

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 10-C

INTRODUCER: Senator Avila

SUBJECT: Scrutinized Companies

DATE: November 2, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>McVaney</u>	<u>Twogood</u>	<u>RC</u>	<u>Pre-meeting</u>

I. Summary:

SB 10-C amends the Protect Florida Investment Act to expand the definition of “scrutinized company” with activities in Iran. If the company meets the broader definition of “scrutinized company,” the State Board of Administration must divest current holdings in the Florida Retirement System portfolio and is prohibited from new investments in the securities of those companies.

The definition of “scrutinized company” is expanded to include any company doing business with the government of Iran in the energy, petrochemical, financial, construction, manufacturing, textile, mining, metals, shipping, shipbuilding, or port sectors. A company may be designated a scrutinized company if the company:

- Has, on or after January 10, 2024, at least 10 percent of its revenues or assets linked to Iran and involved in this broader array of industry sectors, and fails to adopt, publicize, and implement a formal plan to cease the scrutinized business operations within 1 year and to refrain from new business operations; or
- Has, with actual knowledge, on or after January 10, 2024, an investment of \$20 million or more in these industry sectors, including oil-related or mineral-extraction activities in Iran.

The bill renames the current “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List” to the “Scrutinized Companies with Activities in Iran Terrorism Sectors List.” The companies on the current list as of November 6, 2023, are deemed to be on the renamed list until subsequently removed pursuant to process established in law.

The bill applies the current statutory restrictions and requirements on scrutinized companies to the renamed list of companies designated in the Scrutinized Companies with Activities in Iran Terrorism Sectors List. These newly designated scrutinized companies on the new Iran Terrorism Sectors List are ineligible to bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods and services of \$1 million or more if the company is on the Iran Terrorism Sectors List.

The bill makes conforming changes to ss. 624.449 and 215.47, F.S.

The impact to state and local expenditures is indeterminate.

The bill takes effect upon becoming a law.

II. Present Situation:

Relevant Federal Law and Actions

State Sponsors of Terrorism

The United States Department of State (State Department) maintains a list of countries determined to have repeatedly provided support for acts of international terrorism.¹ The countries are designated "terrorist nations" under requirements in three federal laws: the Export Administration Act;² the Arms Export Control Act;³ and the Foreign Assistance Act.⁴ Taken together, the four main categories of sanctions resulting from designation under these authorities include restrictions on U.S. foreign assistance; a ban on defense exports and sales; certain controls over exports of dual use items; and miscellaneous financial and other restrictions.⁵ Currently, the State Department designates four countries under these authorities: Iran, Cuba, Syria, and the Democratic People's Republic of Korea (North Korea).⁶ The chart below shows the date each country was designated a terrorist nation.

Country	Designation Date
Syria	December 29, 1979
Iran	January 19, 1984
Democratic People's Republic of Korea (North Korea)	November 20, 2017
Cuba	January 12, 2021 ⁷

Sanctions

The U.S. first imposed sanctions against Iran in 1979 in response to the Iran hostage crisis. The U.S. Secretary of State designated Iran as a state sponsor of acts of international terrorism in 1984;⁸ this triggered sanctions including a ban on U.S. foreign assistance, arms sales, and support in international financial institutions.⁹ In 1995, President Clinton issued two executive

¹ U.S. Department of State, *State Sponsors of Terrorism*, available at <https://www.state.gov/state-sponsors-of-terrorism/> (last visited October 29, 2023).

² 50 U.S.C. App 2405(j).

³ 22 U.S.C. s. 2780.

⁴ 22 U.S.C. s. 2371.

⁵ See, U.S. Department of State, *State Sponsors of Terrorism*, available at <https://www.state.gov/state-sponsors-of-terrorism/> (last visited October 29, 2023).

⁶ *Id.*

⁷ Cuba was designated as a State Sponsor of Terrorism on March 1, 1982. Cuba was officially removed from the list on May 29, 2015.

⁸ Dianne Rennack, Congressional Research Center, *State Sponsors of Acts of International Terrorism—Legislative Parameters: In Brief* at 1, (May 4, 2021), available at [State Sponsors of Acts of International Terrorism—Legislative Parameters: In Brief \(fas.org\)](https://www.crs.org/congress/legislation/state-sponsors-of-acts-of-international-terrorism-legislative-parameters-in-brief) (last visited November 1, 2023).

