



784986

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/19/2015	.	
	.	
	.	
	.	

---

The Committee on Appropriations (Negron) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 215.4725, Florida Statutes, is created  
to read:

215.4725 Prohibited investments by the State Board of  
Administration; companies that boycott Israel.-

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

(a) "Boycott Israel" or "boycott of Israel" means refusing



784986

11 to deal, terminating business activities, or taking other  
12 actions to limit commercial relations with Israel, or persons or  
13 entities doing business in Israel or in Israeli-controlled  
14 territories, in a discriminatory manner. A statement by a  
15 company that it is participating in a boycott of Israel, or that  
16 it has initiated a boycott in response to a request for a  
17 boycott of Israel or in compliance with, or in furtherance of,  
18 calls for a boycott of Israel, may be considered by the State  
19 Board of Administration to be evidence that a company is  
20 participating in a boycott of Israel. The term does not include  
21 restrictive trade practices or boycotts fostered or imposed by  
22 foreign countries against Israel.

23 (b) "Company" means a sole proprietorship, organization,  
24 association, corporation, partnership, joint venture, limited  
25 partnership, limited liability partnership, limited liability  
26 company, or other entity or business association, including all  
27 wholly owned subsidiaries, majority-owned subsidiaries, and  
28 parent companies, that exists for the purpose of making profit.

29 (c) "Direct holdings" in a company means all securities of  
30 that company that are held directly by the public fund or in an  
31 account or fund in which the public fund owns all shares or  
32 interests.

33 (d) "Indirect holdings" in a company means all securities  
34 of that company that are held in a commingled fund or other  
35 collective investment, such as a mutual fund, in which the  
36 public fund owns shares or interests, together with other  
37 investors not subject to this section or which are held in an  
38 index fund.

39 (e) "Public fund" means all funds, assets, trustee, and



784986

40 other designates under the State Board of Administration  
41 pursuant to part I of chapter 121.

42 (f) "Scrutinized companies" means companies that boycott  
43 Israel or engage in a boycott of Israel.

44 (2) IDENTIFICATION OF COMPANIES.—

45 (a) By August 1, 2016, the public fund shall make its best  
46 efforts to identify all scrutinized companies in which the  
47 public fund has direct or indirect holdings or could possibly  
48 have such holdings in the future. Such efforts include:

49 1. To the extent that the public fund finds it appropriate,  
50 reviewing and relying on publicly available information  
51 regarding companies that boycott Israel, including information  
52 provided by nonprofit organizations, research firms,  
53 international organizations, and government entities;

54 2. Contacting asset managers contracted by the public fund  
55 for information regarding companies that boycott Israel; or

56 3. Contacting other institutional investors that prohibit  
57 such investments or that have engaged with companies that  
58 boycott Israel.

59 (b) By the first meeting of the public fund following the  
60 identification of scrutinized companies in accordance with  
61 paragraph (a), the public fund shall compile and make available  
62 the "Scrutinized Companies that Boycott Israel List."

63 (c) The public fund shall update and make publicly  
64 available quarterly the Scrutinized Companies that Boycott  
65 Israel List based on evolving information from, among other  
66 sources, those listed in paragraph (a).

67 (3) REQUIRED ACTIONS.—The public fund shall adhere to the  
68 following procedures for assembling companies on the Scrutinized



784986

69 Companies that Boycott Israel List.

70 (a) Engagement.—

71 1. The public fund shall immediately determine the  
72 companies on the Scrutinized Companies that Boycott Israel List  
73 in which the public fund owns direct or indirect holdings.

74 2. For each company newly identified under this paragraph  
75 after August 1, 2016, the public fund shall send a written  
76 notice informing the company of its scrutinized company status  
77 and that it may become subject to investment prohibition by the  
78 public fund. The notice must inform the company of the  
79 opportunity to clarify its activities regarding the boycott of  
80 Israel and encourage the company to cease the boycott of Israel  
81 within 90 days in order to avoid qualifying for investment  
82 prohibition.

83 3. If, within 90 days after the public fund's first  
84 engagement with a company pursuant to this paragraph, the  
85 company ceases a boycott of Israel, the company shall be removed  
86 from the Scrutinized Companies that Boycott Israel List, and the  
87 provisions of this section shall cease to apply to that company  
88 unless that company resumes a boycott of Israel.

89 (b) Prohibition.—The public fund may not acquire securities  
90 of companies on the Scrutinized Companies that Boycott Israel  
91 List, except as provided in paragraph (c) and subsection (6).

