

A bill to be entitled

An act relating to foreign investments; amending s. 215.473, F.S.; revising and providing definitions with respect to requirements that the board divest securities in which public moneys are invested in certain companies doing specified types of business in or with Sudan or Iran; revising exclusions from the divestment requirements; conforming cross-references; creating s. 624.449, F.S.; requiring domestic insurers to report annually on specified investments to the Office of Insurance Regulation; providing severability; providing an effective date.

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

Section 1. Subsections (1) and (2), paragraph (e) of subsection (3), and subsection (5) of section 215.473, Florida Statutes, are amended to read:

215.473 Divestiture by the State Board of Administration; Sudan; Iran.—

(1) DEFINITIONS.—As used in this section ~~act~~, the term:

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

(b) "Business operations" means engaging in commerce in any form in Sudan or Iran, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing,

27 leasing, or operating equipment, facilities, personnel,
28 products, services, personal property, real property, or any
29 other apparatus of business or commerce.

30 (c) "Company" means a ~~any~~ sole proprietorship,
31 organization, association, corporation, partnership, joint
32 venture, limited partnership, limited liability partnership,
33 limited liability company, or other entity or business
34 association, including all wholly owned subsidiaries, majority-
35 owned subsidiaries, parent companies, or affiliates of such
36 entities or business associations, that exists for the purpose
37 of making profit.

38 (d) "Complicit" means taking actions during any preceding
39 20-month period which have directly supported or promoted the
40 genocidal campaign in Darfur, including, ~~but not limited to,~~
41 preventing Darfur's victimized population from communicating
42 with each other; encouraging Sudanese citizens to speak out
43 against an internationally approved security force for Darfur;
44 actively working to deny, cover up, or alter the record on human
45 rights abuses in Darfur; or other similar actions.

46 (e) "Direct holdings" in a company means all securities of
47 that company that are held directly by the public fund or in an
48 account or fund in which the public fund owns all shares or
49 interests.

50 (f) "Government of Iran" means the government of Iran, its
51 instrumentalities, and companies owned or controlled by the
52 government of Iran.

53 (g) "Government of South Sudan" means the Republic of
54 South Sudan that has its capital in Juba, South Sudan.

55 (h)~~(g)~~ "Government of Sudan" means the Republic of the
56 Sudan that has its capital ~~government~~ in Khartoum, Sudan, ~~that~~
57 ~~is led by the National Congress Party, formerly known as the~~
58 ~~National Islamic Front, or any successor government formed on or~~
59 ~~after October 13, 2006, including the coalition National Unity~~
60 ~~Government agreed upon in the Comprehensive Peace Agreement for~~
61 ~~Sudan, and does not include the regional government of southern~~
62 ~~Sudan.~~

63 (i)~~(h)~~ "Inactive business operations" means the mere
64 continued holding or renewal of rights to property previously
65 operated for the purpose of generating revenues but not
66 presently deployed for such purpose.

67 (j)~~(i)~~ "Indirect holdings" in a company means all
68 securities of that company that are held in a commingled an
69 ~~account or fund~~ or other collective investment, such as a mutual
70 fund, ~~managed by one or more persons not employed by the public~~
71 ~~fund,~~ in which the public fund owns shares or interests together
72 with other investors not subject to ~~the provisions of this~~
73 section act.

74 (k)~~(j)~~ "Iran" means the Islamic Republic of Iran.

75 (l)~~(k)~~ "Marginalized populations of Sudan" include, but
76 are not limited to, the portion of the population in the Darfur
77 region that has been genocidally victimized; the portion of the
78 population of South ~~southern~~ Sudan victimized by Sudan's north-

79 south civil war; the Beja, Rashidiya, and other similarly
80 underserved groups of eastern Sudan; the Nubian and other
81 similarly underserved groups in Sudan's Abyei, Southern Blue
82 Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir,
83 and other similarly underserved groups of northern Sudan.

84 (m)~~(l)~~ "Military equipment" means weapons, arms, military
85 supplies, and equipment that may readily be used for military
86 purposes, including, but not limited to, radar systems,
87 military-grade transport vehicles, or supplies or services sold
88 or provided directly or indirectly to any force actively
89 participating in armed conflict in Sudan.

