

By the Committees on Appropriations; Banking and Insurance; and Governmental Oversight and Accountability; and Senator Ring

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1 A bill to be entitled
2 An act relating to foreign investments; amending s.
3 215.47, F.S.; revising the percentage of investments
4 that the State Board of Administration may invest in
5 foreign securities; amending s. 215.473, F.S.;
6 revising and providing definitions with respect to
7 requirements that the board divest securities in which
8 public moneys are invested in certain companies doing
9 specified types of business in or with Sudan or Iran;
10 revising exclusions from the divestment requirements;
11 conforming cross-references; creating s. 624.449,
12 F.S.; requiring a domestic insurer to provide a list
13 of investments that it has in companies on the State
14 Board of Administration's lists of scrutinized
15 companies with activities in Sudan or in Iran's
16 petroleum energy sector; providing for severability;
17 providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Subsection (20) of section 215.47, Florida
22 Statutes, is amended to read:

23 215.47 Investments; authorized securities; loan of
24 securities.—Subject to the limitations and conditions of the
25 State Constitution or of the trust agreement relating to a trust
26 fund, moneys available for investments under ss. 215.44-215.53
27 may be invested as follows:

28 (20) Notwithstanding the provisions in subsection (5)
29 limiting such investments to 25 percent of any fund, the board

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30 may invest up to 50 ~~no more than 35~~ percent of any fund in
31 corporate obligations and securities of any kind of a foreign
32 corporation or a foreign commercial entity having its principal
33 office located in any country other than the United States or
34 its possessions or territories, not including United States
35 dollar-denominated securities listed and traded on a United
36 States exchange that are a part of the ordinary investment
37 strategy of the board.

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

41 215.473 Divestiture by the State Board of Administration;
42 Sudan; Iran.—

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

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

46 (b) "Business operations" means engaging in commerce in any
47 form in Sudan or Iran, including, but not limited to, acquiring,
48 developing, maintaining, owning, selling, possessing, leasing,
49 or operating equipment, facilities, personnel, products,
50 services, personal property, real property, or any other
51 apparatus of business or commerce.

52 (c) "Company" means a ~~any~~ sole proprietorship,
53 organization, association, corporation, partnership, joint
54 venture, limited partnership, limited liability partnership,
55 limited liability company, or other entity or business
56 association, including all wholly owned subsidiaries, majority-
57 owned subsidiaries, parent companies, or affiliates of such
58 entities or business associations, that exists for the purpose

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59 of making profit.

60 (d) "Complicit" means taking actions during any preceding
61 20-month period which have directly supported or promoted the
62 genocidal campaign in Darfur, including, ~~but not limited to,~~
63 preventing Darfur's victimized population from communicating
64 with each other; encouraging Sudanese citizens to speak out
65 against an internationally approved security force for Darfur;
66 actively working to deny, cover up, or alter the record on human
67 rights abuses in Darfur; or other similar actions.

68 (e) "Direct holdings" in a company means all securities of
69 that company that are held directly by the public fund or in an
70 account or fund in which the public fund owns all shares or
71 interests.

72 (f) "Government of Iran" means the government of Iran, its
73 instrumentalities, and companies owned or controlled by the
74 government of Iran.

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

77 (h) ~~(g)~~ "Government of Sudan" means the Republic of the
78 Sudan that has its capital ~~government~~ in Khartoum, Sudan, ~~that~~
79 is led by the National Congress Party, formerly known as the
80 National Islamic Front, or any successor government formed on or
81 after October 13, 2006, including the coalition National Unity
82 Government agreed upon in the Comprehensive Peace Agreement for
83 Sudan, and does not include the regional government of southern
84 Sudan.

85 (i) ~~(h)~~ "Inactive business operations" means the mere
86 continued holding or renewal of rights to property previously
87 operated for the purpose of generating revenues but not

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88 presently deployed for such purpose.

89 (j)~~(i)~~ "Indirect holdings" in a company means all
90 securities of that company that are held in a commingled an
91 ~~account or fund or other collective investment~~, such as a mutual
92 fund, ~~managed by one or more persons not employed by the public~~
93 ~~fund~~, in which the public fund owns shares or interests together
94 with other investors not subject to ~~the provisions of this~~
95 section act.

