

1 A bill to be entitled
2 An act relating to scrutinized companies; amending s.
3 215.473, F.S.; providing legislative findings;
4 revising and providing definitions; requiring the
5 State Board of Administration to identify all
6 companies in which public moneys are invested that are
7 doing certain types of business in or with Cuba or
8 Syria; requiring the board to create and maintain
9 certain scrutinized companies lists that name all such
10 companies; requiring the board to periodically contact
11 all scrutinized companies and encourage them to
12 refrain from engaging in certain types of business in
13 or with Cuba or Syria; requiring the board to inform
14 scrutinized companies of their status as a scrutinized
15 company and to provide notice of the opportunity to
16 clarify the nature of the company's business
17 activities; providing for removal of a company from
18 the list under certain conditions; requiring the board
19 to divest all publicly traded securities of a
20 scrutinized company under certain conditions;
21 providing for reintroduction of a company onto the
22 list; providing exceptions to the divestment
23 requirement; prohibiting the board from acquiring
24 securities of scrutinized companies that have active
25 business operations; providing an exemption to the
26 divestment requirement and investment prohibition;
27 providing an additional exception from the divestment
28 requirement and the investment prohibition for certain

29 indirect holdings in actively managed investment
30 funds; providing procedures of the board with respect
31 to requesting removal of scrutinized companies from
32 actively managed investment funds and defined
33 contribution plans or the creation of a similar fund
34 that excludes such companies; providing reporting
35 requirements of the board; providing for cessation of
36 assembly of the Scrutinized Companies with Activities
37 in Cuba List and the Scrutinized Companies with
38 Activities in Syria List, cessation of engagement and
39 divestment of such companies, and restoration of
40 authority to reinvest in such companies under
41 specified conditions; authorizing the board to cease
42 divesting or reinvesting in certain companies having
43 scrutinized active business operations under specified
44 conditions; amending s. 287.135, F.S.; prohibiting a
45 state agency or local governmental entity from
46 contracting for goods and services of more than a
47 certain amount with a company that is on the
48 Scrutinized Companies with Activities in Cuba List or
49 the Scrutinized Companies with Activities in Syria
50 List; requiring a contract provision that allows for
51 termination of the contract if the company is found to
52 have been placed on such list; providing exceptions;
53 requiring certification upon submission of a bid or
54 proposal for a contract, or before a company enters
55 into or renews a contract, with an agency or
56 governmental entity that the company is not on the

HB 959

2012

57 | Scrutinized Companies with Activities in Cuba List or
58 | the Scrutinized Companies with Activities in Syria
59 | List; providing procedures upon determination that a
60 | company has submitted a false certification; providing
61 | for civil action; providing penalties; providing
62 | attorney fees and costs; providing a statute of
63 | repose; prohibiting a private right of action;
64 | requiring the Department of Management Services to
65 | notify the Attorney General after the act becomes law;
66 | providing an effective date.

67 |
68 | WHEREAS, with a population of approximately 11 million,
69 | Cuba is a totalitarian communist state that does not tolerate
70 | opposition to official policy, and

71 | WHEREAS, the current government of Cuba assumed power on
72 | January 1, 1959, and

73 | WHEREAS, although the Cuban constitution recognizes the
74 | unicameral National Assembly as the supreme authority in Cuba,
75 | the Communist Party is recognized in the constitution as the
76 | only legal party and "the superior leading force of society and
77 | of the state," and

78 | WHEREAS, elections in January 2008 for the Cuban National
79 | Assembly were neither free nor fair, and all of the candidates
80 | had to be preapproved by a Communist Party candidacy commission,
81 | with the result that the Communist Party candidates and their
82 | allies won 98.7 percent of the vote and 607 of 614 seats in the
83 | National Assembly, and

84 | WHEREAS, the Cuban government continues to deny its

HB 959

2012

85 citizens their basic human rights, including the right to change
86 their government, and has committed numerous and serious abuses
87 against the citizens of Cuba, and

88 WHEREAS, among the human rights problems reported within
89 Cuba are beatings and abuse of prisoners and detainees, harsh
90 and life-threatening prison conditions, including denial of
91 medical care, harassment, and beatings, and threats against
92 political opponents by government-recruited mobs, police, and
93 state security officials who acted with impunity, and

94 WHEREAS, arbitrary arrest and detention of human rights
95 advocates and members of independent professional organizations,
96 and denial of fair trial for at least 194 political prisoners
97 and as many as 5,000 persons who have been convicted of
98 potential "dangerousness" without being charged with any
99 specific crime are also reported, and

100 WHEREAS, there have also been severe limitations on freedom
101 of speech and the press, denial of peaceful assembly and
102 association, restrictions on freedom of movement, including
103 selective denial of exit permits to citizens and the forcible
104 removal of persons from Havana to their hometowns, restrictions
105 on freedom of religion and refusal to recognize domestic human
106 rights groups or permit them to function legally, discrimination
107 against persons of African descent, and severe restrictions on
108 workers' rights, including the right to form independent unions,
109 and

110 WHEREAS, other problems that are prevalent in Cuba include
111 increasing incidences of domestic violence, underage
112 prostitution, and trafficking in human beings, and

113 WHEREAS, Cuba is on the United States Department of State's
 114 list of State Sponsors of Terrorism, and for nearly half a
 115 century the United States has unilaterally imposed an economic,
 116 commercial, and financial embargo against Cuba, and

117 WHEREAS, the embargo, partially imposed on Cuba in October
 118 1960, was enacted after Cuba nationalized the properties of
 119 United States citizens and corporations and it was strengthened
 120 to a near-total embargo on February 7, 1962, and

121 WHEREAS, though the severity and the scope of the sanctions
 122 have varied, depending upon political developments in Cuba, the
 123 United States, and the rest of the world, the United States
 124 Government Accountability Office has stated that "the embargo on
 125 Cuba is the most comprehensive set of United States sanctions on
 126 any country, including other countries designated by the United
 127 States Government to be state sponsors of terrorism," and

128 WHEREAS, also on the Department of State's list of State
 129 Sponsors of Terrorism is the nation of Syria, and

130 WHEREAS, on March 8, 1963, the Baath Party in Syria enacted
 131 an emergency law that suspended basic constitutional rights such
 132 as freedom of speech and assembly and instituted martial law,
 133 and