⁹ Clayton Thomas, Congressional Research Service, *Iran: Background and U.S. Policy* at 21 (Sep. 29, 2023), available at <https://crsreports.congress.gov/product/pdf/R/R47321> (last visited November 1, 2023).

orders; the first specifically prohibited trading in Iran’s petroleum industry, the second banned all American trade with, and investment in Iran.¹⁰ The early 2000’s were characterized by attempts to “persuade Iran to agree to limits to its nuclear program” and ultimately resulted in the agreement, pursuant to the Joint Comprehensive Plan of Action (JCPOA), to limit many of the previously implemented U.S. sanctions against Iran.¹¹ In 2018, U.S. participation in the JCPOA ended, and all U.S. sanctions against Iran were reimposed.¹²

Congress passed the **Iran and Libya Sanctions Act in 1996**¹³ (shortened to the “Iran Sanctions Act” in 2006), which authorized the President to implement secondary sanctions against firms (based in both the U.S. and foreign jurisdictions) that invest \$20 million or more in Iran’s petroleum sector, or other sectors that support the development of Iran’s petroleum sector.¹⁴ Companies that violate the act are subject to sanctions, including the denial of contracts with the U.S. government, and a prohibition on U.S. investment in or purchase of “significant amounts of equity or debt instruments” from the sanctioned entity.¹⁵ The act aims to “deny Iran the financial means to sustain its nuclear, chemical, biological, and missile weapons programs.”¹⁶ It also cites Iran’s “support of acts of international terrorism.” The Iran Sanctions Act will expire in December 2026 if Congress does not renew the legislation.

The **Comprehensive Iran Sanctions, Accountability, and Divestment act of 2010**

(CISADA)¹⁷ expands sanctions imposed by the Iran Sanctions Act relating to Iran’s petroleum industry to include liquefied natural gas (LNG), oil or LNG tankers, and products that relate to pipelines that transport oil or LNG. It also allows sanctions against any person that knowingly sells, leases, or provides any of the following at or above certain monetary thresholds:

- Goods, services, or technology that could directly and significantly facilitate the maintenance or expansion of Iran’s domestic production of refined petroleum products;
- Goods, services, or technology that could directly and significantly contribute to the enhancement of Iran’s ability to import refined petroleum products; or
- Refined petroleum products to Iran.

CISADA further codifies the U.S. ban on trade with and investments in Iran that were first imposed by Executive Order 12959 in 1995 and imposes sanctions on foreign banks that

¹⁰ Belfer Center for Science and International Affairs, *Sanctions Against Iran: A Guide to Targets, Terms, and Timetables* at 4 (Jun. 2015), available at <https://www.belfercenter.org/sites/default/files/legacy/files/Iran%20Sanctions.pdf> (last visited Nov. 1, 2023). See also, Exec. Order No. 12957, 60 CFR 14615 (Mar. 15, 1995) and Exec. Order No. 12959, 60 CFR 24757 (May 9, 1995).

¹¹ Clayton Thomas, Congressional Research Center, *Iran Sanctions* at 1, (Feb. 2, 2022), available at <https://crsreports.congress.gov/product/pdf/RS/RS20871> (last visited Nov. 1, 2023).

¹² *Id.*

¹³ 50 U.S.C. §1701 note, [https://uscode.house.gov/view.xhtml?req=\(title:50%20section:1701%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:50%20section:1701%20edition:prelim)).

¹⁴ Support of Iran’s petroleum sector are defined as “...goods, services, technology, information, or support that could directly and significantly facilitate the maintenance or expansion of Iran’s domestic production of refined petroleum products, including direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries or directly associated infrastructure, including construction of port facilities, railways, and roads, the primary use of which is to support the delivery of refined petroleum products.”

¹⁵ Belfer Center for Science and International Affairs, *Sanctions Against Iran: A Guide to Targets, Terms, and Timetables* at 31-33 (Jun. 2015), available at <https://www.belfercenter.org/sites/default/files/legacy/files/Iran%20Sanctions.pdf> (last visited Nov. 1, 2023).

¹⁶ 50 U.S.C. §1701 ss. 2-3.

¹⁷ P.L. 111-195, 22 U.S.C. §§8501 et seq.

facilitate transactions for Iranian entities. Lastly, CISADA bars from federal procurements those entities that are subject to sanction under the act.¹⁸

The **Iran Threat Reduction and Syria Human Rights Act of 2012**¹⁹ expands sanctions that relate to Iran’s energy sector and prohibits foreign banks from allowing Iran to withdraw its funds.

The **Iran Freedom and Counter-Proliferation Act**²⁰ imposes the same sanctions set by the Iran Sanctions Act on entities that provide goods or services to Iranian energy, shipping or shipbuilding sectors, or that provide underwriting, insurance, or reinsurance to Iranian companies connected with the shipping or energy sectors. It also sanctions entities that provide precious metals to Iran.²¹

While federal law authorizes the imposition of sanctions, additional presidential action is generally required to implement sanctions. Current U.S. sanctions on Iran block Iranian government assets in the U.S., ban nearly all U.S. trade with Iran (except food and agricultural commodities, medicine, medical supplies, and humanitarian-related goods), and prohibit foreign assistance and arms sales.