90 (n)~~(m)~~ "Mineral-extraction activities" include the
91 exploring, extracting, processing, transporting, or wholesale
92 selling or trading of elemental minerals or associated metal
93 alloys or oxides (ore), including gold, copper, chromium,
94 chromite, diamonds, iron, iron ore, silver, tungsten, uranium,
95 and zinc, as well as facilitating such activities, including
96 providing supplies or services in support of such activities.

97 (o)~~(n)~~ "Oil-related activities" include, but are not
98 limited to, owning rights to oil blocks; exporting, extracting,
99 producing, refining, processing, exploring for, transporting,
100 selling, or trading of oil; constructing, maintaining, or
101 operating a pipeline, refinery, or other oil-field
102 infrastructure; and facilitating such activities, including
103 providing supplies or services in support of such activities,
104 except that the mere retail sale of gasoline and related

105 consumer products is not considered an oil-related activity.

106 (p)~~(e)~~ "Petroleum resources" means petroleum, petroleum
107 byproducts, or natural gas.

108 (q)~~(p)~~ "Power-production activities" means any business
109 operation that involves a project commissioned by the National
110 Electricity Corporation (NEC) of Sudan or other similar entity
111 of the government of Sudan whose purpose is to facilitate power
112 generation and delivery, including, but not limited to,
113 establishing power-generating plants or hydroelectric dams,
114 selling or installing components for the project, providing
115 service contracts related to the installation or maintenance of
116 the project, as well as facilitating such activities, including
117 providing supplies or services in support of such activities.

118 (r)~~(q)~~ "Public fund" means all funds, assets, trustee, and
119 other designates under the State Board of Administration
120 pursuant to chapter 121.

121 (s)~~(r)~~ "Scrutinized active business operations" means
122 active business operations that result ~~have resulted~~ in a
123 company becoming a scrutinized company.

124 (t)~~(s)~~ "Scrutinized business operations" means business
125 operations that result ~~have resulted~~ in a company becoming a
126 scrutinized company.

127 (u)~~(t)~~ "Scrutinized company" means a ~~any~~ company that
128 meets any of the following criteria:

129 1. The company has business operations that involve
130 contracts with or provision of supplies or services to the

131 government of Sudan, companies in which the government of Sudan
 132 has a ~~any~~ direct or indirect equity share, consortiums or
 133 projects commissioned by the government of Sudan, or companies
 134 involved in consortiums or projects commissioned by the
 135 government of Sudan, and:

136 a. More than 10 percent of the company's revenues or
 137 assets linked to Sudan involve oil-related activities or
 138 mineral-extraction activities; less than 75 percent of the
 139 company's revenues or assets linked to Sudan involve contracts
 140 with or provision of oil-related or mineral-extracting products
 141 or services to the ~~regional~~ government of South ~~southern~~ Sudan
 142 ~~or a project or consortium created exclusively by that regional~~
 143 ~~government~~; and the company has failed to take substantial
 144 action; or

145 b. More than 10 percent of the company's revenues or
 146 assets linked to Sudan involve power-production activities; less
 147 than 75 percent of the company's power-production activities
 148 include projects whose intent is to provide power or electricity
 149 to the marginalized populations of Sudan; and the company has
 150 failed to take substantial action.

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

152 3. The company supplies military equipment within Sudan,
 153 unless it clearly shows that the military equipment cannot be
 154 used to facilitate offensive military actions in Sudan or the
 155 company implements rigorous and verifiable safeguards to prevent
 156 use of that equipment by forces actively participating in armed

157 conflict. Examples of safeguards include post-sale tracking of
158 such equipment by the company, certification from a reputable
159 and objective third party that such equipment is not being used
160 by a party participating in armed conflict in Sudan, or sale of
161 such equipment solely to the ~~regional~~ government of South
162 ~~southern~~ Sudan or any internationally recognized peacekeeping
163 force or humanitarian organization.