134 WHEREAS, in February 1982, the Syrian army, under the
 135 orders of Syrian President Hafez al-Assad, effectively ended a
 136 campaign begun in 1976 by Sunni Islamic groups against the Assad
 137 regime with what is now known as "the Hama massacre," the
 138 quelling of a revolt by the Sunni Muslim community against the
 139 al-Assad regime that resulted in Syrian deaths, the estimates of
 140 which range from 10,000 to possibly as many as 40,000 Syrian

HB 959

2012

141 citizens according to the Syrian Human Rights Committee, and
142 WHEREAS, the Hama massacre has been described as being
143 among "the single deadliest acts by any Arab government against
144 its own people in the Middle East," and

145 WHEREAS, in 2011 the "Syrian uprising" began in that
146 country, and

147 WHEREAS, the Syrian uprising is an ongoing internal
148 conflict occurring in Syria that began with protests that
149 started on January 26, 2011, and then escalated to an uprising
150 by March 15, 2011, and

151 WHEREAS, the demands of protesters in this sustained
152 campaign of civil resistance include the allowance by the ruling
153 Baath Party of other political parties, the end of President
154 Bashar al-Assad's presidency, equal rights for Kurds, and broad
155 political freedoms such as freedom of the press, free speech,
156 and freedom to assemble, and

157 WHEREAS, as protests continued, the Syrian government used
158 tanks and snipers to force Syrian citizens off the streets,
159 water and electricity were shut off, and security forces began
160 confiscating flour and food in various areas of the country, and

161 WHEREAS, violence escalated as the crisis wore on and as a
162 result more than 3,000 people were killed, many more were
163 injured, and thousands of protesters have been detained, with
164 dozens of detainees reportedly having been tortured and killed,
165 and

166 WHEREAS, since the beginning of the uprising, the Syrian
167 government has made several concessions, including the repeal on
168 April 21, 2011, of the 1963 emergency law which allowed the

169 government sweeping authority to suspend constitutional rights,
 170 though the concessions are widely considered trivial and
 171 superficial by protesters demanding more meaningful reform,
 172 especially in light of the fact that government crackdowns on
 173 protesters have continued to heighten, and

174 WHEREAS, the oppressive Assad Regime blatantly murders
 175 protesters of the regime in mass, regularly detains political
 176 and human rights activists and journalists, engages in
 177 widespread media censorship, and is associated with the
 178 disappearance of citizens opposed to the Assad regime, and

179 WHEREAS, the United States Government and other nations
 180 throughout the world have openly called for President Assad to
 181 step down from office, and

182 WHEREAS, effective August 18, 2011, President Barack Obama
 183 issued a new Executive Order imposing significant new economic
 184 sanctions on Syria, and

185 WHEREAS, the action greatly expanded United States
 186 international trade restrictions against Syria and its
 187 government in certain important respects, representing a more
 188 comprehensive unilateral economic embargo, and

189 WHEREAS, most notably, the sanctions now include a freeze
 190 on the property and interests of property of the Government of
 191 Syria in the United States or held by United States persons,
 192 defined to include entities in the United States and their
 193 foreign branch offices, United States citizens or lawful
 194 permanent residents, and anyone of any nationality acting or
 195 located within the United States, and

196 WHEREAS, the sanctions include prohibitions on United
 197 States persons engaging in any transactions with the Syrian
 198 Government, making new investments in Syria, providing any
 199 services to Syria, or conducting business dealings in or related
 200 to petroleum or petroleum products of Syrian origin, and

201 WHEREAS, the sanctions also include a ban on the
 202 importation of Syrian-origin petroleum products into the United
 203 States and a prohibition against United States persons
 204 facilitating, approving, financing, or guaranteeing a
 205 transaction or dealing with a foreign person related to any of
 206 the prohibitions in place against Syria, and

207 WHEREAS, both the Government of Cuba and the Government of
 208 Syria have repeatedly committed human rights violations through
 209 intimidation by military and security forces, through
 210 bureaucratic and administrative obstruction, through acts of
 211 terrorism and atrocities directed against civilians, and through
 212 the displacement of citizens from their homes, and

213 WHEREAS, the Federal Government has imposed sanctions
 214 against the Government of Cuba and the Government of Syria, and
 215 such sanctions are monitored through the United States Treasury
 216 Department's Office of Foreign Assets Control (OFAC), and

217 WHEREAS, according to a former chair of the United States
 218 Securities and Exchange Commission, the fact that a foreign
 219 company is doing material business with a country, government,
 220 or entity on OFAC's sanctions list is, in the SEC staff's view,
 221 substantially likely to be significant to a reasonable
 222 investor's decision about whether to invest in that company, and

223 WHEREAS, because the United States Secretary of State has

HB 959

2012

224 determined that both Cuba and Syria are countries whose
225 governments have provided support for acts of international
226 terrorism, as a result, the United States has restricted
227 assistance, defense exports, defense sales, financial
228 transactions, and various other transactions with the Government
229 of Cuba and the Government of Syria, and

230 WHEREAS, a 2006 report by the United States House of
231 Representatives states that "a company's association with
232 sponsors of terrorism and human rights abuses, no matter how
233 large or small, can have a materially adverse result on a public
234 company's operations, financial condition, earnings, and stock
235 prices, all of which can negatively affect the value of an
236 investment," and

237 WHEREAS, in response to the financial risk posed by
238 investments in companies doing business with a state that
239 sponsors terrorists, the Securities and Exchange Commission
240 established its Office of Global Security Risk to provide for
241 enhanced disclosure of material information regarding such
242 companies, and

243 WHEREAS, divestment actions precipitated by such
244 sponsorship of terrorism and human rights violations encompass
245 universities, municipalities, states, and private pension plans,
246 and

247 WHEREAS, companies facing such widespread divestment
248 present further material risk to remaining investors, and

249 WHEREAS, it is a fundamental responsibility of the State of
250 Florida to decide where, how, and by whom financial resources in
251 its control should be invested, taking into account numerous

252 | pertinent factors, and

253 | WHEREAS, it is the prerogative and desire of the State of
 254 | Florida, with respect to investment resources in its control and
 255 | to the extent reasonable, with due consideration for return on
 256 | investment on behalf of the state and its investment
 257 | beneficiaries, not to participate in an ownership or capital-
 258 | providing capacity with entities that provide significant
 259 | practical support for terrorism and human rights violations,
 260 | including certain non-United States companies presently doing
 261 | business in such countries, and