92 (c) Excluded securities.—Notwithstanding the provisions of  
93 this section, paragraph (b) does not apply to:

94 1. Indirect holdings. However, the public fund shall submit  
95 letters to the managers of such investment funds containing  
96 companies that boycott Israel requesting that they consider  
97 removing such companies from the fund or create a similar fund



784986

98 having indirect holdings devoid of such companies. If the  
99 manager creates a similar fund, the public fund shall replace  
100 all applicable investments with investments in the similar fund  
101 in an expedited timeframe consistent with prudent investing  
102 standards. For the purposes of this section, an alternative  
103 investment, as the term is defined in s. 215.4401, and  
104 securities that are not publicly traded are deemed to be  
105 indirect holdings.

106 2. Exchange-traded funds.

107 (4) REPORTING.—

108 (a) The public fund shall file a report with each member of  
109 the Board of Trustees of the State Board of Administration, the  
110 President of the Senate, and the Speaker of the House of  
111 Representatives which includes the Scrutinized Companies that  
112 Boycott Israel List within 30 days after the list is created.  
113 This report shall be made available to the public.

114 (b) At each quarterly meeting of the Board of Trustees  
115 thereafter, the public fund shall file a report, which shall be  
116 made available to the public and to each member of the Board of  
117 Trustees of the State Board of Administration, the President of  
118 the Senate, and the Speaker of the House of Representatives,  
119 which includes:

120 1. A summary of correspondence with companies engaged by  
121 the public fund under subparagraph (3) (a)2.;

122 2. All prohibited investments under paragraph (3) (b);

123 3. Any progress made under paragraph (3) (c); and

124 4. A list of all publicly traded securities held directly  
125 by the public fund.

126 (5) INVESTMENT POLICY STATEMENT OBLIGATIONS.—The public



784986

127 fund's actions taken in compliance with this section, including  
128 all good faith determinations regarding companies as required by  
129 this act, shall be adopted and incorporated into the public  
130 fund's investment policy statement as provided in s. 215.475.

131 (6) INVESTMENT IN CERTAIN SCRUTINIZED COMPANIES.—

132 Notwithstanding any other provision of this section, the public  
133 fund may invest in certain scrutinized companies if clear and  
134 convincing evidence shows that the value of all assets under  
135 management by the public fund becomes equal to or less than  
136 99.50 percent, or 50 basis points, of the hypothetical value of  
137 all assets under management by the public fund, assuming no  
138 investment prohibition for any company had occurred under  
139 paragraph (3) (b). Cessation of the investment prohibition and  
140 any new investment in a scrutinized company is limited to the  
141 minimum steps necessary to avoid the contingency described in  
142 this subsection. For any cessation of the investment prohibition  
143 and new investment authorized by this subsection, the public  
144 fund shall provide a written report to each member of the Board  
145 of Trustees of the State Board of Administration, the President  
146 of the Senate, and the Speaker of the House of Representatives  
147 in advance of the new investment, updated semiannually  
148 thereafter as applicable, setting forth the reasons and  
149 justification, supported by clear and convincing evidence, for  
150 its decisions to cease the investment prohibition in scrutinized  
151 companies.

152 Section 2. Effective October 1, 2016, section 287.135,  
153 Florida Statutes, is reenacted and amended to read:

154 287.135 Prohibition against contracting with scrutinized  
155 companies.—



784986

156 (1) In addition to the terms defined in ss. 287.012 and  
157 215.473, as used in this section, the term:

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

161 (b) "Boycott of Israel" has the same meaning as defined in  
162 s. 215.4725.

163 (c) ~~(b)~~ "Business operations" means, for purposes  
164 specifically related to Cuba or Syria, engaging in commerce in  
165 any form in Cuba or Syria, including, but not limited to,  
166 acquiring, developing, maintaining, owning, selling, possessing,  
167 leasing, or operating equipment, facilities, personnel,  
168 products, services, personal property, real property, military  
169 equipment, or any other apparatus of business or commerce.

170 (d) ~~(e)~~ "Local governmental entity" means a county,  
171 municipality, special district, or other political subdivision  
172 of the state.

173 (2) A company is ineligible to, and may not, bid on, submit  
174 a proposal for, or enter into or renew a contract with an agency  
175 or local governmental entity for goods or services of \$1 million  
176 or more if ~~that,~~ at the time of bidding or submitting a proposal  
177 for a new contract or renewal of an existing contract, the  
178 company:

179 (a) Is on the Scrutinized Companies that Boycott Israel  
180 List, created pursuant to s. 215.4725, or is engaged in a  
181 boycott of Israel;

182 (b) Is on the Scrutinized Companies with Activities in  
183 Sudan List or the Scrutinized Companies with Activities in the  
184 Iran Petroleum Energy Sector List, created pursuant to s.