Executive Order	Subject
E.O. 12959 (May 1995) ²²	Bans U.S. firms from exporting to Iran, importing from Iran, or investing in Iran.
E.O. 13645 (June 2013)/ E.O. 13846 (Aug. 2018) ²³	Reimposed sanctions lifted by the JCPOA—prohibits transactions related to the Iranian currency (rial); Iran’s automotive, petroleum, and petrochemical sectors; and persons who materially assist Specially Designated Nationals and Blocked Persons.
E.O. 13871 (May 2019) ²⁴	Blocked transactions with entities that operate in Iran’s iron, steel, aluminum, and copper sectors.
E.O. 13902 (Jan. 2020) ²⁵	Blocked U.S. transactions with entities operating in Iran’s construction, manufacturing, textiles, or mining sectors.

¹⁸ 50 U.S.C. 1701 Note, s. 6 (b)(1). This provision is closely mirrored by the procurement provisions in s. 287.135, F.S.

¹⁹ P.L. 112-158, 22 U.S.C. §§8701 et seq.

²⁰ Sections 1244-1247, P.L. 112-239, 22 U.S.C. §§ 8801 et seq.

²¹ Belfer Center for Science and International Affairs, *Sanctions Against Iran: A Guide to Targets, Terms, and Timetables* at 35-36 (Jun. 2015), available at <https://www.belfercenter.org/sites/default/files/legacy/files/Iran%20Sanctions.pdf> (last visited Nov. 1, 2023).

²² Exec. Order No. 12959, 60 CFR 24757 (May 9, 1995), available at <https://www.govinfo.gov/content/pkg/FR-1995-05-09/pdf/95-11694.pdf> (last visited November 1, 2023).

²³ Exec. Order No. 13846, 83 CFR 38939 (August 6, 2018), available at <https://www.govinfo.gov/content/pkg/DCPD-201800524/pdf/DCPD-201800524.pdf> (last visited November 1, 2023).

²⁴ Exec. Order No. 13871, 84 CFR 20761 (May 8, 2019), available at <https://www.federalregister.gov/documents/2019/05/10/2019-09877/imposing-sanctions-with-respect-to-the-iron-steel-aluminum-and-copper-sectors-of-iran> (last visited November 1, 2023).

²⁵ Exec. Order No. 13902, 85 CFR 2003 (January 10, 2020), available at <https://www.federalregister.gov/documents/2020/01/14/2020-00534/imposing-sanctions-with-respect-to-additional-sectors-of-iran> (last visited November 1, 2023).

Preemption of State and Local Government Divestment

State and local governments may divest their assets from, or prohibit investment of their assets in, any person that they determine to be engaged in investment activities in Iran, subject to specific requirements outlined in CISADA.²⁶ CISADA provides that federal law or regulations do not preempt any state or local government action that divests from, or prohibits investment with specified parties, if the state or local government:

- Provides written notice to each person to which its divestment or investment prohibition measure will apply;
- Applies its divestment or investment prohibition no earlier than 90 days after it provides notice;
- Grants an opportunity for hearing, via written comment, to an affected party; and
- Avoids erroneous targeting of persons.

The state or local government is also required to provide notice to the Department of Justice within 30 days of adopting any such divestment or investment prohibition measure.²⁷

CISADA also created a safe harbor for state and local measures adopted before July 2, 2010, that divest from or prohibit investment in any person determined to “engage in investment activities in Iran,” as defined by the act.

Waiver or Termination of Federal Sanctions

Generally, Congress provides for presidential authority to terminate sanctions. For example, the CISADA and the Iran Threat Reduction and Syria Human Rights Act provisions end 30 days after the President certifies to Congress that (1) Iran neither supports acts of international terrorism, nor satisfies the requirements for designation as a state sponsor of terrorism, and (2) Iran ceased the pursuit, acquisition, and development of, and verifiably dismantled its nuclear, biological, and chemical weapons as well as ballistic missiles and ballistic missile launch technology.²⁸ Sanctions applied pursuant to the Iran Sanction Act and Iran Freedom and Counter-proliferation Act may be removed by a substantially similar certification by the President to Congress.²⁹

Relevant Florida Law

State Board of Administration - Generally

The State Board of Administration (SBA or board) is established by the State Constitution.³⁰ The board derives its powers to oversee state funds from Art. XII, s. 9 of the State Constitution and ch. 215, F.S. The board serves as the state’s investment management organization, with authority

²⁶ 22 U.S.C. §8532 defines “investment activities in Iran” as (1) having an investment of \$20,000,000 or more in the energy sector of Iran, including in a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or (2) being a financial institution that extends \$20,000,000 or more in credit to another person, for 45 days or more, if that person will use the credit for investment in the energy sector of Iran.

²⁷ 22 U.S.C. §8532.

²⁸ See, 22 U.S.C. §8551 and 22 U.S.C. § 8785.

²⁹ 50 U.S.C. §1701 Note s. 8(a) and 22 U.S.C. §8809.