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

266 | WHEREAS, the State of Florida is deeply concerned about
 267 | investments in publicly traded companies that have business
 268 | activities in and ties to Cuba and Syria as a financial risk to
 269 | the shareholders, and

270 | WHEREAS, by investing in publicly traded companies having
 271 | ties to Cuba and Syria, the Florida State Board of
 272 | Administration is putting the funds it oversees at substantial
 273 | financial risk, and

274 | WHEREAS, divestiture from markets that are vulnerable to
 275 | embargo, loan restrictions, and sanctions from the United States
 276 | and the international community, including the United Nations
 277 | Security Council, is in accordance with the rules of prudence,
 278 | and

279 | WHEREAS, the Legislature finds that this act should remain

HB 959

2012

280 | in effect only insofar as it continues to be consistent with and
 281 | does not unduly interfere with the foreign policy of the United
 282 | States as determined by the Federal Government, and

283 | WHEREAS, to protect Florida's assets, it is in the best
 284 | interest of the state to enact a statutory prohibition regarding
 285 | the investments managed by the State Board of Administration
 286 | doing business in Cuba and Syria, NOW, THEREFORE,

287 |

288 | Be It Enacted by the Legislature of the State of Florida:

289 |

290 | Section 1. Section 215.473, Florida Statutes, is amended
 291 | to read:

292 | 215.473 Divestiture by the State Board of Administration;
 293 | Sudan; Iran; Cuba; Syria.—

294 | (1) DEFINITIONS.—As used in this act, the term:

295 | (a) "Active business operations" means all business
 296 | operations that are not inactive business operations.

297 | (b) "Business operations" means engaging in commerce in
 298 | any form in Sudan, ~~or~~ Iran, Cuba, or Syria, including, but not
 299 | limited to, acquiring, developing, maintaining, owning, selling,
 300 | possessing, leasing, or operating equipment, facilities,
 301 | personnel, products, services, personal property, real property,
 302 | or any other apparatus of business or commerce.

303 | (c) "Company" means any sole proprietorship, organization,
 304 | association, corporation, partnership, joint venture, limited
 305 | partnership, limited liability partnership, limited liability
 306 | company, or other entity or business association, including all
 307 | wholly owned subsidiaries, majority-owned subsidiaries, parent

308 | companies, or affiliates of such entities or business
 309 | associations, that exists for the purpose of making profit.

310 | (d) "Complicit" means taking actions during any preceding
 311 | 20-month period which have directly supported or promoted:

312 | 1. The genocidal campaign in Darfur, including, but not
 313 | limited to, preventing Darfur's victimized population from
 314 | communicating with each other;

315 | 2. Encouraging Sudanese citizens to speak out against an
 316 | internationally approved security force for Darfur;

317 | 3. Actively working to deny, cover up, or alter the record
 318 | on human rights abuses in Darfur; or

319 | 4. Other similar actions.

320 | (e) "Cuba" means the nation of Cuba.

321 | (f)~~(e)~~ "Direct holdings" in a company means all securities
 322 | of that company that are held directly by the public fund or in
 323 | an account or fund in which the public fund owns all shares or
 324 | interests.

325 | (g) "Government of Cuba" means the government of Cuba,
 326 | under the control of General Raul Castro and the Cuban Communist
 327 | Party, its instrumentalities, and companies owned or controlled
 328 | by the government of Cuba.

329 | (h)~~(f)~~ "Government of Iran" means the government of Iran,
 330 | its instrumentalities, and companies owned or controlled by the
 331 | government of Iran.

332 | (i)~~(g)~~ "Government of Sudan" means the government in
 333 | Khartoum, Sudan, that is led by the National Congress Party,
 334 | formerly known as the National Islamic Front, or any successor
 335 | government formed on or after October 13, 2006, including the

HB 959

2012

336 coalition National Unity Government agreed upon in the
337 Comprehensive Peace Agreement for Sudan, and does not include
338 the regional government of southern Sudan.

339 (j) "Government of Syria" means the government of Syria,
340 under the control of President Bashar Al-Assad and the Arab
341 Socialist Baath Party, its instrumentalities, and companies
342 owned or controlled by the government of Syria.

343 (k)~~(h)~~ "Inactive business operations" means the mere
344 continued holding or renewal of rights to property previously
345 operated for the purpose of generating revenues but not
346 presently deployed for such purpose.

347 (l)~~(i)~~ "Indirect holdings" in a company means all
348 securities of that company that are held in an account or fund,
349 such as a mutual fund, managed by one or more persons not
350 employed by the public fund, in which the public fund owns
351 shares or interests together with other investors not subject to
352 the provisions of this act.

353 (m)~~(j)~~ "Iran" means the Islamic Republic of Iran.

354 (n)~~(k)~~ "Marginalized populations of Sudan" include, but
355 are not limited to, the portion of the population in the Darfur
356 region that has been genocidally victimized; the portion of the
357 population of southern Sudan victimized by Sudan's north-south
358 civil war; the Beja, Rashidiya, and other similarly underserved
359 groups of eastern Sudan; the Nubian and other similarly
360 underserved groups in Sudan's Abyei, Southern Blue Nile, and
361 Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other
362 similarly underserved groups of northern Sudan.

363 (o)~~(l)~~ "Military equipment" means weapons, arms, military

364 supplies, and equipment that may readily be used for military
 365 purposes, including, but not limited to, radar systems,
 366 military-grade transport vehicles, or supplies or services sold
 367 or provided directly or indirectly to any force actively
 368 participating in armed conflict in Sudan, Cuba, or Syria.

369 (p)~~(m)~~ "Mineral-extraction activities" include the
 370 exploring, extracting, processing, transporting, or wholesale
 371 selling or trading of elemental minerals or associated metal
 372 alloys or oxides (ore), including gold, copper, chromium,
 373 chromite, diamonds, iron, iron ore, silver, tungsten, uranium,
 374 and zinc, as well as facilitating such activities, including
 375 providing supplies or services in support of such activities.