164 4. The company has business operations that involve
165 contracts with or provision of supplies or services to the
166 government of Iran, companies in which the government of Iran
167 has any direct or indirect equity share, consortiums, or
168 projects commissioned by the government of Iran, or companies
169 involved in consortiums or projects commissioned by the
170 government of Iran and:

171 a. More than 10 percent of the company's total revenues or
172 assets are linked to Iran and involve oil-related activities or
173 mineral-extraction activities,† and the company has failed to
174 take substantial action; or

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

182 (v) ~~(u)~~ "Social-development company" means a company whose

183 primary purpose in Sudan is to provide humanitarian goods or
 184 services, including medicine or medical equipment; agricultural
 185 supplies or infrastructure; educational opportunities;
 186 journalism-related activities; information or information
 187 materials; spiritual-related activities; services of a purely
 188 clerical or reporting nature; food, clothing, or general
 189 consumer goods that are unrelated to oil-related activities;
 190 mineral-extraction activities; or power-production activities.

191 (w)~~(v)~~ "Substantial action specific to Iran" means
 192 adopting, publicizing, and implementing a formal plan to cease
 193 scrutinized business operations within 1 year and to refrain
 194 from ~~any~~ such new business operations.

195 (x)~~(w)~~ "Substantial action specific to Sudan" means
 196 adopting, publicizing, and implementing a formal plan to cease
 197 scrutinized business operations within 1 year and to refrain
 198 from ~~any~~ such new business operations; undertaking humanitarian
 199 efforts in conjunction with an international organization, the
 200 government of Sudan, the ~~regional~~ government of South ~~southern~~
 201 Sudan, or a nonprofit entity evaluated and certified by an
 202 independent third party to be substantially in a relationship to
 203 the company's Sudan business operations and of benefit to one or
 204 more marginalized populations of Sudan; or, through engagement
 205 with the government of Sudan, materially improving conditions
 206 for the genocidally victimized population in Darfur.

207 (2) IDENTIFICATION OF COMPANIES.—

208 (a) Within 90 days after June 8, 2007 ~~the effective date~~

209 ~~of this act,~~ the public fund shall make its best efforts to
 210 identify all scrutinized companies in which the public fund has
 211 direct or indirect holdings or could possibly have such holdings
 212 in the future. Such efforts include:

213 1. Reviewing and relying, as appropriate in the public
 214 fund's judgment, on publicly available information regarding
 215 companies having business operations in Sudan, including
 216 information provided by nonprofit organizations, research firms,
 217 international organizations, and government entities;

218 2. Contacting asset managers contracted by the public fund
 219 which ~~that~~ invest in companies having business operations in
 220 Sudan; or

221 3. Contacting other institutional investors that have
 222 divested from or engaged with companies that have business
 223 operations in Sudan.

224 4. Reviewing the laws of the United States regarding the
 225 levels of business activity that would cause application of
 226 sanctions for companies conducting business or investing in
 227 countries that are designated state sponsors of terror.

228 (b) By the first meeting of the public fund following the
 229 90-day period described in paragraph (a), the public fund shall
 230 assemble all scrutinized companies that fit criteria specified
 231 in subparagraphs (1)(u)1., 2., and 3. ~~(1)(t)1., 2., and 3.~~ into
 232 a "Scrutinized Companies with Activities in Sudan List" and
 233 ~~shall assemble~~ all scrutinized companies that fit criteria
 234 specified in subparagraph (1)(u)4. ~~(1)(t)4.~~ into a "Scrutinized

235 Companies with Activities in the Iran Petroleum Energy Sector
 236 List."

237 (c) The public fund shall update and make publicly
 238 available quarterly the Scrutinized Companies with Activities in
 239 Sudan List and the Scrutinized Companies with Activities in the
 240 Iran Petroleum Energy Sector List based on evolving information
 241 from, among other sources, those listed in paragraph (a).

242 (d) Notwithstanding the provisions of this section ~~act~~, a
 243 social-development company that is not complicit in the Darfur
 244 genocide is not considered a scrutinized company under
 245 subparagraph (1)(u)1. ~~(1)(t)1.~~, subparagraph (1)(u)2. ~~(1)(t)2.~~,
 246 or subparagraph (1)(u)3 ~~(1)(t)3.~~

247 (3) REQUIRED ACTIONS.—The public fund shall adhere to the
 248 following procedure for assembling companies on the Scrutinized
 249 Companies with Activities in Sudan List and the Scrutinized
 250 Companies with Activities in the Iran Petroleum Energy Sector
 251 List:

252 (e) Excluded securities.—

253 1. Notwithstanding the provisions of this section ~~act~~,
 254 paragraphs (b) and (c) do not apply to indirect holdings in
 255 actively managed investment funds. However, the public fund
 256 shall submit letters to the managers of such investment funds
 257 containing companies that have scrutinized active business
 258 operations requesting that they consider removing such companies
 259 from the fund or create a similar actively managed fund having
 260 indirect holdings devoid of such companies. If the manager

261 creates a similar fund, the public fund shall replace all
 262 applicable investments with investments in the similar fund in
 263 an expedited timeframe consistent with prudent investing
 264 standards. For the purposes of this section, a private equity
 265 fund is deemed to be an actively managed investment fund.