³⁰ Art. IV, s. 4(e) Fla. Const. (1968).

over 30 funds collectively valued at about \$228 billion as of June 30, 2022, including \$192.8 billion in the state's pension and investment plans for public employees, which accounts for 84 percent of assets under management.³¹ Other funds under management include the Florida Hurricane Catastrophe Fund, Department of the Lottery Fund, Florida Prepaid College and Florida College Investment Plan, FSU Research Foundation, Florida PRIME (surplus funds of local governments) and the Police and Firefighters' Premium Tax Trust Fund.³² The Governor, Chief Financial Officer, and Attorney General serve as the SBA's Board of Trustees (Trustees), and delegate operational authority to an executive director and chief investment officer, who oversee about 200 employees.³³ A nine-member Investment Advisory Council provides guidance on investment policy and strategy.³⁴

Specific Investment Responsibilities Relating to the Florida Retirement System Pension Plan

The State Board of Administration (SBA or board) is charged with investing the assets of the Florida Retirement System (both the Pension Plan and the Investment Plan). As fiduciaries, the Board and its Trustees must act in the best interests of the plan's participants and beneficiaries. Generally, when deciding whether to invest, the Board and the Trustees must make decisions based solely on pecuniary factors and may not subordinate the interests of participants and beneficiaries to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary interest.³⁵

In this instance, "pecuniary factor" means "a factor that the State Board of Administration prudently determines is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy. The term does not include the consideration of the furtherance of any social, political, or ideological interests."³⁶

The Legislature has enacted three statutory exceptions to the normal fiduciary standards relating to investments of the FRS. The exceptions apply to investments in (a) certain companies doing business in Cuba, Syria, and Venezuela,³⁷ (b) certain companies doing business in Sudan or Iran,³⁸ and (c) certain companies that boycott Israel or engage in a boycott of Israel.³⁹ These statutory exceptions allow the Board and the Trustees to make decisions regarding investments in these "scrutinized companies" without regard to the pecuniary factors and nonpecuniary interests involved.

³¹ State Board of Administration, *Performance Report Month Ending June 30, 2022*, available at: <https://www.sbafla.com/fsb/Portals/FSB/Content/Trustees/2022/June%202022%20Monthly%20Trustee%20Report.pdf?ver=2022-08-24-133206-397> (last visited Oct. 30, 2023).

³² A full list of SBA-managed investment funds is available at <https://www.sbafla.com/fsb/FundsWeManage.aspx> (last visited Oct. 30, 2023).

³³ Section 215.44, F.S.; Summary Overview of the State Board of Administration of Florida, *supra* footnote 1.

³⁴ Section 215.444(2), F.S.

³⁵ Section 214.47(10)(b), F.S.

³⁶ Section 215.47(10)(a), F.S.

³⁷ Section 215.471, F.S.

³⁸ Section 215.473, F.S.

³⁹ Section 215.4725, F.S.

Protecting Florida Investments Act

In 2007, the Legislature enacted the Protecting Florida's Investments Act (PFIA).⁴⁰ The PFIA requires the SBA, acting on behalf of the Florida Retirement System Trust Fund (FRSTF), to assemble and publish a list of "scrutinized companies" that have prohibited business operations in Sudan and Iran. Once placed on either list of scrutinized companies, the SBA and its investment managers are prohibited from acquiring those companies' securities⁴¹ and are required to divest those securities if the companies do not cease the prohibited activities or take certain compensating actions.⁴² The definition of "company" for purposes of the PFIA includes all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations.⁴³

The term "public fund" is defined as "all assets of the FRS held by the SBA in its capacity as a fiduciary pursuant to chapter 121."⁴⁴ This means those assets of the Florida Retirement System - both the pension plan as well as the investment plan.

To be designated a "scrutinized company" related to business operations in Iran, the company must have business operations that involve contracts with, or provide supplies or services to, the Iranian government or a companies in which the Iranian government has an equity share, a consortium involving the Iranian government, or a project commissioned by the government; and either:

- More than 10 percent of the company's total revenues or assets are linked to Iran and involve oil-related activities or mineral-extraction activities, and the company has failed to take substantial action; or
- The company has, with actual knowledge, on or after August 5, 1996, made an investment of \$20 million or more, or any combination of investments of at least \$10 million each, which in the aggregate equals or exceeds \$20 million in any 12-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran.⁴⁵

The Board must make its best efforts to identify all scrutinized companies in which the FRS has direct or indirect holdings.⁴⁶ To this end, the Board has contracted with "external research" providers. After these providers have identified the potential companies meeting the definition of scrutinized company, the Board's staff review the providers' assessments and, using other publicly available information, make determinations as to whether a company has engaged in scrutinized business operations and as to whether those operations have ceased.

From this information and assessments, the Board will begin to interact with the identified companies. If the company only has inactive business operations, the Board must send a written notice informing the company of this law and encourage the company to continue to refrain from

⁴⁰ Chapter 2007-88, Laws of Florida, codified as s. 215.473, F.S.