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

97 (l)~~(k)~~ "Marginalized populations of Sudan" include, but are
98 not limited to, the portion of the population in the Darfur
99 region that has been genocidally victimized; the portion of the
100 population of South ~~southern~~ Sudan victimized by Sudan's north-
101 south civil war; the Beja, Rashidiya, and other similarly
102 underserved groups of eastern Sudan; the Nubian and other
103 similarly underserved groups in Sudan's Abyei, Southern Blue
104 Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir,
105 and other similarly underserved groups of northern Sudan.

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

112 (n)~~(m)~~ "Mineral-extraction activities" include the
113 exploring, extracting, processing, transporting, or wholesale
114 selling or trading of elemental minerals or associated metal
115 alloys or oxides (ore), including gold, copper, chromium,
116 chromite, diamonds, iron, iron ore, silver, tungsten, uranium,

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117 and zinc, as well as facilitating such activities, including
118 providing supplies or services in support of such activities.

119 (o)~~(n)~~ "Oil-related activities" include, but are not
120 limited to, owning rights to oil blocks; exporting, extracting,
121 producing, refining, processing, exploring for, transporting,
122 selling, or trading of oil; constructing, maintaining, or
123 operating a pipeline, refinery, or other oil-field
124 infrastructure; and facilitating such activities, including
125 providing supplies or services in support of such activities,
126 except that the mere retail sale of gasoline and related
127 consumer products is not considered an oil-related activity.

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

130 (q)~~(f)~~ "Power-production activities" means a ~~any~~ business
131 operation that involves a project commissioned by the National
132 Electricity Corporation (NEC) of Sudan or other similar entity
133 of the government of Sudan whose purpose is to facilitate power
134 generation and delivery, including, but not limited to,
135 establishing power-generating plants or hydroelectric dams,
136 selling or installing components for the project, providing
137 service contracts related to the installation or maintenance of
138 the project, as well as facilitating such activities, including
139 providing supplies or services in support of such activities.

140 (r)~~(g)~~ "Public fund" means all funds, assets, trustee, and
141 other designates under the State Board of Administration
142 pursuant to chapter 121.

143 (s)~~(r)~~ "Scrutinized active business operations" means
144 active business operations that result ~~have resulted~~ in a
145 company becoming a scrutinized company.

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146 (t)~~(s)~~ "Scrutinized business operations" means business
147 operations that result ~~have resulted~~ in a company becoming a
148 scrutinized company.

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

151 1. The company has business operations that involve
152 contracts with or provision of supplies or services to the
153 government of Sudan, companies in which the government of Sudan
154 has a ~~any~~ direct or indirect equity share, consortiums or
155 projects commissioned by the government of Sudan, or companies
156 involved in consortiums or projects commissioned by the
157 government of Sudan, and:

158 a. More than 10 percent of the company's revenues or assets
159 linked to Sudan involve oil-related activities or mineral-
160 extraction activities; less than 75 percent of the company's
161 revenues or assets linked to Sudan involve contracts with or
162 provision of oil-related or mineral-extracting products or
163 services to the ~~regional~~ government of South ~~southern~~ Sudan ~~or a~~
164 ~~project or consortium created exclusively by that regional~~
165 ~~government~~; and the company has failed to take substantial
166 action; or

167 b. More than 10 percent of the company's revenues or assets
168 linked to Sudan involve power-production activities; less than
169 75 percent of the company's power-production activities include
170 projects whose intent is to provide power or electricity to the
171 marginalized populations of Sudan; and the company has failed to
172 take substantial action.

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

174 3. The company supplies military equipment within Sudan,

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175 unless it clearly shows that the military equipment cannot be
176 used to facilitate offensive military actions in Sudan or the
177 company implements rigorous and verifiable safeguards to prevent
178 use of that equipment by forces actively participating in armed
179 conflict. Examples of safeguards include post-sale tracking of
180 such equipment by the company, certification from a reputable
181 and objective third party that such equipment is not being used
182 by a party participating in armed conflict in Sudan, or sale of
183 such equipment solely to the ~~regional~~ government of South
184 ~~southern~~ Sudan or any internationally recognized peacekeeping
185 force or humanitarian organization.