266 2. Notwithstanding the provisions of this section,
 267 paragraphs (b) and (c) do not apply to exchange-traded funds.

268 (5) EXPIRATION.—This section ~~act~~ expires upon the
 269 occurrence of all of the following:

270 (a) If any of the following occur, the public fund shall
 271 no longer scrutinize companies according to subparagraphs
 272 (1) (u) 1., 2., and 3. ~~(1) (t) 1., 2., and 3.~~ and shall no longer
 273 assemble the Scrutinized Companies with Activities in Sudan
 274 List, shall cease engagement and divestment of such companies,
 275 and may reinvest in such companies if ~~as long as~~ such companies
 276 do not satisfy the criteria for inclusion in the Scrutinized
 277 Companies with Activities in the Iran Petroleum Energy Sector
 278 List:

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

284 2. The United States revokes all sanctions imposed against
 285 the government of Sudan;

286 3. The Congress or President of the United States

287 affirmatively and unambiguously states, by means including, but
 288 not limited to, legislation, executive order, or written
 289 certification from the President to Congress, that the
 290 government of Sudan has honored its commitments to cease attacks
 291 on civilians, demobilize and demilitarize the Janjaweed and
 292 associated militias, grant free and unfettered access for
 293 deliveries of humanitarian assistance, and allow for the safe
 294 and voluntary return of refugees and internally displaced
 295 persons; or

296 4. The Congress or President of the United States
 297 affirmatively and unambiguously states, by means including, but
 298 not limited to, legislation, executive order, or written
 299 certification from the President to Congress, that mandatory
 300 divestment of the type provided for in this section ~~act~~
 301 interferes with the conduct of United States foreign policy.

302 (b) If any of the following occur, the public fund shall
 303 no longer scrutinize companies according to subparagraph
 304 (1)(u)4. ~~(1)(t)4.~~ and shall no longer assemble the Scrutinized
 305 Companies with Activities in the Iran Petroleum Energy Sector
 306 List and shall cease engagement, investment prohibitions, and
 307 divestment. The public fund may reinvest in such companies if ~~as~~
 308 ~~long as~~ such companies do not satisfy the criteria for inclusion
 309 in the Scrutinized Companies with Activities in Sudan List:

310 1. The Congress or President of the United States
 311 affirmatively and unambiguously states, by means including, but
 312 not limited to, legislation, executive order, or written

313 certification from the President to Congress, that the
314 government of Iran has ceased to acquire weapons of mass
315 destruction and support international terrorism;

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

318 3. The Congress or President of the United States
319 affirmatively and unambiguously declares, by means including,
320 but not limited to, legislation, executive order, or written
321 certification from the President to Congress, that mandatory
322 divestment of the type provided for in this section ~~act~~
323 interferes with the conduct of United States foreign policy.

324 Section 2. Section 624.449, Florida Statutes, is created
325 to read:

326 624.449 Insurer investment in foreign companies.—A
327 domestic insurer must provide to the office on an annual basis a
328 list of investments that the domestic insurer has in companies
329 included on the Scrutinized Companies with Activities in Sudan
330 List and the Scrutinized Companies with Activities in the Iran
331 Petroleum Energy Sector List compiled by the State Board of
332 Administration pursuant to s. 215.473. This list must include
333 the name of the issuer and the stock, bond, security, and other
334 evidence of indebtedness.

335 Section 3. If any provision of this act or the application
336 thereof to any person or circumstance is held invalid, the
337 invalidity does not affect other provisions or applications of
338 the act which can be given effect without the invalid provision

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339 or application, and to this end the provisions of this act are
340 declared severable.

341 Section 4. This act shall take effect July 1, 2014.