

1                   A bill to be entitled  
2           An act relating to economic sanctions related to Sudan;  
3           providing legislative findings; providing definitions;  
4           requiring the State Board of Administration to identify  
5           all companies doing certain types of business in or with  
6           Sudan in which public moneys are invested; requiring the  
7           board to create and maintain a Scrutinized Company List  
8           which names all such companies; requiring the board to  
9           periodically contact all scrutinized companies and  
10          encourage them to refrain from engaging in certain types  
11          of business in or with Sudan; requiring the board to  
12          inform scrutinized companies of their status as a  
13          scrutinized company and to ask for clarification as to the  
14          nature of each company's business activities; providing  
15          that a company may be removed from the list under certain  
16          conditions; providing for reintroduction of a company onto  
17          the list; requiring the board to divest of all publicly  
18          traded securities of a scrutinized company under certain  
19          conditions; providing exceptions to the divestment  
20          requirement; prohibiting the board from acquiring  
21          securities of scrutinized companies that have active  
22          business operations; providing exceptions to the  
23          investment prohibition; providing an additional exception  
24          from the divestment requirement and the investment  
25          prohibition to certain indirect holdings in actively  
26          managed investment funds; requiring the board to request  
27          that the managers of such investment funds consider  
28          removing scrutinized companies from the fund or create a

HB 1431

2007

29 similar fund that excludes such companies; requiring the  
30 board to file a report with the Governor, the Legislature,  
31 and Attorney General within a specified period after  
32 creation of the Scrutinized Company List; requiring the  
33 annual filing of an updated report; requiring that all  
34 such reports be made available to the public; requiring  
35 that the report include certain information; providing for  
36 the expiration of the act; exempting the board from  
37 certain statutory or common law obligations; authorizing  
38 the board to cease divesting or to reinvest in certain  
39 scrutinized companies if the value for all assets under  
40 management by the board becomes equal to or less than a  
41 specified amount; requiring the board to provide a written  
42 report to the Governor, the Legislature, and Attorney  
43 General before such reinvestment; requiring that the  
44 report contain certain information; requiring semiannual  
45 updates to such reports when applicable; requiring the  
46 Attorney General to enforce the divestment requirements  
47 and investment prohibitions; authorizing the Attorney  
48 General to bring enforcement actions in court through any  
49 lawful designee; providing for severability; providing an  
50 effective date.

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

53  
54 Section 1. (1) LEGISLATIVE FINDINGS.--

55 (a) On July 23, 2004, the United States Congress declared  
56 that "the atrocities unfolding in Darfur, Sudan, are genocide."

HB 1431

2007

57 (b) On September 9, 2004, Secretary of State Colin L.  
58 Powell told the United States Senate Foreign Relations Committee  
59 that "genocide has occurred and may still be occurring in  
60 Darfur" and "the Government of Sudan and the Janjaweed bear  
61 responsibility."

62 (c) On September 21, 2004, addressing the United Nations  
63 General Assembly, President George W. Bush affirmed the  
64 Secretary of State's finding and stated, "At this hour, the  
65 world is witnessing terrible suffering and horrible crimes in  
66 the Darfur region of Sudan, crimes my government has concluded  
67 are genocide."

68 (d) On December 7, 2004, the United States Congress noted  
69 that the genocidal policy in Darfur has led to reports of  
70 "systematic rape of thousands of women and girls, the abduction  
71 of women and children, and the destruction of hundreds of  
72 ethnically African villages, including the poisoning of their  
73 wells and the plunder of their crops and cattle upon which the  
74 people of such villages sustain themselves."

75 (e) Also on December 7, 2004, Congress found that "the  
76 Government of Sudan has restricted access by humanitarian and  
77 human rights workers to the Darfur area through intimidation by  
78 military and security forces, and through bureaucratic and  
79 administrative obstruction, in an attempt to inflict the most  
80 devastating harm on those individuals displaced from their  
81 villages and homes without any means of sustenance or shelter."