784986

185 215.473;7 or

186 (c) Is engaged in business operations in Cuba or Syria, ~~is~~  
187 ~~ineligible for, and may not bid on, submit a proposal for, or~~  
188 ~~enter into or renew a contract with an agency or local~~  
189 ~~governmental entity for goods or services of \$1 million or more.~~

190 ~~(3)(a)~~ Any contract with an agency or local governmental  
191 entity for goods or services of \$1 million or more entered into  
192 or renewed on or after:

193 (a) July 1, 2011, through June 30, 2012, must contain a  
194 provision that allows for the termination of such contract at  
195 the option of the awarding body if the company is found to have  
196 submitted a false certification as provided under subsection (5)  
197 or been placed on the Scrutinized Companies with Activities in  
198 Sudan List or the Scrutinized Companies with Activities in the  
199 Iran Petroleum Energy Sector List.

200 ~~(b) Any contract with an agency or local governmental~~  
201 ~~entity for goods or services of \$1 million or more entered into~~  
202 ~~or renewed on or after July 1, 2012, through September 30, 2016,~~  
203 must contain a provision that allows for the termination of such  
204 contract at the option of the awarding body if the company is  
205 found to have submitted a false certification as provided under  
206 subsection (5), been placed on the Scrutinized Companies with  
207 Activities in Sudan List or the Scrutinized Companies with  
208 Activities in the Iran Petroleum Energy Sector List, or been  
209 engaged in business operations in Cuba or Syria.

210 (c) October 1, 2016, must contain a provision that allows  
211 for the termination of such contract at the option of the  
212 awarding body if the company:

213 1. Is found to have submitted a false certification as





784986

214 provided under subsection (5);

215 2. Has been placed on the Scrutinized Companies that  
216 Boycott Israel List, or is engaged in a boycott of Israel;

217 3. Has been placed on the Scrutinized Companies with  
218 Activities in Sudan List or the Scrutinized Companies with  
219 Activities in the Iran Petroleum Energy Sector List; or

220 4. Has been engaged in business operations in Cuba or  
221 Syria.

222 (4) Notwithstanding subsection (2) or subsection (3), an  
223 agency or local governmental entity, on a case-by-case basis,  
224 may permit a company on the Scrutinized Companies that Boycott  
225 Israel List, the Scrutinized Companies with Activities in Sudan  
226 List or the Scrutinized Companies with Activities in the Iran  
227 Petroleum Energy Sector List, or a company with business  
228 operations in Cuba or Syria, to be eligible for, bid on, submit  
229 a proposal for, or enter into or renew a contract for goods or  
230 services of \$1 million or more under the conditions set forth in  
231 paragraph (a) or the conditions set forth in paragraph (b):

232 (a)1. With respect to a company on the Scrutinized  
233 Companies with Activities in Sudan List or the Scrutinized  
234 Companies with Activities in the Iran Petroleum Energy Sector  
235 List, all of the following occur:

236 a. The scrutinized business operations were made before  
237 July 1, 2011.

238 b. The scrutinized business operations have not been  
239 expanded or renewed after July 1, 2011.

240 c. The agency or local governmental entity determines that  
241 it is in the best interest of the state or local community to  
242 contract with the company.



784986

243           d. The company has adopted, has publicized, and is  
244 implementing a formal plan to cease scrutinized business  
245 operations and to refrain from engaging in any new scrutinized  
246 business operations.

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

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

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

252           c. The agency or local governmental entity determines that  
253 it is in the best interest of the state or local community to  
254 contract with the company.

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

258           3. With respect to a company on the Scrutinized Companies  
259 that Boycott Israel List, all of the following occur:

260           a. The boycott of Israel was initiated before October 1,  
261 2016.

262           b. The company certifies in writing that it has ceased its  
263 boycott of Israel.

264           c. The agency or local governmental entity determines that  
265 it is in the best interest of the state or local community to  
266 contract with the company.

267           d. The company has adopted, has publicized, and is  
268 implementing a formal plan to cease scrutinized business  
269 operations and to refrain from engaging in any new scrutinized  
270 business operations.

271           (b) One of the following occurs:



784986

272           1. The local governmental entity makes a public finding  
273 that, absent such an exemption, the local governmental entity  
274 would be unable to obtain the goods or services for which the  
275 contract is offered.

276           2. For a contract with an executive agency, the Governor  
277 makes a public finding that, absent such an exemption, the  
278 agency would be unable to obtain the goods or services for which  
279 the contract is offered.

280           3. For a contract with an office of a state constitutional  
281 officer other than the Governor, the state constitutional  
282 officer makes a public finding that, absent such an exemption,  
283 the office would be unable to obtain the goods or services for  
284 which the contract is offered.

285           (5) At the time a company submits a bid or proposal for a  
286 contract or before the company enters into or renews a contract  
287 with an agency or governmental entity for goods or services of  
288 \$1 million or more, the company must certify that the company is  
289 not participating in a boycott of Israel, on the Scrutinized  
290 Companies with Activities in Sudan List or the Scrutinized  
291 Companies with Activities in the Iran Petroleum Energy Sector  
292 List, or that it does not have business operations in Cuba or  
293 Syria.