⁴¹ Section 215.473(3)(c), F.S.

⁴² Section 215.473(3)(b), F.S.

⁴³ Section 215.473(1)(d), F.S.

⁴⁴ Section 215.473(1)(s), F.S.

⁴⁵ Section 215.473(1)(v), F.S.

⁴⁶ Section 215.473(2)(a), F.S.

initiating active business operations.⁴⁷ For a company identified which has active business operations, the Board must send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the FRS. The company has the opportunity to clarify its activities and cease scrutinized business operations or convert such operations to inactive business operations within 90 days in order to avoid qualifying for divestment.⁴⁸ If the company ceases scrutinized business operations within 90 days after the notice, the company will be removed from the “scrutinized companies” list, and the provisions of the PFIA cease to apply to the company. If the company converts to inactive business operations, portions of the PFIA cease to apply.⁴⁹

If, after 90 days following the Board’s initial engagement with a company, the company continues to have scrutinized business operations, the board must divest all publicly traded securities of the company, unless the federal government affirmatively declares the company to be excluded from federal sanctions. The divestment may take no longer than 12 months from the company’s most recent appearance on the scrutinized companies lists.⁵⁰ The Board is prohibited from acquiring, on behalf of the FRS, any securities of companies on the scrutinized companies lists.⁵¹

Divestment does not apply to indirect holdings in actively managed commingled investment funds—i.e., where the SBA is not the sole investor in the fund. Private equity funds are considered to be actively managed.

Relevant Sudan or Iran portions of the PFIA are discontinued if the Congress or President of the United States passes legislation, executive order, or other written certification that:

- Darfur genocide has been halted for at least 12 months;⁵²
- Sanctions imposed against the Government of Sudan are revoked;⁵³
- Government of Sudan honors its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons;⁵⁴
- Government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;⁵⁵
- Sanctions imposed against the government of Iran are revoked;⁵⁶ or
- Mandatory divestment of the type provided for by the PFIA interferes with the conduct of U.S. foreign policy (however, this provision applies only to divestment from Sudan).⁵⁷

⁴⁷ Section 215.473(3)(a)2., F.S.

⁴⁸ Section 215.473(3)(a)3., F.S.

⁴⁹ Section 215.473(3)(a)4., F.S.

⁵⁰ Section 215.473(3)(b)1., F.S.

⁵¹ Section 215.473(3)(c), F.S.

⁵² Section 215.473(5)(a)1., F.S.

⁵³ Section 215.473(5)(a)2., F.S.

⁵⁴ Section 215.473(5)(a)3., F.S.

⁵⁵ Section 215.473(5)(b)1., F.S.

⁵⁶ Section 215.473(5)(b)2., F.S.

⁵⁷ Section 215.473(5)(a)4., F.S.

The board's actions taken in compliance with this act must be adopted and incorporated into the FRSTF investment policy statement as provided in s. 215.475, F.S. Changes to the IPS are reviewed by the Investment Advisory Council (IAC) and approved by the Trustees.⁵⁸

Cessation of divestment and/or reinvestment into previously divested companies may occur if the value of all FRSTF assets under management decreases by 50 basis points (0.5 percent) or more as a result of divestment.⁵⁹ If cessation of divestment is triggered, the SBA is required to provide a written report to each member of the Board of Trustees, the President of the Senate, and the Speaker of the House of Representatives prior to initial reinvestment.⁶⁰ Such condition is required to be updated semiannually.⁶¹

Procurement by Governmental Entities

Chapter 287, F.S., regulates state agency⁶² procurement of personal property and services.⁶³ Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposals," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.⁶⁴

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.⁶⁵ However, specified contractual services and commodities are not subject to competitive-solicitation requirements.⁶⁶

⁵⁸ Section 215.473(6), F.S.

⁵⁹ Section 215.473(7), F.S.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

⁶³ Generally, local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

⁶⁴ See ss. 287.012(6) and 287.057, F.S.

⁶⁵ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

⁶⁶ See s. 287.057(3)(e), F.S.

Chapter 287, F.S., establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the Department of Management Services (DMS), a water management district, or state agencies.⁶⁷

The DMS is statutorily designated as the central executive agency procurement authority and its responsibilities include: overseeing agency implementation of the ch. 287, F.S., competitive procurement process;⁶⁸ creating uniform agency procurement rules;⁶⁹ implementing the online procurement program;⁷⁰ and establishing state term contracts.⁷¹ The agency procurement process is partly decentralized in that an agency, except in the case of state term contracts, may procure goods and services itself in accordance with requirements set forth in statute and rule, rather than placing orders through the DMS.

