



318306

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2012	.	
	.	
	.	
	.	

---

The Committee on Governmental Oversight and Accountability  
(Garcia) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 215.471, Florida Statutes, is amended to  
read:

215.471 Divestiture by the State Board of Administration;  
reporting requirements.—

(1) The State Board of Administration shall divest any  
investment under s. 121.151 and ss. 215.44-215.53, and is  
prohibited from investment in stocks, securities, or other  
obligations of:



318306

13           ~~(a)(1)~~ Any institution or company domiciled in the United  
14 States, or foreign subsidiary of a company domiciled in the  
15 United States, doing business in or with Cuba, or with agencies  
16 or instrumentalities thereof in violation of federal law.

17           ~~(b)(2)~~ Any institution or company domiciled outside of the  
18 United States if the President of the United States has applied  
19 sanctions against the foreign country in which the institution  
20 or company is domiciled pursuant to s. 4 of the Cuban Democracy  
21 Act of 1992.

22           (2) The State Board of Administration may not be a  
23 fiduciary under this section with respect to voting on, and does  
24 not have the right to vote in favor of, any proxy resolution  
25 advocating expanded United States trade with Cuba or Syria. The  
26 board's staff shall report on its activities in its annual proxy  
27 voting report.

28           Section 2. Section 287.135, Florida Statutes, is amended to  
29 read:

30           287.135 Prohibition against contracting with scrutinized  
31 companies.—

32           (1) In addition to the terms defined in ss. 287.012 and  
33 215.473, as used in this section, the term:

34           (a) "Awarding body" means, for purposes of state contracts,  
35 an agency or the department, and for purposes of local  
36 contracts, the governing body of the local governmental entity.

37           **(b) "Business operations" means, for purposes specifically**  
38 related to Cuba or Syria, engaging in commerce in any form in  
39 Cuba or Syria, including, but not limited to, acquiring,  
40 developing, maintaining, owning, selling, possessing, leasing,  
41 or operating equipment, facilities, personnel, products,



318306

42 services, personal property, real property, military equipment,  
43 or any other apparatus of business or commerce.

44 (c) ~~(b)~~ "Local governmental entity" means a county,  
45 municipality, special district, or other political subdivision  
46 of the state.

47 (2) A company that, at the time of bidding or submitting a  
48 proposal for a new contract or renewal of an existing contract,  
49 is on the Scrutinized Companies with Activities in Sudan List or  
50 the Scrutinized Companies with Activities in the Iran Petroleum  
51 Energy Sector List, created pursuant to s. 215.473, or is  
52 engaged in business operations in Cuba or Syria, is ineligible  
53 for, and may not bid on, submit a proposal for, or enter into or  
54 renew a contract with an agency or local governmental entity for  
55 goods or services of \$1 million or more.

56 (3) (a) Any contract with an agency or local governmental  
57 entity for goods or services of \$1 million or more entered into  
58 or renewed on or after July 1, 2011, through June 30, 2012, must  
59 contain a provision that allows for the termination of such  
60 contract at the option of the awarding body if the company is  
61 found to have submitted a false certification as provided under  
62 subsection (5) or been placed on the Scrutinized Companies with  
63 Activities in Sudan List or the Scrutinized Companies with  
64 Activities in the Iran Petroleum Energy Sector List.

65 (b) Any contract with an agency or local governmental  
66 entity for goods or services of \$1 million or more entered into  
67 or renewed on or after July 1, 2012, must contain a provision  
68 that allows for the termination of such contract at the option  
69 of the awarding body if the company is found to have submitted a  
70 false certification as provided under subsection (5), been



318306

71 placed on the Scrutinized Companies with Activities in Sudan  
72 List or the Scrutinized Companies with Activities in the Iran  
73 Petroleum Energy Sector List, or been engaged in business  
74 operations in Cuba or Syria.

75 (4) Notwithstanding subsection (2) or subsection (3), an  
76 agency or local governmental entity, on a case-by-case basis,  
77 may permit a company on the Scrutinized Companies with  
78 Activities in Sudan List or the Scrutinized Companies with  
79 Activities in the Iran Petroleum Energy Sector List, or a  
80 company with business operations in Cuba or Syria, to be  
81 eligible for, bid on, submit a proposal for, or enter into or  
82 renew a contract for goods or services of \$1 million or more  
83 under ~~either of the following~~ conditions set forth in paragraph  
84 (a) or the conditions set forth in paragraph (b):

85 (a) 1. With respect to a company on the Scrutinized  
86 Companies with Activities in Sudan List or the Scrutinized  
87 Companies with Activities in the Iran Petroleum Energy Sector  
88 List, all of the following occur:

89 ~~a.1.~~ The scrutinized business operations were made before  
90 July 1, 2011.

91 ~~b.2.~~ The scrutinized business operations have not been  
92 expanded or renewed after July 1, 2011.

93 ~~c.3.~~ The agency or local governmental entity determines  
94 that it is in the best interest of the state or local community  
95 to contract with the company.

96 ~~d.4.~~ The company has adopted, has publicized, and is  
97 implementing a formal plan to cease scrutinized business  
98 operations and to refrain from engaging in any new scrutinized  
99 business operations.



318306

100           2. With respect to a company engaged in business operations  
101 in Cuba or Syria, all of the following occur:

102           a. The business operations were made before July 1, 2012.