186 4. The company has business operations that involve
187 contracts with or provision of supplies or services to the
188 government of Iran, companies in which the government of Iran
189 has any direct or indirect equity share, consortiums, or
190 projects commissioned by the government of Iran, or companies
191 involved in consortiums or projects commissioned by the
192 government of Iran and:

193 a. More than 10 percent of the company's total revenues or
194 assets are linked to Iran and involve oil-related activities or
195 mineral-extraction activities, + and the company has failed to
196 take substantial action; or

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

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204 (v)~~(u)~~ "Social-development company" means a company whose
205 primary purpose in Sudan is to provide humanitarian goods or
206 services, including medicine or medical equipment; agricultural
207 supplies or infrastructure; educational opportunities;
208 journalism-related activities; information or information
209 materials; spiritual-related activities; services of a purely
210 clerical or reporting nature; food, clothing, or general
211 consumer goods that are unrelated to oil-related activities;
212 mineral-extraction activities; or power-production activities.

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

217 (x)~~(w)~~ "Substantial action specific to Sudan" means
218 adopting, publicizing, and implementing a formal plan to cease
219 scrutinized business operations within 1 year and to refrain
220 from ~~any~~ such new business operations; undertaking humanitarian
221 efforts in conjunction with an international organization, the
222 government of Sudan, the ~~regional~~ government of South ~~southern~~
223 Sudan, or a nonprofit entity evaluated and certified by an
224 independent third party to be substantially in a relationship to
225 the company's Sudan business operations and of benefit to one or
226 more marginalized populations of Sudan; or, through engagement
227 with the government of Sudan, materially improving conditions
228 for the genocidally victimized population in Darfur.

229 (2) IDENTIFICATION OF COMPANIES.—

230 (a) Within 90 days after June 8, 2007 ~~the effective date of~~
231 ~~this act~~, the public fund shall make its best efforts to
232 identify all scrutinized companies in which the public fund has

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233 direct or indirect holdings or could possibly have such holdings
234 in the future. Such efforts include:

235 1. Reviewing and relying, as appropriate in the public
236 fund's judgment, on publicly available information regarding
237 companies having business operations in Sudan, including
238 information provided by nonprofit organizations, research firms,
239 international organizations, and government entities;

240 2. Contacting asset managers contracted by the public fund
241 which ~~that~~ invest in companies having business operations in
242 Sudan; or

243 3. Contacting other institutional investors that have
244 divested from or engaged with companies that have business
245 operations in Sudan.

246 4. Reviewing the laws of the United States regarding the
247 levels of business activity that would cause application of
248 sanctions for companies conducting business or investing in
249 countries that are designated state sponsors of terror.

250 (b) By the first meeting of the public fund following the
251 90-day period described in paragraph (a), the public fund shall
252 assemble all scrutinized companies that fit criteria specified
253 in subparagraphs (1) (u) 1., 2., and 3. ~~(1) (t) 1., 2., and 3.~~ into
254 a "Scrutinized Companies with Activities in Sudan List" and
255 ~~shall assemble~~ all scrutinized companies that fit criteria
256 specified in subparagraph (1) (u) 4. ~~(1) (t) 4.~~ into a "Scrutinized
257 Companies with Activities in the Iran Petroleum Energy Sector
258 List."

259 (c) The public fund shall update and make publicly
260 available quarterly the Scrutinized Companies with Activities in
261 Sudan List and the Scrutinized Companies with Activities in the

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262 Iran Petroleum Energy Sector List based on evolving information
263 from, among other sources, those listed in paragraph (a).

