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1  
2 An act relating to scrutinized companies; creating s.  
3 215.4725, F.S.; providing definitions; requiring the  
4 State Board of Administration to identify all  
5 companies that are boycotting Israel or are engaged in  
6 a boycott of Israel in which the public fund owns  
7 direct or indirect holdings by a specified date;  
8 requiring the public fund to create and maintain the  
9 Scrutinized Companies that Boycott Israel List that  
10 names all such companies; requiring the public fund to  
11 provide written notice to a company that is identified  
12 as a scrutinized company; specifying the contents of  
13 the notice; specifying circumstances under which a  
14 company may be removed from the list; prohibiting the  
15 acquisition of certain securities of scrutinized  
16 companies; prescribing reporting requirements;  
17 requiring that certain information be included in the  
18 investment policy statement; authorizing the public  
19 fund to invest in certain scrutinized companies if the  
20 value of all assets under management by the public  
21 fund becomes equal to or less than a specified amount;  
22 requiring the public fund to provide a written report  
23 to the board of trustees of the state board and the  
24 Legislature before such investment occurs; specifying  
25 required contents of the report; reenacting and  
26 amending s. 287.135, F.S., relating to the prohibition  
27 against contracting with scrutinized companies;  
28 providing a definition; prohibiting a state agency or  
29 local governmental entity from contracting for goods

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30 and services that exceed a specified amount if the  
31 company has been placed on the Scrutinized Companies  
32 that Boycott Israel List; requiring inclusion of a  
33 contract provision that authorizes termination of a  
34 contract if a company submits certain false  
35 certification, has been placed on the scrutinized  
36 companies list, or is engaged in a boycott of Israel;  
37 providing exceptions; requiring certification upon  
38 submission of a bid or proposal for certain contracts,  
39 or before a company enters into or renews certain  
40 contracts, with an agency or local governmental entity  
41 that the company is not participating in a boycott of  
42 Israel; providing procedures upon determination that a  
43 company has submitted a false certification; providing  
44 for civil action; providing penalties; providing  
45 attorney fees and costs; providing a statute of  
46 repose; prohibiting a private right of action;  
47 providing for preemption of conflicting ordinances and  
48 rules; revising provisions relating to federal  
49 preemption; providing for severability; providing  
50 effective dates.

51  
52 Be It Enacted by the Legislature of the State of Florida:

53  
54 Section 1. Section 215.4725, Florida Statutes, is created  
55 to read:

56 215.4725 Prohibited investments by the State Board of  
57 Administration; companies that boycott Israel.-

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

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59       (a) "Boycott Israel" or "boycott of Israel" means refusing  
60 to deal, terminating business activities, or taking other  
61 actions to limit commercial relations with Israel, or persons or  
62 entities doing business in Israel or in Israeli-controlled  
63 territories, in a discriminatory manner. A statement by a  
64 company that it is participating in a boycott of Israel, or that  
65 it has initiated a boycott in response to a request for a  
66 boycott of Israel or in compliance with, or in furtherance of,  
67 calls for a boycott of Israel, may be considered by the State  
68 Board of Administration to be evidence that a company is  
69 participating in a boycott of Israel. The term does not include  
70 restrictive trade practices or boycotts fostered or imposed by  
71 foreign countries against Israel.

72       (b) "Company" means a sole proprietorship, organization,  
73 association, corporation, partnership, joint venture, limited  
74 partnership, limited liability partnership, limited liability  
75 company, or other entity or business association, including all  
76 wholly owned subsidiaries, majority-owned subsidiaries, and  
77 parent companies, that exists for the purpose of making profit.

78       (c) "Direct holdings" in a company means all securities of  
79 that company that are held directly by the public fund or in an  
80 account or fund in which the public fund owns all shares or  
81 interests.

82       (d) "Indirect holdings" in a company means all securities  
83 of that company that are held in a commingled fund or other  
84 collective investment, such as a mutual fund, in which the  
85 public fund owns shares or interests, together with other  
86 investors not subject to this section or which are held in an  
87 index fund.