Prohibition against Contracting with Scrutinized Companies and Companies Engaged in Business Operations in Cuba or Syria

Section 287.135(2), F.S., prohibits a company on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations in Cuba⁷² or Syria from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of \$1 million or more. “Local governmental entity,” for the purposes of s. 287.135, F.S., means a county, municipality, special district, or other political subdivision of the state.

Section 287.135(3)(a)4., F.S., requires any contract with an agency or local governmental entity for goods or services of \$1 million or more entered into or renewed on or after July 1, 2018, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or have engaged in business operations in Cuba or Syria.

Section 287.135(4)(a)1., F.S., allows an agency or local governmental entity to make a case-by-case exception to the prohibition for a company on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List if:

⁶⁷ See ss. 287.042(2)(c) and 120.57(3), F.S.

⁶⁸ Sections 287.032 and 287.042, F.S.

⁶⁹ Sections 287.032(2) and 287.042(3), (4), and (12), F.S.

⁷⁰ Section 287.057(22), F.S.

⁷¹ Sections 287.042(2) and 287.056, F.S.

⁷² See *Odebrecht Const., Inc. v. Secretary, Fla. Dep't of Transp.*, 715 F.3d 1268 (11th Cir. 2013). The Eleventh Circuit Court of Appeals affirmed an injunction against enforcement of the “Cuba Amendment,” a 2012 Florida law (s. 287.135, F.S.) that banned companies with subsidiaries doing business with Cuba, from bidding on state or local contracts in Florida. The Court found that the Cuba Amendment was preempted by extensive federal statutory and administrative sanctions and would undermine the President’s discretionary authority concerning federal policy with Cuba.

- The scrutinized business operations⁷³ were made before July 1, 2011;
- The scrutinized business operations have not been expanded or renewed after July 1, 2011;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company;
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations; and
- One of the following occurs:
 - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

An agency or local governmental entity must require a company that submits a bid or proposal for, or that otherwise proposes to enter into or renew, a contract with the agency or local governmental entity for goods or services of \$1 million or more to certify, at the time a bid or proposal is submitted or before a contract is executed or renewed, that the company is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.^{74,75}

If an agency or local governmental entity determines that a company has submitted a false certification, it shall provide the company with written notice, and the company will have 90 days to respond in writing to such determination.⁷⁶ If the company fails to demonstrate that the determination of false certification was made in error, then the awarding body must bring a civil action against the company.⁷⁷ If a civil action is brought and the court determines that the company submitted a false certification, the company must pay all reasonable attorney's fees and costs (including costs for investigations that led to the finding of false certification).⁷⁸ Also, a civil penalty equal to the greater of \$2 million or twice the amount of the contract for which the false certification was submitted must be imposed.⁷⁹ The company is ineligible to bid on any contract with an agency or local governmental entity for 3 years after the date the agency or local governmental entity determined that the company submitted a false certification.⁸⁰ A civil action

⁷³ Section 215.473(1)(t), F.S., defines "scrutinized business operations" to mean business operations that result in a company becoming a scrutinized company.

⁷⁴ Section 287.135(5), F.S.

⁷⁵ Similar requirements apply regarding certifications as to whether a company is on the Scrutinized Companies with Activities in Sudan List, whether the company has business operations in Cuban or Syria, and whether the company participates in boycotts of Israel.

⁷⁶ Section 287.135(5)(a), F.S.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Section 287.135(5)(a)1., F.S.

⁸⁰ Section 287.135(5)(a)2., F.S.

to collect the penalties must commence within 3 years after the date the false certification is made.⁸¹

Section 287.135(6), F.S., specifies that only the awarding body may cause a civil action to be brought, and that the section does not create or authorize a private right of action or enforcement of the provided penalties. An unsuccessful bidder, or any other person other than the awarding body, may not protest the award or contract renewal on the basis of a false certification.

Section 287.135(8), F.S., provides that this provision becomes inoperative on the date that federal law ceases to authorize the state to adopt and enforce the contracting prohibitions of the type provided for in this section.

Florida Insurance Code

Section 624.449, F.S., requires that a domestic insurer⁸² annually provide to the Office of Insurance Regulation a list of all investments that the insurer has in the companies included on the Scrutinized Companies with Activities in Sudan List and Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. The list must include the name of the issuer of the stock, bond, security, and other evidence of indebtedness.

III. Effect of Proposed Changes:

Section 1 amends s. 215.473, F.S., to expand the applicability of the PFIA to include companies doing business with the government of Iran in the energy, petrochemical, financial, construction, manufacturing, textile, mining, metals, shipping, shipbuilding, or port sectors. A company may be designated a scrutinized company if the company:

- Has, on or after January 10, 2024, at least 10 percent of its revenues or assets linked to Iran and involved in this broader array of industry sectors, and fails to adopt, publicize, and implement a formal plan to cease the scrutinized business operations within 1 year and to refrain from new business operations; or
- Has, with actual knowledge, on or after January 10, 2024, an investment of \$20 million or more in these industry sectors in Iran.