103           b. The business operations have not been expanded or  
104 renewed after July 1, 2012.

105           c. The agency or local governmental entity determines that  
106 it is in the best interest of the state or local community to  
107 contract with the company.

108           d. The company has adopted, has publicized, and is  
109 implementing a formal plan to cease business operations and to  
110 refrain from engaging in any new business operations.

111           (b) One of the following occurs:

112           1. The local governmental entity makes a public finding  
113 that, absent such an exemption, the local governmental entity  
114 would be unable to obtain the goods or services for which the  
115 contract is offered.

116           2. For a contract with an executive agency, the Governor  
117 makes a public finding that, absent such an exemption, the  
118 agency would be unable to obtain the goods or services for which  
119 the contract is offered.

120           3. For a contract with an office of a state constitutional  
121 officer other than the Governor, the state constitutional  
122 officer makes a public finding that, absent such an exemption,  
123 the office would be unable to obtain the goods or services for  
124 which the contract is offered.

125           (5) At the time a company submits a bid or proposal for a  
126 contract or before the company enters into or renews a contract  
127 with an agency or governmental entity for goods or services of  
128 \$1 million or more, the company must certify that the company is



318306

129 not on the Scrutinized Companies with Activities in Sudan List  
130 or the Scrutinized Companies with Activities in the Iran  
131 Petroleum Energy Sector List, or that it does not have business  
132 operations in Cuba or Syria.

133 (a) If, after the agency or the local governmental entity  
134 determines, using credible information available to the public,  
135 that the company has submitted a false certification, the agency  
136 or local governmental entity shall provide the company with  
137 written notice of its determination. The company shall have 90  
138 days following receipt of the notice to respond in writing and  
139 to demonstrate that the determination of false certification was  
140 made in error. If the company does not make such demonstration  
141 within 90 days after receipt of the notice, the agency or the  
142 local governmental entity shall bring a civil action against the  
143 company. If a civil action is brought and the court determines  
144 that the company submitted a false certification, the company  
145 shall pay the penalty described in subparagraph 1. and all  
146 reasonable attorney ~~attorney's~~ fees and costs, including any  
147 costs for investigations that led to the finding of false  
148 certification.

149 1. A civil penalty equal to the greater of \$2 million or  
150 twice the amount of the contract for which the false  
151 certification was submitted shall be imposed.

152 2. The company is ineligible to bid on any contract with an  
153 agency or local governmental entity for 3 years after the date  
154 the agency or local governmental entity determined that the  
155 company submitted a false certification.

156 (b) A civil action to collect the penalties described in  
157 paragraph (a) must commence within 3 years after the date the



318306

158 false certification is submitted.

159 (6) Only the agency or local governmental entity that is a  
160 party to the contract may cause a civil action to be brought  
161 under this section. This section does not create or authorize a  
162 private right of action or enforcement of the penalties provided  
163 in this section. An unsuccessful bidder, or any other person  
164 other than the agency or local governmental entity, may not  
165 protest the award of a contract or contract renewal on the basis  
166 of a false certification.

167 (7) This section preempts any ordinance or rule of any  
168 agency or local governmental entity involving public contracts  
169 for goods or services of \$1 million or more with a company  
170 engaged in scrutinized business operations.

171 (8) The department shall submit to the Attorney General of  
172 the United States a written notice:

173 (a) Describing this section within 30 days after July 1,  
174 2011.

175 (b) Within 30 days after July 1, 2012, apprising the  
176 Attorney General of the United States of the inclusion of  
177 companies with business operations in Cuba or Syria within the  
178 provisions of this section.

179 (9) This section becomes inoperative on the date that  
180 federal law ceases to authorize the states to adopt and enforce  
181 the contracting prohibitions of the type provided for in this  
182 section.

183 Section 3. This act shall take effect July 1, 2012.

184  
185 ===== T I T L E A M E N D M E N T =====

186 And the title is amended as follows:



318306

187 Delete everything before the enacting clause  
188 and insert:

189 A bill to be entitled  
190 An act relating to state and local government  
191 relations with Cuba or Syria; amending s. 215.471,  
192 F.S.; prohibiting the State Board of Administration  
193 from being a fiduciary with respect to voting on any  
194 proxy resolution advocating expanded United States  
195 trade with Cuba or Syria; prohibiting the State Board  
196 of Administration from being a fiduciary with respect  
197 to having the right to vote in favor of any proxy  
198 resolution advocating expanded United States trade  
199 with Cuba or Syria; creating reporting requirements;  
200 amending s. 287.135, F.S.; prohibiting a state agency  
201 or local governmental entity from contracting for  
202 goods and services of more than a certain amount with  
203 a company that has business operations in Cuba or  
204 Syria; requiring a contract provision that allows for  
205 termination of the contract if the company is found to  
206 have business operations in Cuba or Syria; providing  
207 exceptions; requiring certification upon submission of  
208 a bid or proposal for a contract, or before a company  
209 enters into or renews a contract, with an agency or  
210 governmental entity that the company is not engaged in  
211 business operations in Cuba or Syria; providing  
212 procedures upon determination that a company has  
213 submitted a false certification; providing for civil  
214 action; providing penalties; providing attorney fees  
215 and costs; providing a statute of repose; prohibiting





318306

216 a private right of action; requiring the Department of  
217 Management Services to notify the Attorney General  
218 after the act becomes law; providing an effective  
219 date.