376 (q)~~(n)~~ "Oil-related activities" include, but are not
 377 limited to, owning rights to oil blocks; exporting, extracting,
 378 producing, refining, processing, exploring for, transporting,
 379 selling, or trading of oil; constructing, maintaining, or
 380 operating a pipeline, refinery, or other oil-field
 381 infrastructure; and facilitating such activities, including
 382 providing supplies or services in support of such activities,
 383 except that the mere retail sale of gasoline and related
 384 consumer products is not considered an oil-related activity.

385 (r)~~(o)~~ "Petroleum resources" means petroleum, petroleum
 386 byproducts, or natural gas.

387 (s)~~(p)~~ "Power-production activities" means any business
 388 operation that involves a project commissioned by the National
 389 Electricity Corporation (NEC) of Sudan or other similar entity
 390 of the government of Sudan whose purpose is to facilitate power
 391 generation and delivery, including, but not limited to,

392 establishing power-generating plants or hydroelectric dams,
 393 selling or installing components for the project, providing
 394 service contracts related to the installation or maintenance of
 395 the project, as well as facilitating such activities, including
 396 providing supplies or services in support of such activities.

397 (t)~~(e)~~ "Public fund" means all funds, assets, trustee, and
 398 other designates under the State Board of Administration
 399 pursuant to chapter 121.

400 (u)~~(r)~~ "Scrutinized active business operations" means
 401 active business operations that have resulted in a company
 402 becoming a scrutinized company.

403 (v)~~(s)~~ "Scrutinized business operations" means business
 404 operations that have resulted in a company becoming a
 405 scrutinized company.

406 (w)~~(t)~~ "Scrutinized company" means any company that meets
 407 any of the following criteria:

408 1. The company has business operations that involve
 409 contracts with or provision of supplies or services to the
 410 government of Sudan, companies in which the government of Sudan
 411 has any direct or indirect equity share, consortiums or projects
 412 commissioned by the government of Sudan, or companies involved
 413 in consortiums or projects commissioned by the government of
 414 Sudan, and:

415 a. More than 10 percent of the company's revenues or
 416 assets linked to Sudan involve oil-related activities or
 417 mineral-extraction activities; less than 75 percent of the
 418 company's revenues or assets linked to Sudan involve contracts
 419 with or provision of oil-related or mineral-extracting products

420 or services to the regional government of southern Sudan or a
421 project or consortium created exclusively by that regional
422 government; and the company has failed to take substantial
423 action; or

424 b. More than 10 percent of the company's revenues or
425 assets linked to Sudan involve power-production activities; less
426 than 75 percent of the company's power-production activities
427 include projects whose intent is to provide power or electricity
428 to the marginalized populations of Sudan; and the company has
429 failed to take substantial action.

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

431 3. The company supplies military equipment within Sudan,
432 unless it clearly shows that the military equipment cannot be
433 used to facilitate offensive military actions in Sudan or the
434 company implements rigorous and verifiable safeguards to prevent
435 use of that equipment by forces actively participating in armed
436 conflict. Examples of safeguards include post-sale tracking of
437 such equipment by the company, certification from a reputable
438 and objective third party that such equipment is not being used
439 by a party participating in armed conflict in Sudan, or sale of
440 such equipment solely to the regional government of southern
441 Sudan or any internationally recognized peacekeeping force or
442 humanitarian organization.

443 4. The company has business operations that involve
444 contracts with or provision of supplies or services to the
445 government of Iran, companies in which the government of Iran
446 has any direct or indirect equity share, ~~consortiums,~~ or
447 projects commissioned by the government of Iran, or companies

HB 959

2012

448 involved in consortiums or projects commissioned by the
449 government of Iran and:

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

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

461 5. The company has business operations that involve
462 contracts with or provision of supplies or services to the
463 government of Cuba, companies in which the government of Cuba
464 has any direct or indirect equity share, consortiums or projects
465 commissioned by the government of Cuba, or companies involved in
466 consortiums or projects commissioned by the government of Cuba
467 and:

468 a. More than 10 percent of the company's total revenues or
469 assets are linked to Cuba, and the company has failed to take
470 substantial action; or

471 b. The company has, with actual knowledge, on or after
472 January 1, 1959, made an investment of \$20 million or more, or
473 any combination of investments of at least \$10 million each,
474 which in the aggregate equals or exceeds \$20 million in any 12-
475 month period.

476 6. The company supplies military equipment within Cuba,
477 unless it clearly shows that the military equipment cannot be
478 used to facilitate offensive military actions in Cuba or the
479 company implements rigorous and verifiable safeguards to prevent
480 use of that equipment by forces actively participating in armed
481 conflict. Examples of safeguards include post-sale tracking of
482 such equipment by the company, certification from a reputable
483 and objective third party that such equipment is not being used
484 by a party participating in armed conflict in Cuba, or sale of
485 such equipment solely to any internationally recognized
486 peacekeeping force or humanitarian organization.

487 7. The company has business operations that involve
488 contracts with or provision of supplies or services to the
489 government of Syria, companies in which the government of Syria
490 has any direct or indirect equity share, consortiums or projects
491 commissioned by the government of Syria, or companies involved
492 in consortiums or projects commissioned by the government of
493 Syria and:

494 a. More than 10 percent of the company's total revenues or
495 assets are linked to Syria and involve oil-related activities,
496 and the company has failed to take substantial action; or

497 b. The company has, with actual knowledge, on or after
498 March 8, 1963, made an investment of \$20 million or more, or any
499 combination of investments of at least \$10 million each, which
500 in the aggregate equals or exceeds \$20 million in any 12-month
501 period, and which directly or significantly contributes to the
502 enhancement of Syria's ability to develop the petroleum
503 resources of Syria.

HB 959

2012

504 8. The company supplies military equipment within Syria,
505 unless it clearly shows that the military equipment cannot be
506 used to facilitate offensive military actions in Syria or the
507 company implements rigorous and verifiable safeguards to prevent
508 use of that equipment by forces actively participating in armed
509 conflict. Examples of safeguards include post-sale tracking of
510 such equipment by the company, certification from a reputable
511 and objective third party that such equipment is not being used
512 by a party participating in armed conflict in Syria, or sale of
513 such equipment solely to any internationally recognized
514 peacekeeping force or humanitarian organization.

515 ~~(x)~~~~(u)~~ "Social-development company" means a company whose
516 primary purpose in Sudan is to provide humanitarian goods or
517 services, including medicine or medical equipment; agricultural
518 supplies or infrastructure; educational opportunities;
519 journalism-related activities; information or information
520 materials; spiritual-related activities; services of a purely
521 clerical or reporting nature; food, clothing, or general
522 consumer goods that are unrelated to oil-related activities;
523 mineral-extraction activities; or power-production activities.