82 (f) On September 25, 2006, Congress reaffirmed that "the  
83 genocide unfolding in the Darfur region of Sudan is  
84 characterized by acts of terrorism and atrocities directed

HB 1431

2007

85 against civilians, including mass murder, rape, and sexual  
86 violence committed by the Janjaweed and associated militias with  
87 the complicity and support of the National Congress Party-led  
88 faction of the Government of Sudan."

89 (g) On September 26, 2006, the United States House of  
90 Representatives stated that "an estimated 300,000 to 400,000  
91 people have been killed by the Government of Sudan and its  
92 Janjaweed allies since the crisis began in 2003, more than  
93 2,000,000 people have been displaced from their homes, and more  
94 than 250,000 people from Darfur remain in refugee camps in  
95 Chad."

96 (h) The Darfur crisis represents the first time the United  
97 States Government has labeled ongoing atrocities as genocide.

98 (i) The Federal Government has imposed sanctions against  
99 the Government of Sudan since 1997. These sanctions are  
100 monitored through the United States Treasury Department's Office  
101 of Foreign Assets Control (OFAC).

102 (j) According to a former chair of the United States  
103 Securities and Exchange Commission, "the fact that a foreign  
104 company is doing material business with a country, government,  
105 or entity on OFAC's sanctions list is, in the SEC staff's view,  
106 substantially likely to be significant to a reasonable  
107 investor's decision about whether to invest in that company."

108 (k) Since 1993, the United States Secretary of State has  
109 determined that Sudan is a country whose government has  
110 repeatedly provided support for acts of international terrorism,  
111 and, as a result, the United States has restricted assistance,  
112 defense exports, defense sales, financial transactions, and

HB 1431

2007

113 various other transactions with the Government of Sudan.

114 (l) A 2006 report by United States House of  
115 Representatives states that "a company's association with  
116 sponsors of terrorism and human rights abuses, no matter how  
117 large or small, can have a materially adverse result on a public  
118 company's operations, financial condition, earnings, and stock  
119 prices, all of which can negatively affect the value of an  
120 investment."

121 (m) In response to the financial risk posed by investments  
122 in companies doing business with a state that sponsors  
123 terrorists, the Securities and Exchange Commission established  
124 its Office of Global Security Risk to provide for enhanced  
125 disclosure of material information regarding such companies.

126 (n) The current Sudan divestment movement encompasses  
127 nearly 100 universities, municipalities, states, and private  
128 pension plans.

129 (o) Companies facing such widespread divestment present  
130 further material risk to remaining investors.

131 (p) It is a fundamental responsibility of the State of  
132 Florida to decide where, how, and by whom financial resources in  
133 its control should be invested, taking into account numerous  
134 pertinent factors.

135 (q) It is the prerogative and desire of the State of  
136 Florida with respect to investment resources in its control and  
137 to the extent reasonable, with due consideration for return on  
138 investment on behalf of the state and its investment  
139 beneficiaries, not to participate in an ownership or capital-  
140 providing capacity with entities that provide significant

HB 1431

2007

141 practical support for genocide, including certain non-United  
142 States companies presently doing business in Sudan.

143 (r) The Legislature finds that this act should remain in  
144 effect only insofar as it continues to be consistent with and  
145 does not unduly interfere with the foreign policy of the United  
146 States as determined by the Federal Government.

147 (s) The Legislature finds that mandatory divestment of  
148 public funds from certain companies is a measure that should be  
149 employed sparingly and judiciously. A Congressional and  
150 Presidential declaration of genocide satisfies this high  
151 threshold.

152 (2) DEFINITIONS.--As used in this act, the term:

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

155 (b) "Business operations" means engaging in commerce in  
156 any form in Sudan, including, but not limited to, acquiring,  
157 developing, maintaining, owning, selling, possessing, leasing,  
158 or operating equipment, facilities, personnel, products,  
159 services, personal property, real property, or any other  
160 apparatus of business or commerce.

161 (c) "Company" means any sole proprietorship, organization,  
162 association, corporation, partnership, joint venture, limited  
163 partnership, limited liability partnership, limited liability  
164 company, or other entity or business association, including all  
165 wholly owned subsidiaries, majority-owned subsidiaries, parent  
166 companies, or affiliates of such entities or business  
167 associations, which exists for the purpose of making profit.