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88       (e) "Public fund" means all funds, assets, trustee, and  
89 other designates under the State Board of Administration  
90 pursuant to part I of chapter 121.

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

93       (2) IDENTIFICATION OF COMPANIES.—

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

98       1. To the extent that the public fund finds it appropriate,  
99 reviewing and relying on publicly available information  
100 regarding companies that boycott Israel, including information  
101 provided by nonprofit organizations, research firms,  
102 international organizations, and government entities;

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

105       3. Contacting other institutional investors that prohibit  
106 such investments or that have engaged with companies that  
107 boycott Israel.

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

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

116       (3) REQUIRED ACTIONS.—The public fund shall adhere to the

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117 following procedures for assembling companies on the Scrutinized  
118 Companies that Boycott Israel List.

119 (a) Engagement.—

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

123 2. For each company newly identified under this paragraph  
124 after August 1, 2016, the public fund shall send a written  
125 notice informing the company of its scrutinized company status  
126 and that it may become subject to investment prohibition by the  
127 public fund. The notice must inform the company of the  
128 opportunity to clarify its activities regarding the boycott of  
129 Israel and encourage the company to cease the boycott of Israel  
130 within 90 days in order to avoid qualifying for investment  
131 prohibition.

132 3. If, within 90 days after the public fund's first  
133 engagement with a company pursuant to this paragraph, the  
134 company ceases a boycott of Israel, the company shall be removed  
135 from the Scrutinized Companies that Boycott Israel List, and the  
136 provisions of this section shall cease to apply to that company  
137 unless that company resumes a boycott of Israel.

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

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

143 1. Indirect holdings. However, the public fund shall submit  
144 letters to the managers of such investment funds containing  
145 companies that boycott Israel requesting that they consider

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146 removing such companies from the fund or create a similar fund  
147 having indirect holdings devoid of such companies. If the  
148 manager creates a similar fund, the public fund shall replace  
149 all applicable investments with investments in the similar fund  
150 in an expedited timeframe consistent with prudent investing  
151 standards. For the purposes of this section, an alternative  
152 investment, as the term is defined in s. 215.4401, and  
153 securities that are not publicly traded are deemed to be  
154 indirect holdings.

155 2. Exchange-traded funds.

156 (4) REPORTING.—

157 (a) The public fund shall file a report with each member of  
158 the Board of Trustees of the State Board of Administration, the  
159 President of the Senate, and the Speaker of the House of  
160 Representatives which includes the Scrutinized Companies that  
161 Boycott Israel List within 30 days after the list is created.  
162 This report shall be made available to the public.

163 (b) At each quarterly meeting of the Board of Trustees  
164 thereafter, the public fund shall file a report, which shall be  
165 made available to the public and to each member of the Board of  
166 Trustees of the State Board of Administration, the President of  
167 the Senate, and the Speaker of the House of Representatives,  
168 which includes:

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

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

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

173 4. A list of all publicly traded securities held directly  
174 by the public fund.

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175       (5) INVESTMENT POLICY STATEMENT OBLIGATIONS.—The public  
176 fund's actions taken in compliance with this section, including  
177 all good faith determinations regarding companies as required by  
178 this act, shall be adopted and incorporated into the public  
179 fund's investment policy statement as provided in s. 215.475.

180       (6) INVESTMENT IN CERTAIN SCRUTINIZED COMPANIES.—  
181 Notwithstanding any other provision of this section, the public  
182 fund may invest in certain scrutinized companies if clear and  
183 convincing evidence shows that the value of all assets under  
184 management by the public fund becomes equal to or less than  
185 99.50 percent, or 50 basis points, of the hypothetical value of  
186 all assets under management by the public fund, assuming no  
187 investment prohibition for any company had occurred under  
188 paragraph (3)(b). Cessation of the investment prohibition and  
189 any new investment in a scrutinized company is limited to the  
190 minimum steps necessary to avoid the contingency described in  
191 this subsection. For any cessation of the investment prohibition  
192 and new investment authorized by this subsection, the public  
193 fund shall provide a written report to each member of the Board  
194 of Trustees of the State Board of Administration, the President  
195 of the Senate, and the Speaker of the House of Representatives  
196 in advance of the new investment, updated semiannually  
197 thereafter as applicable, setting forth the reasons and  
198 justification, supported by clear and convincing evidence, for  
199 its decisions to cease the investment prohibition in scrutinized  
200 companies.