524 (y) "Substantial action specific to Cuba" means adopting,
525 publicizing, and implementing a formal plan to cease scrutinized
526 business operations within 1 year and to refrain from any such
527 new business operations.

528 ~~(z)~~~~(v)~~ "Substantial action specific to Iran" means
529 adopting, publicizing, and implementing a formal plan to cease
530 scrutinized business operations within 1 year and to refrain
531 from any such new business operations.

HB 959

2012

532 (aa) ~~(w)~~ "Substantial action specific to Sudan" means
533 adopting, publicizing, and implementing a formal plan to cease
534 scrutinized business operations within 1 year and to refrain
535 from any such new business operations; undertaking humanitarian
536 efforts in conjunction with an international organization, the
537 government of Sudan, the regional government of southern Sudan,
538 or a nonprofit entity evaluated and certified by an independent
539 third party to be substantially in a relationship to the
540 company's Sudan business operations and of benefit to one or
541 more marginalized populations of Sudan; or, through engagement
542 with the government of Sudan, materially improving conditions
543 for the genocidally victimized population in Darfur.

544 (bb) "Substantial action specific to Syria" means
545 adopting, publicizing, and implementing a formal plan to cease
546 scrutinized business operations within 1 year and to refrain
547 from any such new business operations.

548 (cc) "Syria" means the nation of Syria.

549 (2) IDENTIFICATION OF COMPANIES.—

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

555 1. Reviewing and relying, as appropriate in the public
556 fund's judgment, on publicly available information regarding
557 companies having business operations in Sudan, including
558 information provided by nonprofit organizations, research firms,
559 international organizations, and government entities;

HB 959

2012

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

562 3. Contacting other institutional investors that have
563 divested from or engaged with companies that have business
564 operations in Sudan.

565 4. Reviewing the laws of the United States regarding the
566 levels of business activity that would cause application of
567 sanctions for companies conducting business or investing in
568 countries that are designated state sponsors of terror.

569 (b) By the first meeting of the public fund following the
570 90-day period described in paragraph (a), the public fund shall
571 assemble all scrutinized companies that fit criteria specified
572 in subparagraphs (1) (w) 1., 2., and 3. ~~(1) (t) 1., 2., and 3.~~ into
573 a "Scrutinized Companies with Activities in Sudan List," ~~and~~
574 shall assemble all scrutinized companies that fit criteria
575 specified in subparagraph (1) (w) 4. ~~(1) (t) 4.~~ into a "Scrutinized
576 Companies with Activities in the Iran Petroleum Energy Sector
577 List," ~~and~~ shall assemble all scrutinized companies that fit
578 criteria specified in subparagraphs (1) (w) 5. and 6. into a
579 "Scrutinized Companies with Activities in Cuba List," and shall
580 assemble all scrutinized companies that fit criteria specified
581 in subparagraphs (1) (w) 7. and 8. into a "Scrutinized Companies
582 with Activities in Syria List."

583 (c) The public fund shall update and make publicly
584 available quarterly the Scrutinized Companies with Activities in
585 Sudan List, ~~and~~ the Scrutinized Companies with Activities in the
586 Iran Petroleum Energy Sector List, the Scrutinized Companies
587 with Activities in Cuba List, and the Scrutinized Companies with

588 Activities in Syria List based on evolving information from,
 589 among other sources, those listed in paragraph (a).

590 (d) Notwithstanding the provisions of this act, a social-
 591 development company that is not complicit in the Darfur genocide
 592 is not considered a scrutinized company under subparagraph
 593 (1) (w) 1. ~~(1) (t) 1.~~, subparagraph (1) (w) 2. ~~(1) (t) 2.~~, or
 594 subparagraph (1) (w) 3. ~~(1) (t) 3.~~

595 (3) REQUIRED ACTIONS.—The public fund shall adhere to the
 596 following procedure for assembling companies on the Scrutinized
 597 Companies with Activities in Sudan List, ~~and~~ the Scrutinized
 598 Companies with Activities in the Iran Petroleum Energy Sector
 599 List, the Scrutinized Companies with Activities in Cuba List,
 600 and the Scrutinized Companies with Activities in Syria List:

601 (a) Engagement.—

602 1. The public fund shall immediately determine the
 603 companies on the Scrutinized Companies with Activities in Sudan
 604 List, ~~and~~ the Scrutinized Companies with Activities in the Iran
 605 Petroleum Energy Sector List, the Scrutinized Companies with
 606 Activities in Cuba List, and the Scrutinized Companies with
 607 Activities in Syria List in which the public fund owns direct or
 608 indirect holdings.

609 2. For each company identified in this paragraph that has
 610 only inactive business operations, the public fund shall send a
 611 written notice informing the company of this act and encouraging
 612 it to continue to refrain from initiating active business
 613 operations in Sudan, ~~or~~ Iran, Cuba, or Syria until it is able to
 614 avoid scrutinized business operations. The public fund shall
 615 continue such correspondence semiannually.

616 3. For each company newly identified under this paragraph
 617 that has active business operations, the public fund shall send
 618 a written notice informing the company of its scrutinized
 619 company status and that it may become subject to divestment by
 620 the public fund. The notice must inform the company of the
 621 opportunity to clarify its Sudan-related, ~~or~~ Iran-related, Cuba-
 622 related, or Syria-related activities and encourage the company,
 623 within 90 days, to cease its scrutinized business operations or
 624 convert such operations to inactive business operations in order
 625 to avoid qualifying for divestment by the public fund.

626 4. If, within 90 days after the public fund's first
 627 engagement with a company pursuant to this paragraph, that
 628 company ceases scrutinized business operations, the company
 629 shall be removed from the Scrutinized Companies with Activities
 630 in Sudan List, ~~and~~ the Scrutinized Companies with Activities in
 631 the Iran Petroleum Energy Sector List, the Scrutinized Companies
 632 with Activities in Cuba List, and the Scrutinized Companies with
 633 Activities in Syria List, and the provisions of this act shall
 634 cease to apply to that company unless that company resumes
 635 scrutinized business operations. If, within 90 days after the
 636 public fund's first engagement, the company converts its
 637 scrutinized active business operations to inactive business
 638 operations, the company is subject to all provisions relating to
 639 inactive business operations. A company may be removed from one
 640 list but remain on the other list, in which case the company
 641 shall be subject to the provisions applicable to the list on
 642 which the company remains.

