or written
24 certification from the President to Congress, that mandatory
25 divestment of the type provided for in this act interferes
26 with the conduct of United States foreign policy.

27 (6) OTHER LEGAL OBLIGATIONS.--With respect to actions
28 taken in compliance with this act, including all good faith
29 determinations regarding companies as required by this act,
30 the public fund is exempt from any conflicting statutory or
31 common law obligations, including any such obligations with

1 respect to choice of asset managers, investment funds, or
2 investments for the public fund's securities portfolios.
3 (7) REINVESTMENT IN CERTAIN COMPANIES HAVING
4 SCRUTINIZED ACTIVE BUSINESS OPERATIONS.--Notwithstanding any
5 other provision of this act to the contrary, the public fund
6 may cease divesting from certain scrutinized companies
7 pursuant to paragraph (3)(b) or reinvest in certain
8 scrutinized companies from which it divested pursuant to
9 paragraph (3)(b) if clear and convincing evidence shows that
10 the value of all assets under management by the public fund
11 becomes equal to or less than 99.50 percent, or 50 basis
12 points, of the hypothetical value of all assets under
13 management by the public fund assuming no divestment for any
14 company had occurred under paragraph (3)(b). Cessation of
15 divestment, reinvestment, or any subsequent ongoing investment
16 authorized by this act is limited to the minimum steps
17 necessary to avoid the contingency set forth in this
18 subsection or that no divestment of any company is required
19 for less than fair value. For any cessation of divestment,
20 reinvestment, or subsequent ongoing investment authorized by
21 this act, the public fund shall provide a written report to
22 each member of the Board of Trustees of the State Board of
23 Administration, the President of the Senate, and the Speaker
24 of the House of Representatives in advance of initial
25 reinvestment, updated semiannually thereafter as applicable,
26 setting forth the reasons and justification, supported by
27 clear and convincing evidence, for its decisions to cease
28 divestment, reinvest, or remain invested in companies having
29 scrutinized active business operations. This act does not
30 apply to reinvestment in companies on the grounds that they
31 have ceased to have scrutinized active business operations.

1 Section 3. If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 invalidity does not affect other provisions or applications of
4 the act that can be given effect without the invalid provision
5 or application, and to this end the provisions of this act are
6 severable. The Legislature hereby declares that it would have
7 passed this act and each provision of this act, irrespective
8 of the fact that any one or more provisions of this act might
9 be declared invalid, illegal, unenforceable or
10 unconstitutional, including, but not limited to, each of the
11 engagement, divestment, and prohibition provisions of this
12 act.

13 Section 4. This act shall take effect upon becoming a
14 law.

15
16 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
17 COMMITTEE SUBSTITUTE FOR
18 SB 2142

19 The Committee Substitute provides recognition of more specific
20 actions by federal authorities for a determination of the
21 expiration of the act. It exempts all funds managed by the
22 Board of Administration other than those involving the defined
23 benefit plan of the Florida Retirement System, and it
24 restricts divestment actions to only direct securities, thus
25 exempting private equity funds, and other indirect holdings.
26 The bill eliminates an original provision giving the Attorney
27 General specific enforcement powers.
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