264 (d) Notwithstanding the provisions of this section ~~act~~, a
265 social-development company that is not complicit in the Darfur
266 genocide is not considered a scrutinized company under
267 subparagraph (1)(u)1. ~~(1)(t)1.~~, subparagraph (1)(u)2. ~~(1)(t)2.~~,
268 or subparagraph (1)(u)3 ~~(1)(t)3.~~

269 (3) REQUIRED ACTIONS.—The public fund shall adhere to the
270 following procedure for assembling companies on the Scrutinized
271 Companies with Activities in Sudan List and the Scrutinized
272 Companies with Activities in the Iran Petroleum Energy Sector
273 List:

274 (e) *Excluded securities.*—

275 1. Notwithstanding the provisions of this act, paragraphs
276 (b) and (c) do not apply to indirect holdings in actively
277 managed investment funds. However, the public fund shall submit
278 letters to the managers of such investment funds containing
279 companies that have scrutinized active business operations
280 requesting that they consider removing such companies from the
281 fund or create a similar actively managed fund having indirect
282 holdings devoid of such companies. If the manager creates a
283 similar fund, the public fund shall replace all applicable
284 investments with investments in the similar fund in an expedited
285 timeframe consistent with prudent investing standards. For the
286 purposes of this section, a private equity fund is deemed to be
287 an actively managed investment fund.

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

290 (5) EXPIRATION.—This act expires upon the occurrence of all

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291 of the following:

292 (a) If any of the following occur, the public fund shall no
293 longer scrutinize companies according to subparagraphs (1)(u)1.,
294 2., and 3. ~~(1)(t)1., 2., and 3.~~ and shall no longer assemble the
295 Scrutinized Companies with Activities in Sudan List, shall cease
296 engagement and divestment of such companies, and may reinvest in
297 such companies if ~~as long as~~ such companies do not satisfy the
298 criteria for inclusion in the Scrutinized Companies with
299 Activities in the Iran Petroleum Energy Sector List:

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

305 2. The United States revokes all sanctions imposed against
306 the government of Sudan;

307 3. The Congress or President of the United States
308 affirmatively and unambiguously states, by means including, but
309 not limited to, legislation, executive order, or written
310 certification from the President to Congress, that the
311 government of Sudan has honored its commitments to cease attacks
312 on civilians, demobilize and demilitarize the Janjaweed and
313 associated militias, grant free and unfettered access for
314 deliveries of humanitarian assistance, and allow for the safe
315 and voluntary return of refugees and internally displaced
316 persons; or

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

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320 certification from the President to Congress, that mandatory
321 divestment of the type provided for in this section ~~act~~
322 interferes with the conduct of United States foreign policy.

323 (b) If any of the following occur, the public fund shall no
324 longer scrutinize companies according to subparagraph (1)(u)4.
325 ~~(1)(t)4.~~ and shall no longer assemble the Scrutinized Companies
326 with Activities in the Iran Petroleum Energy Sector List and
327 shall cease engagement, investment prohibitions, and divestment.
328 The public fund may reinvest in such companies if ~~as long as~~
329 such companies do not satisfy the criteria for inclusion in the
330 Scrutinized Companies with Activities in Sudan List:

331 1. The Congress or President of the United States
332 affirmatively and unambiguously states, by means including, but
333 not limited to, legislation, executive order, or written
334 certification from the President to Congress, that the
335 government of Iran has ceased to acquire weapons of mass
336 destruction and support international terrorism;

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

339 3. The Congress or President of the United States
340 affirmatively and unambiguously declares, by means including,
341 but not limited to, legislation, executive order, or written
342 certification from the President to Congress, that mandatory
343 divestment of the type provided for in this section ~~act~~
344 interferes with the conduct of United States foreign policy.

345 Section 3. Section 624.449, Florida Statutes, is created to
346 read:

347 624.449 Insurer investment in foreign companies.—A domestic
348 insurer shall provide to the office on an annual basis a list of

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349 investments that the insurer has in companies included on the
350 "Scrutinized Companies with Activities in Sudan List" and
351 "Scrutinized Companies with Activities in the Iran Petroleum
352 Energy Sector List," compiled by the State Board of
353 Administration pursuant to s. 215.473(2). The insurer's list
354 must include the name of the issuer and the stock, bond,
355 security, and other evidence of indebtedness.

356 Section 4. If any provision of this act or the application
357 thereof to any person or circumstance is held invalid, the
358 invalidity does not affect other provisions or applications of
359 the act which can be given effect without the invalid provision
360 or application, and to this end the provisions of this act are
361 declared severable.

362 Section 5. This act shall take effect July 1, 2014.