643 (b) Divestment.—

644 1. If, after 90 days following the public fund's first
 645 engagement with a company pursuant to paragraph (a), the company
 646 continues to have scrutinized active business operations, and
 647 only while such company continues to have scrutinized active
 648 business operations, the public fund shall sell, redeem, divest,
 649 or withdraw all publicly traded securities of the company,
 650 except as provided in paragraph (d), from the public fund's
 651 assets under management within 12 months after the company's
 652 most recent appearance on the Scrutinized Companies with
 653 Activities in Sudan List, ~~or on~~ the Scrutinized Companies with
 654 Activities in the Iran Petroleum Energy Sector List, the
 655 Scrutinized Companies with Activities in Cuba List, or the
 656 Scrutinized Companies with Activities in Syria List.

657 2. If a company that ceased scrutinized active business
 658 operations following engagement pursuant to paragraph (a)
 659 resumes such operations, this paragraph immediately applies, and
 660 the public fund shall send a written notice to the company. The
 661 company shall also be immediately reintroduced onto the
 662 Scrutinized Companies with Activities in Sudan List, ~~or on~~ the
 663 Scrutinized Companies with Activities in the Iran Petroleum
 664 Energy Sector List, the Scrutinized Companies with Activities in
 665 Cuba List, or the Scrutinized Companies with Activities in Syria
 666 List, as applicable.

667 (c) Prohibition.—The public fund may not acquire
 668 securities of companies on the Scrutinized Companies with
 669 Activities in Sudan List, ~~or~~ the Scrutinized Companies with
 670 Activities in the Iran Petroleum Energy Sector List, the
 671 Scrutinized Companies with Activities in Cuba List, or the

HB 959

2012

672 Scrutinized Companies with Activities in Syria List that have
673 active business operations, except as provided in paragraph (d).

674 (d) Exemption.—A company that the United States Government
675 affirmatively declares to be excluded from its present or any
676 future federal sanctions regime relating to Sudan, Iran,
677 Cuba, or Syria is not subject to divestment or the investment
678 prohibition pursuant to paragraphs (b) and (c).

679 (e) Excluded securities.—Notwithstanding the provisions of
680 this act, paragraphs (b) and (c) do not apply to indirect
681 holdings in actively managed investment funds. However, the
682 public fund shall submit letters to the managers of such
683 investment funds containing companies that have scrutinized
684 active business operations requesting that they consider
685 removing such companies from the fund or create a similar
686 actively managed fund having indirect holdings devoid of such
687 companies. If the manager creates a similar fund, the public
688 fund shall replace all applicable investments with investments
689 in the similar fund in an expedited timeframe consistent with
690 prudent investing standards. For the purposes of this section, a
691 private equity fund is deemed to be an actively managed
692 investment fund.

693 (f) Further exclusions.—Notwithstanding any other
694 provision of this act, the public fund, when discharging its
695 responsibility for operation of a defined contribution plan,
696 shall engage the manager of the investment offerings in such
697 plans requesting that they consider removing scrutinized
698 companies from the investment offerings or create an alternative
699 investment offering devoid of scrutinized companies. If the

HB 959

2012

700 manager creates an alternative investment offering and the
 701 offering is deemed by the public fund to be consistent with
 702 prudent investor standards, the public fund shall consider
 703 including such investment offering in the plan.

704 (4) REPORTING.—

705 (a) The public fund shall file a report with each member
 706 of the Board of Trustees of the State Board of Administration,
 707 the President of the Senate, and the Speaker of the House of
 708 Representatives that includes the Scrutinized Companies with
 709 Activities in Sudan List, ~~and~~ the Scrutinized Companies with
 710 Activities in the Iran Petroleum Energy Sector List, the
 711 Scrutinized Companies with Activities in Cuba List, and the
 712 Scrutinized Companies with Activities in Syria List within 30
 713 days after the list is created. This report shall be made
 714 available to the public.

715 (b) At each quarterly meeting of the Board of Trustees
 716 thereafter, the public fund shall file a report, which shall be
 717 made available to the public and to each member of the Board of
 718 Trustees of the State Board of Administration, the President of
 719 the Senate, and the Speaker of the House of Representatives, and
 720 send a copy of that report to the United States Presidential
 721 Special Envoy to Sudan, ~~and~~ the United States Presidential
 722 Special Envoy to Iran, the United States Presidential Special
 723 Envoy to Cuba, and the United States Presidential Special Envoy
 724 to Syria, or an appropriate designee or successor, which
 725 includes:

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

HB 959

2012

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

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

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

732 5. A list of all publicly traded securities held directly
733 by this state.

734 (5) EXPIRATION.—This act expires upon the occurrence of
735 all of the following:

736 (a) If any of the following occur, the public fund shall
737 no longer scrutinize companies according to subparagraphs
738 (1) (w) 1., 2., and 3. ~~(1) (t) 1., 2., and 3.~~ and shall no longer
739 assemble the Scrutinized Companies with Activities in Sudan
740 List, shall cease engagement and divestment of such companies,
741 and may reinvest in such companies as long as such companies do
742 not satisfy the criteria for inclusion in the Scrutinized
743 Companies with Activities in the Iran Petroleum Energy Sector
744 List, the Scrutinized Companies with Activities in Cuba List, or
745 the Scrutinized Companies with Activities in Syria List:

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

751 2. The United States revokes all sanctions imposed against
752 the government of Sudan;

753 3. The Congress or President of the United States
754 affirmatively and unambiguously states, by means including, but
755 not limited to, legislation, executive order, or written

HB 959

2012

756 certification from the President to Congress, that the
757 government of Sudan has honored its commitments to cease attacks
758 on civilians, demobilize and demilitarize the Janjaweed and
759 associated militias, grant free and unfettered access for
760 deliveries of humanitarian assistance, and allow for the safe
761 and voluntary return of refugees and internally displaced
762 persons; or

763 4. The Congress or President of the United States
764 affirmatively and unambiguously states, by means including, but
765 not limited to, legislation, executive order, or written
766 certification from the President to Congress, that mandatory
767 divestment of the type provided for in this act interferes with
768 the conduct of United States foreign policy.