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

203       287.135 Prohibition against contracting with scrutinized

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204 companies.—

205 (1) In addition to the terms defined in ss. 287.012 and  
206 215.473, as used in this section, the term:

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

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

212 (c) ~~(b)~~ "Business operations" means, for purposes  
213 specifically related to Cuba or Syria, engaging in commerce in  
214 any form in Cuba or Syria, including, but not limited to,  
215 acquiring, developing, maintaining, owning, selling, possessing,  
216 leasing, or operating equipment, facilities, personnel,  
217 products, services, personal property, real property, military  
218 equipment, or any other apparatus of business or commerce.

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

222 (2) A company is ineligible to, and may not, bid on, submit  
223 a proposal for, or enter into or renew a contract with an agency  
224 or local governmental entity for goods or services of \$1 million  
225 or more if that, at the time of bidding or submitting a proposal  
226 for a new contract or renewal of an existing contract, the  
227 company:

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

231 (b) Is on the Scrutinized Companies with Activities in  
232 Sudan List or the Scrutinized Companies with Activities in the



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233 Iran Petroleum Energy Sector List, created pursuant to s.  
234 215.473;~~7~~ or

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

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

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

249 ~~(b) Any contract with an agency or local governmental~~  
250 ~~entity for goods or services of \$1 million or more entered into~~  
251 ~~or renewed on or after~~ July 1, 2012, through September 30, 2016,  
252 must contain a provision that allows for the termination of such  
253 contract at the option of the awarding body if the company is  
254 found to have submitted a false certification as provided under  
255 subsection (5), been placed on the Scrutinized Companies with  
256 Activities in Sudan List or the Scrutinized Companies with  
257 Activities in the Iran Petroleum Energy Sector List, or been  
258 engaged in business operations in Cuba or Syria.

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

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262 1. Is found to have submitted a false certification as  
263 provided under subsection (5);

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

266 3. Has been placed on the Scrutinized Companies with  
267 Activities in Sudan List or the Scrutinized Companies with  
268 Activities in the Iran Petroleum Energy Sector List; or

269 4. Has been engaged in business operations in Cuba or  
270 Syria.

271 (4) Notwithstanding subsection (2) or subsection (3), an  
272 agency or local governmental entity, on a case-by-case basis,  
273 may permit a company on the Scrutinized Companies that Boycott  
274 Israel List, the Scrutinized Companies with Activities in Sudan  
275 List or the Scrutinized Companies with Activities in the Iran  
276 Petroleum Energy Sector List, or a company with business  
277 operations in Cuba or Syria, to be eligible for, bid on, submit  
278 a proposal for, or enter into or renew a contract for goods or  
279 services of \$1 million or more under the conditions set forth in  
280 paragraph (a) or the conditions set forth in paragraph (b):

281 (a)1. With respect to a company on the Scrutinized  
282 Companies with Activities in Sudan List or the Scrutinized  
283 Companies with Activities in the Iran Petroleum Energy Sector  
284 List, all of the following occur:

285 a. The scrutinized business operations were made before  
286 July 1, 2011.

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

289 c. The agency or local governmental entity determines that  
290 it is in the best interest of the state or local community to

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291 contract with the company.

292 d. The company has adopted, has publicized, and is  
293 implementing a formal plan to cease scrutinized business  
294 operations and to refrain from engaging in any new scrutinized  
295 business operations.