If designated a scrutinized company, the SBA must divest its current FRS holdings related to the company, and the SBA is prohibited from initiating any new holdings using FRS assets.

This section also renames the current “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List” as the “Scrutinized Companies with Activities in Iran Terrorism Sectors List” Any company list on the current list as of November 6, 2023, is deemed to be on the new list until subsequently removed pursuant to the process provided in this section.

This section also changes the conditions that must be met, absent subsequent legislative action, to revoke the SBA’s duty and authority to assemble the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Specifically, this section requires *both* (rather than either)

⁸¹ Section 287.135(5)(b), F.S.

⁸² Section 624.06, F.S., defines “domestic insurer” as one formed under the laws of Florida.

the Congress and President of the United States to affirmatively and unambiguously state that the government of Iran has ceased to acquire weapons of mass destruction and support international terrorism; *and* (rather than “or”) requires the United States to revoke all sanctions imposed against the government of Iran.

This section defines the new industry sectors that are subjected to scrutiny under the PFIA.

Section 2 amends s. 287.135, F.S., to apply the current contractual restrictions and requirements on scrutinized companies to the new list of companies designated in the Scrutinized Companies with Activities in Iran Terrorism Sectors List.

Similar to current law, a company on the new Iran Terrorism Sectors List is ineligible to bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods and services of \$1 million or more if the company is on the new Iran Terrorism Sectors List.

Similar to current law, a company must certify that it is not on any of the lists of scrutinized companies before it submits any bids or enters into or renews a contract. Any contract with an agency or local governmental entity for goods and services of \$1 million or more entered into or renewed on or after July 1, 2018, must contain a provision that allows termination of the contract if the company submits a false certification regarding its inclusion on the “scrutinized companies” lists, including the new “Iran Terrorism Sectors List” or if the company is placed on the list.

Similar to current law, an agency or local governmental entity may allow a company on the new “Iran Terrorism Sectors List” to bid on, enter into, or renew a contract in two instances. The first instance requires each of the following:

- The scrutinized business operations were made before January 10, 2024;
- The scrutinized business operations have not been expanded or renewed on or after January 10, 2024;
- The agency or local governmental entity determines that it is in the best interests of the state or local community to contract with the company; and
- The company has adopted, has publicized, and is implementing a formal plan to cease the scrutinized business operation and to refrain from engaging in any new scrutinized business operations.

The second instance requires one of the following:

- The local governmental entity makes a public finding that, absent an exemption, the entity would be unable to obtain the goods and service for which the contract is offered;
- For a contract with an executive agency, the Governor makes a similar finding; or
- For a contract with an office of another state constitutional officer, the officer makes a similar finding.

Section 3 amends s. 624.449, F.S., to require a domestic insurer to provide to the Office of Insurance Regulation on an annual basis a list of investments the insurer has in companies included on the new “Scrutinized Companies with Activities in Iran Terrorism Sectors List”

Section 4 reenacts s. 215.47, F.S., to incorporate by reference the changes made in section 1 of this bill. This allows the Board to consider factors other than pecuniary factors when making decisions regarding investments in companies on the expanded list of “Scrutinized Companies with Activities in Iran Terrorism Sectors List.”

Section 5 provides that if any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid portion or application.

Section 6 provides that the act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The U.S. Constitution’s Supremacy Clause establishes that federal statutes, treaties, and the U.S. Constitution are “the supreme Law of the Land.”⁸³

Accordingly, federal law may preempt state action that thwarts federal law in three ways:

- By an express statement of its intent to occupy a field. Express preemption need not be total, however—it can preempt all state laws or only certain state laws.
- With “a framework of regulation so pervasive that Congress left no room for the States to supplement it or where the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.”⁸⁴

⁸³ U.S. CONST., Art. VI, cl. 2.

⁸⁴ *Arizona v. U.S.*, 567 U.S. 387, 399 (2012).

- Where state law conflicts, leaving an actor to choose whether to adhere to state or federal law.⁸⁵ The state law may also be subject to conflict preemption where it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”⁸⁶

The federal government’s authority to act in the realm of foreign affairs is vested by the U.S. Constitution.⁸⁷ State laws that intrude into this field of foreign affairs, even where not preempted by prior federal action, improperly impact foreign affairs and are therefore invalid.⁸⁸ Courts have generally held, however, that the state’s intrusion must have more than an “incidental effect” on foreign affairs in order to be considered an encroachment onto the federal government’s powers.⁸⁹

Article I, section 8, clause 3 of the U.S. Constitution grants Congress the power to “regulate commerce with foreign nations” Conversely, this provision serves as a limitation on states’ authority to encroach onto the realm of foreign commerce where such action creates a risk of conflicts with foreign governments or impedes the federal government’s ability to speak with one voice in regulating industry affairs with foreign states.⁹⁰ The “dormant foreign commerce power”⁹¹ voids state acts upon foreign commerce because of the Constitution’s overriding concern for national uniformity in foreign commerce—even in instances when Congress has not affirmatively acted.⁹² Courts also generally subject state action to a heightened scrutiny that assumes the supremacy of federal action in the realm of foreign relations.⁹³