769 (b) If any of the following occur, the public fund shall
770 no longer scrutinize companies according to subparagraph
771 (1) (w) 4. ~~(1) (t) 4.~~ and shall no longer assemble the Scrutinized
772 Companies with Activities in the Iran Petroleum Energy Sector
773 List and shall cease engagement, investment prohibitions, and
774 divestment. The public fund may reinvest in such companies as
775 long as such companies do not satisfy the criteria for inclusion
776 in the Scrutinized Companies with Activities in Sudan List, the
777 Scrutinized Companies with Activities in Cuba List, or the
778 Scrutinized Companies with Activities in Syria List:

779 1. The Congress or President of the United States
780 affirmatively and unambiguously states, by means including, but
781 not limited to, legislation, executive order, or written
782 certification from the President to Congress, that the
783 government of Iran has ceased to acquire weapons of mass

784 destruction and support international terrorism;

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

787 3. The Congress or President of the United States
788 affirmatively and unambiguously declares, by means including,
789 but not limited to, legislation, executive order, or written
790 certification from the President to Congress, that mandatory
791 divestment of the type provided for in this act interferes with
792 the conduct of United States foreign policy.

793 (c) If any of the following occur, the public fund shall
794 no longer scrutinize companies according to subparagraphs
795 (1)(w)5. and 6. and shall no longer assemble the Scrutinized
796 Companies with Activities in Cuba List and shall cease
797 engagement, investment prohibitions, and divestment. The public
798 fund may reinvest in such companies as long as such companies do
799 not satisfy the criteria for inclusion in the Scrutinized
800 Companies with Activities in Sudan List, the Scrutinized
801 Companies with Activities in the Iran Petroleum Energy Sector
802 List, or the Scrutinized Companies with Activities in Syria
803 List:

804 1. The Congress or President of the United States
805 affirmatively and unambiguously states, by means including, but
806 not limited to, legislation, executive order, or written
807 certification from the President to Congress, that the
808 government of Cuba has ceased to acquire weapons of mass
809 destruction and support international terrorism;

810 2. The United States revokes all sanctions imposed against
811 the government of Cuba; or

HB 959

2012

812 3. The Congress or President of the United States
813 affirmatively and unambiguously declares, by means including,
814 but not limited to, legislation, executive order, or written
815 certification from the President to Congress, that mandatory
816 divestment of the type provided for in this act interferes with
817 the conduct of United States foreign policy.

818 (d) If any of the following occur, the public fund shall
819 no longer scrutinize companies according to subparagraphs
820 (1)(w)7. and 8. and shall no longer assemble the Scrutinized
821 Companies with Activities in Syria List and shall cease
822 engagement, investment prohibitions, and divestment. The public
823 fund may reinvest in such companies as long as such companies do
824 not satisfy the criteria for inclusion in the Scrutinized
825 Companies with Activities in Sudan List, the Scrutinized
826 Companies with Activities in the Iran Petroleum Energy Sector
827 List, or the Scrutinized Companies with Activities in Cuba List:

828 1. The Congress or President of the United States
829 affirmatively and unambiguously states, by means including, but
830 not limited to, legislation, executive order, or written
831 certification from the President to Congress, that the
832 government of Cuba has ceased to acquire weapons of mass
833 destruction and support international terrorism;

834 2. The United States revokes all sanctions imposed against
835 the government of Syria; or

836 3. The Congress or President of the United States
837 affirmatively and unambiguously declares, by means including,
838 but not limited to, legislation, executive order, or written
839 certification from the President to Congress, that mandatory

840 divestment of the type provided for in this act interferes with
841 the conduct of United States foreign policy.

842 (6) INVESTMENT POLICY STATEMENT OBLIGATIONS.—The public
843 fund's actions taken in compliance with this act, including all
844 good faith determinations regarding companies as required by
845 this act, shall be adopted and incorporated into the public
846 fund's investment policy statement (the IPS) as set forth in s.
847 215.475.

848 (7) REINVESTMENT IN CERTAIN COMPANIES HAVING SCRUTINIZED
849 ACTIVE BUSINESS OPERATIONS.—Notwithstanding any other provision
850 of this act to the contrary, the public fund may cease divesting
851 from certain scrutinized companies pursuant to paragraph (3) (b)
852 or reinvest in certain scrutinized companies from which it
853 divested pursuant to paragraph (3) (b) if clear and convincing
854 evidence shows that the value of all assets under management by
855 the public fund becomes equal to or less than 99.50 percent, or
856 50 basis points, of the hypothetical value of all assets under
857 management by the public fund assuming no divestment for any
858 company had occurred under paragraph (3) (b). Cessation of
859 divestment, reinvestment, or any subsequent ongoing investment
860 authorized by this act is limited to the minimum steps necessary
861 to avoid the contingency set forth in this subsection or that no
862 divestment of any company is required for less than fair value.
863 For any cessation of divestment, reinvestment, or subsequent
864 ongoing investment authorized by this act, the public fund shall
865 provide a written report to each member of the Board of Trustees
866 of the State Board of Administration, the President of the
867 Senate, and the Speaker of the House of Representatives in

868 advance of initial reinvestment, updated semiannually thereafter
 869 as applicable, setting forth the reasons and justification,
 870 supported by clear and convincing evidence, for its decisions to
 871 cease divestment, reinvest, or remain invested in companies
 872 having scrutinized active business operations. This act does not
 873 apply to reinvestment in companies on the grounds that they have
 874 ceased to have scrutinized active business operations.

875 Section 2. Section 287.135, Florida Statutes, is amended
 876 to read:

877 287.135 Prohibition against contracting with scrutinized
 878 companies.—

879 (1) In addition to the terms defined in ss. 287.012 and
 880 215.473, as used in this section, the term:

881 (a) "Awarding body" means, for purposes of state
 882 contracts, an agency or the department, and for purposes of
 883 local contracts, the governing body of the local governmental
 884 entity.

885 (b) "Local governmental entity" means a county,
 886 municipality, special district, or other political subdivision
 887 of the state.