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

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

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

301 c. The agency or local governmental entity determines that  
302 it is in the best interest of the state or local community to  
303 contract with the company.

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

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

309 a. The boycott of Israel was initiated before October 1,  
310 2016.

311 b. The company certifies in writing that it has ceased its  
312 boycott of Israel.

313 c. The agency or local governmental entity determines that  
314 it is in the best interest of the state or local community to  
315 contract with the company.

316 d. The company has adopted, has publicized, and is  
317 implementing a formal plan to cease scrutinized business  
318 operations and to refrain from engaging in any new scrutinized  
319 business operations.

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320 (b) One of the following occurs:

321 1. The local governmental entity makes a public finding  
322 that, absent such an exemption, the local governmental entity  
323 would be unable to obtain the goods or services for which the  
324 contract is offered.

325 2. For a contract with an executive agency, the Governor  
326 makes a public finding that, absent such an exemption, the  
327 agency would be unable to obtain the goods or services for which  
328 the contract is offered.

329 3. For a contract with an office of a state constitutional  
330 officer other than the Governor, the state constitutional  
331 officer makes a public finding that, absent such an exemption,  
332 the office would be unable to obtain the goods or services for  
333 which the contract is offered.

334 (5) At the time a company submits a bid or proposal for a  
335 contract or before the company enters into or renews a contract  
336 with an agency or governmental entity for goods or services of  
337 \$1 million or more, the company must certify that the company is  
338 not participating in a boycott of Israel, on the Scrutinized  
339 Companies with Activities in Sudan List or the Scrutinized  
340 Companies with Activities in the Iran Petroleum Energy Sector  
341 List, or that it does not have business operations in Cuba or  
342 Syria.

343 (a) If, after the agency or the local governmental entity  
344 determines, using credible information available to the public,  
345 that the company has submitted a false certification, the agency  
346 or local governmental entity shall provide the company with  
347 written notice of its determination. The company shall have 90  
348 days following receipt of the notice to respond in writing and

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349 to demonstrate that the determination of false certification was  
350 made in error. If the company does not make such demonstration  
351 within 90 days after receipt of the notice, the agency or the  
352 local governmental entity shall bring a civil action against the  
353 company. If a civil action is brought and the court determines  
354 that the company submitted a false certification, the company  
355 shall pay the penalty described in subparagraph 1. and all  
356 reasonable attorney fees and costs, including any costs for  
357 investigations that led to the finding of false certification.

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

361 2. The company is ineligible to bid on any contract with an  
362 agency or local governmental entity for 3 years after the date  
363 the agency or local governmental entity determined that the  
364 company submitted a false certification.

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

368 (6) Only the agency or local governmental entity that is a  
369 party to the contract may cause a civil action to be brought  
370 under this section. This section does not create or authorize a  
371 private right of action or enforcement of the penalties provided  
372 in this section. An unsuccessful bidder, or any other person  
373 other than the agency or local governmental entity, may not  
374 protest the award of a contract or contract renewal on the basis  
375 of a false certification.

376 (7) This section preempts any ordinance or rule of any  
377 agency or local governmental entity involving public contracts

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378 for goods or services of \$1 million or more with a company  
379 engaged in scrutinized business operations.

380 (8) The contracting prohibitions in this section applicable  
381 to companies on the Scrutinized Companies with Activities in  
382 Sudan List or the Scrutinized Companies with Activities in the  
383 Iran Petroleum Energy Sector List or to companies engaged in  
384 business operations in Cuba or Syria become ~~This section becomes~~  
385 inoperative on the date that federal law ceases to authorize the  
386 states to adopt and enforce such ~~the~~ contracting prohibitions ~~of~~  
387 ~~the type provided for in this section.~~

388 Section 3. If any provision of this act or its application  
389 to any person or circumstance is held invalid, the invalidity  
390 does not affect other provisions or applications of this act  
391 which can be given effect without the invalid provision or  
392 application, and to this end the provisions of this act are  
393 declared severable.

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