If the state acts as a market participant, rather than market regulator, its acts may be permitted under the Commerce Clause—states have generally been found to act as a participant where they act in their proprietary capacity to spend or invest funds in a manner that comports with the economic or ideological sentiments of their citizens. A state’s acts may not have a substantial regulatory effect outside the particular market in which it participates. However, it is unclear whether the market participant exception applies to the Foreign Commerce Clause.⁹⁴

⁸⁵ *Crosby v. Nat’l. Foreign Trade Council*, 530 U.S. at 372 (2000).

⁸⁶ *Nat’l Foreign Trade Council, Inc. v. Giannoulis*, 523 F. Supp. 2d 731 (N.D. Ill. Feb. 23, 2007), quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

⁸⁷ See, e.g., U.S. CONST., Art. I, s. 8 (power to declare war, maintain a military, and regulate foreign commerce); U.S. CONST., Art. II, s. 2 (power to enter into treaties); U.S. CONST., Art. III, s. 2 (power to hear case involving foreign states and citizens).

⁸⁸ *Zschernig v. Miller*, 389 U.S. 429 (1968); *American Ins. Ass’n v. Garamendi*, 539 U.S. 396 (2003) (finding that the President’s powers in foreign policy were so great as to outweigh any need for a direct expression of preemption.)

⁸⁹ *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

⁹⁰ *Japan Line v. County of Los Angeles*, 441 U.S. 434, 446 (1979).

⁹¹ See generally, Stephen Mulligan, Congressional Research Service, *Constitutional Limits on States’ Power over Foreign Affairs*, 3-4 (Aug. 15, 2022), available at <https://crsreports.congress.gov/product/pdf/LSB/LSB10808> (last visited Nov. 1, 2023).

⁹² *United States v. Davila-Mendoza*, 972 F.3d 1264 (11th Cir. 2020).

⁹³ “The premise [...] is that the Commerce Clause analysis is identical, regardless of whether interstate or foreign commerce is involved. This premise [...] must be rejected. When construing Congress’ power to ‘regulate Commerce with foreign Nations,’ a more extensive constitutional inquiry is required.” *Japan Line* at 446.

⁹⁴ *National Foreign Trade Council v. Giannoulis*, 523 F.Supp.2d 731, 748 (N.D. Ill. Feb. 23, 2007).

A reviewing court may find that the divestment and contracting provisions implicate the aforementioned constitutional provisions.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The intended impact of this legislation is to reduce the state's investment of FRS assets in companies that are included on the new "Scrutinized Companies with Activities in Iran Terrorism Sectors List." In addition, if a company is on the list, that company will be negatively impacted by the restrictions on contracting with agencies and local governmental entities.

C. Government Sector Impact:

The SBA may be required to divest of certain holdings in companies on the new "Scrutinized Companies with Activities in Iran Terrorism Sectors List." If this divestment activity results in lost investment income or additional administrative costs associated with the divestment and replacement of the divested funds, these costs will be absorbed by the FRS.

Agencies and local governmental entities may have to procure goods and services more quickly than anticipated if a company currently under contract with the agency or local governmental entity is designated a "scrutinized company" on the new "Scrutinized Companies with Activities in Iran Terrorism Sectors List." If a new procurement is necessary, the affected agency or entity will incur additional costs, but the overall impact is indeterminate. However, the company and the affected agency may take steps to allow the otherwise scrutinized company to bid or contract with the affected agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill amends s. 215.473, F.S., and makes conforming reenactments or amendments in ss. 215.47, 287.135, and 624.449, F.S., to make the broader definition of "scrutinized company" in Iran to apply in these provisions. However, the bill intentionally does not reenact, amend, or in any way affect ss. 175.071 or 185.06, F.S., relating to local firefighter pensions and local police pensions. A cross-reference to a specific statute incorporates the language of the referenced statute as it existed at the time the reference was enacted, unaffected by any subsequent amendments to or repeal of the incorporated statute.⁹⁵ Therefore, ss. 175.071 and 185.06, F.S.,

⁹⁵ See, *Overstreet v. Blum*, 227 So.2d 197 (Fla. 1969); and *Jam v. International Finance Corporation*, 139 S.Ct 759, 769 (Feb. 2019).

will continue to operate with the narrower definition of “scrutinized company” according to s. 215.473, F.S., as those sections were last adopted in 2010.⁹⁶

VIII. Statutes Affected:

This bill substantially amends sections 215.473, 287.135, 624.449, and 215.47 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁹⁶ Sections 18-19, ch. 2010-5, Laws of Fla.