888 (2) A company that, at the time of bidding or submitting a
 889 proposal for a new contract or renewal of an existing contract,
 890 is on the Scrutinized Companies with Activities in Sudan List,
 891 ~~or~~ the Scrutinized Companies with Activities in the Iran
 892 Petroleum Energy Sector List, the Scrutinized Companies with
 893 Activities in Cuba List, or the Scrutinized Companies with
 894 Activities in Syria List, created pursuant to s. 215.473, is
 895 ineligible for, and may not bid on, submit a proposal for, or

896 enter into or renew a contract with an agency or local
897 governmental entity for goods or services of \$1 million or more.

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

907 (b) Any contract with an agency or local governmental
908 entity for goods or services of \$1 million or more entered into
909 or renewed on or after July 1, 2012, must contain a provision
910 that allows for the termination of such contract at the option
911 of the awarding body if the company is found to have submitted a
912 false certification as provided under subsection (5) or been
913 placed on the Scrutinized Companies with Activities in Sudan
914 List, the Scrutinized Companies with Activities in the Iran
915 Petroleum Energy Sector List, the Scrutinized Companies with
916 Activities in Cuba List, or the Scrutinized Companies with
917 Activities in Syria List.

918 (4) Notwithstanding subsection (2) or subsection (3), an
919 agency or local governmental entity, on a case-by-case basis,
920 may permit a company on the Scrutinized Companies with
921 Activities in Sudan List, ~~or~~ the Scrutinized Companies with
922 Activities in the Iran Petroleum Energy Sector List, the
923 Scrutinized Companies with Activities in Cuba List, or the

924 Scrutinized Companies with Activities in Syria List to be
 925 eligible for, bid on, submit a proposal for, or enter into or
 926 renew a contract for goods or services of \$1 million or more
 927 under ~~either of the following~~ conditions set forth in paragraph
 928 (a) or the conditions set forth in paragraph (b):

929 (a) 1. With respect to a company on the Scrutinized
 930 Companies with Activities in Sudan List or the Scrutinized
 931 Companies with Activities in the Iran Petroleum Energy Sector
 932 List, all of the following occur:

933 ~~a.1.~~ The scrutinized business operations were made before
 934 July 1, 2011.

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

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

940 ~~d.4.~~ The company has adopted, has publicized, and is
 941 implementing a formal plan to cease scrutinized business
 942 operations and to refrain from engaging in any new scrutinized
 943 business operations.

944 2. With respect to a company on the Scrutinized Companies
 945 with Activities in Cuba List or the Scrutinized Companies with
 946 Activities in Syria List, all of the following occur:

947 a. The scrutinized business operations were made before
 948 July 1, 2012.

949 b. The scrutinized business operations have not been
 950 expanded or renewed after July 1, 2012.

951 c. The agency or local governmental entity determines that

HB 959

2012

952 it is in the best interest of the state or local community to
953 contract with the company.

954 d. The company has adopted, has publicized, and is
955 implementing a formal plan to cease scrutinized business
956 operations and to refrain from engaging in any new scrutinized
957 business operations.

958 (b) One of the following occurs:

959 1. The local governmental entity makes a public finding
960 that, absent such an exemption, the local governmental entity
961 would be unable to obtain the goods or services for which the
962 contract is offered.

963 2. For a contract with an executive agency, the Governor
964 makes a public finding that, absent such an exemption, the
965 agency would be unable to obtain the goods or services for which
966 the contract is offered.

967 3. For a contract with an office of a state constitutional
968 officer other than the Governor, the state constitutional
969 officer makes a public finding that, absent such an exemption,
970 the office would be unable to obtain the goods or services for
971 which the contract is offered.

972 (5) At the time a company submits a bid or proposal for a
973 contract or before the company enters into or renews a contract
974 with an agency or governmental entity for goods or services of
975 \$1 million or more, the company must certify that the company is
976 not on the Scrutinized Companies with Activities in Sudan List,
977 ~~or~~ the Scrutinized Companies with Activities in the Iran
978 Petroleum Energy Sector List, the Scrutinized Companies with
979 Activities in Cuba List, or the Scrutinized Companies with

HB 959

2012

980 Activities in Syria List.

981 (a) If, after the agency or the local governmental entity
982 determines, using credible information available to the public,
983 that the company has submitted a false certification, the agency
984 or local governmental entity shall provide the company with
985 written notice of its determination. The company shall have 90
986 days following receipt of the notice to respond in writing and
987 to demonstrate that the determination of false certification was
988 made in error. If the company does not make such demonstration
989 within 90 days after receipt of the notice, the agency or the
990 local governmental entity shall bring a civil action against the
991 company. If a civil action is brought and the court determines
992 that the company submitted a false certification, the company
993 shall pay the penalty described in subparagraph 1. and all
994 reasonable attorney ~~attorney's~~ fees and costs, including any
995 costs for investigations that led to the finding of false
996 certification.

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

1000 2. The company is ineligible to bid on any contract with
1001 an agency or local governmental entity for 3 years after the
1002 date the agency or local governmental entity determined that the
1003 company submitted a false certification.

1004 (b) A civil action to collect the penalties described in
1005 paragraph (a) must commence within 3 years after the date the
1006 false certification is submitted.

1007 (6) Only the agency or local governmental entity that is a

1008 party to the contract may cause a civil action to be brought
 1009 under this section. This section does not create or authorize a
 1010 private right of action or enforcement of the penalties provided
 1011 in this section. An unsuccessful bidder, or any other person
 1012 other than the agency or local governmental entity, may not
 1013 protest the award of a contract or contract renewal on the basis
 1014 of a false certification.

1015 (7) This section preempts any ordinance or rule of any
 1016 agency or local governmental entity involving public contracts
 1017 for goods or services of \$1 million or more with a company
 1018 engaged in scrutinized business operations.

1019 (8) The department shall submit to the Attorney General of
 1020 the United States a written notice:

1021 (a) Describing this section within 30 days after July 1,
 1022 2011.

1023 (b) Within 30 days after July 1, 2012, apprising the
 1024 Attorney General of the United States of the inclusion of
 1025 companies on the Scrutinized Companies with Activities in Cuba
 1026 List and the Scrutinized Companies with Activities in Syria List
 1027 within the provisions of this section.

1028 (9) This section becomes inoperative on the date that
 1029 federal law ceases to authorize the states to adopt and enforce
 1030 the contracting prohibitions of the type provided for in this
 1031 section.

1032 Section 3. This act shall take effect July 1, 2012.