294           (a) If, after the agency or the local governmental entity  
295 determines, using credible information available to the public,  
296 that the company has submitted a false certification, the agency  
297 or local governmental entity shall provide the company with  
298 written notice of its determination. The company shall have 90  
299 days following receipt of the notice to respond in writing and  
300 to demonstrate that the determination of false certification was



784986

301 made in error. If the company does not make such demonstration  
302 within 90 days after receipt of the notice, the agency or the  
303 local governmental entity shall bring a civil action against the  
304 company. If a civil action is brought and the court determines  
305 that the company submitted a false certification, the company  
306 shall pay the penalty described in subparagraph 1. and all  
307 reasonable attorney fees and costs, including any costs for  
308 investigations that led to the finding of false certification.

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

312 2. The company is ineligible to bid on any contract with an  
313 agency or local governmental entity for 3 years after the date  
314 the agency or local governmental entity determined that the  
315 company submitted a false certification.

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

319 (6) Only the agency or local governmental entity that is a  
320 party to the contract may cause a civil action to be brought  
321 under this section. This section does not create or authorize a  
322 private right of action or enforcement of the penalties provided  
323 in this section. An unsuccessful bidder, or any other person  
324 other than the agency or local governmental entity, may not  
325 protest the award of a contract or contract renewal on the basis  
326 of a false certification.

327 (7) This section preempts any ordinance or rule of any  
328 agency or local governmental entity involving public contracts  
329 for goods or services of \$1 million or more with a company



784986

330 engaged in scrutinized business operations.

331       (8) The contracting prohibitions in this section applicable  
332 to companies on the Scrutinized Companies with Activities in  
333 Sudan List or the Scrutinized Companies with Activities in the  
334 Iran Petroleum Energy Sector List or to companies engaged in  
335 business operations in Cuba or Syria become ~~This section becomes~~  
336 inoperative on the date that federal law ceases to authorize the  
337 states to adopt and enforce such ~~the~~ contracting prohibitions ~~of~~  
338 ~~the type provided for in this section.~~

339       Section 3. If any provision of this act or its application  
340 to any person or circumstance is held invalid, the invalidity  
341 does not affect other provisions or applications of this act  
342 which can be given effect without the invalid provision or  
343 application, and to this end the provisions of this act are  
344 declared severable.

345       Section 4. Except as otherwise expressly provided in this  
346 act, this act shall take effect upon becoming a law.

347  
348 ===== T I T L E   A M E N D M E N T =====

349 And the title is amended as follows:

350       Delete everything before the enacting clause  
351 and insert:

352                               A bill to be entitled  
353       An act relating to scrutinized companies; creating s.  
354       215.4725, F.S.; providing definitions; requiring the  
355       State Board of Administration to identify all  
356       companies that are boycotting Israel or are engaged in  
357       a boycott of Israel in which the public fund owns  
358       direct or indirect holdings; requiring the public fund



784986

359 to create and maintain the Scrutinized Companies that  
360 Boycott Israel List that names all such companies;  
361 requiring the public fund to provide written notice to  
362 a company that is identified as a scrutinized company;  
363 specifying the contents of the notice; specifying  
364 circumstances under which a company may be removed  
365 from the list; prohibiting the acquisition of certain  
366 securities of scrutinized companies; prescribing  
367 reporting requirements; requiring that certain  
368 information be included in the investment policy  
369 statement; authorizing the public fund to invest in  
370 certain scrutinized companies if the value of all  
371 assets under management by the public fund becomes  
372 equal to or less than a specified amount; requiring  
373 the public fund to provide a written report to the  
374 board of trustees of the state board and the  
375 Legislature before such investment occurs; specifying  
376 required contents of the report; reenacting and  
377 amending s. 287.135, F.S., relating to the prohibition  
378 against contracting with scrutinized companies;  
379 providing a definition; prohibiting a state agency or  
380 local governmental entity from contracting for goods  
381 and services that exceed a specified amount if the  
382 company has been placed on the Scrutinized Companies  
383 that Boycott Israel List; requiring inclusion of a  
384 contract provision that authorizes termination of a  
385 contract if a company submits certain false  
386 certification, has been placed on the scrutinized  
387 companies list or is engaged in a boycott of Israel;



784986

388 providing exceptions; requiring certification upon  
389 submission of a bid or proposal for certain contracts,  
390 or before a company enters into or renews certain  
391 contracts, with an agency or local governmental entity  
392 that the company is not participating in a boycott of  
393 Israel; providing procedures upon determination that a  
394 company has submitted a false certification; providing  
395 for civil action; providing penalties; providing  
396 attorney fees and costs; providing a statute of  
397 repose; prohibiting a private right of action;  
398 providing for preemption of conflicting ordinances and  
399 rules; revising provisions relating to federal  
400 preemption; providing for severability; providing  
401 effective dates.