168 (d) "Complicit" means taking actions during any preceding

HB 1431

2007

169 20-month period which have directly supported or promoted the  
170 genocidal campaign in Darfur, including, but not limited to,  
171 preventing Darfur's victimized population from communicating  
172 with each other, encouraging Sudanese citizens to speak out  
173 against an internationally approved security force for Darfur,  
174 actively working to deny, cover up, or alter the record on human  
175 rights abuses in Darfur, or other similar actions.

176 (e) "Direct holdings" in a company means all securities of  
177 that company which are held directly by the Public Fund or in an  
178 account or fund in which the Public Fund owns all shares or  
179 interests.

180 (f) "Government of Sudan" means the government in  
181 Khartoum, Sudan, which is led by the National Congress Party,  
182 formerly known as the National Islamic Front, or any successor  
183 government formed on or after October 13, 2006, including the  
184 coalition National Unity Government agreed upon in the  
185 Comprehensive Peace Agreement for Sudan, and does not include  
186 the regional government of southern Sudan.

187 (g) "Inactive business operations" means the mere  
188 continued holding or renewal of rights to property previously  
189 operated for the purpose of generating revenues but not  
190 presently deployed for such purpose.

191 (h) "Indirect holdings" in a company means all securities  
192 of that company which are held in an account or fund, such as a  
193 mutual fund, managed by one or more persons not employed by the  
194 Public Fund, in which the Public Fund owns shares or interests  
195 together with other investors not subject to the provisions of  
196 this act.

HB 1431

2007

197        (i) "Marginalized populations of Sudan" include, but are  
198 not limited to, the portion of the population in the Darfur  
199 region who have been genocidally victimized; the portion of the  
200 population of southern Sudan victimized by Sudan's north-south  
201 civil war; the Beja, Rashidiya, and other similarly underserved  
202 groups of eastern Sudan; the Nubian and other similarly  
203 underserved groups in Sudan's Abyei, Southern Blue Nile, and  
204 Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other  
205 similarly underserved groups of northern Sudan.

206        (j) "Military equipment" means weapons, arms, military  
207 supplies, and equipment that readily may be used for military  
208 purposes, including, but not limited to, radar systems,  
209 military-grade transport vehicles, or supplies or services sold  
210 or provided directly or indirectly to any force actively  
211 participating in armed conflict in Sudan.

212        (k) "Mineral-extraction activities" include exploring,  
213 extracting, processing, transporting, or wholesale selling or  
214 trading of elemental minerals or associated metal alloys or  
215 oxides (ore), including gold, copper, chromium, chromite,  
216 diamonds, iron, iron ore, silver, tungsten, uranium, and zinc,  
217 as well as facilitating such activities, including, providing  
218 supplies or services in support of such activities.

219        (l) "Oil-related activities" include, but are not limited  
220 to, owning rights to oil blocks; exporting, extracting,  
221 producing, refining, processing, exploring for, transporting,  
222 selling, or trading of oil; constructing, maintaining, or  
223 operating a pipeline, refinery, or other oil-field  
224 infrastructure; and facilitating such activities, including

225 providing supplies or services in support of such activities,  
 226 except that the mere retail sale of gasoline and related  
 227 consumer products is not considered oil-related activities.

228 (m) "Power-production activities" means any business  
 229 operation that involves a project commissioned by the National  
 230 Electricity Corporation (NEC) of Sudan or other similar entity  
 231 of the Government of Sudan whose purpose is to facilitate power  
 232 generation and delivery, including, but not limited to,  
 233 establishing power-generating plants or hydroelectric dams,  
 234 selling or installing components for the project, providing  
 235 service contracts related to the installation or maintenance of  
 236 the project, as well as facilitating such activities, including  
 237 providing supplies or services in support of such activities.

238 (n) "Public Fund" means all funds, assets, trustees, and  
 239 other designates under the State Board of Administration.

240 (o) "Scrutinized company" means any company that meets any  
 241 of the following criteria:

242 1. The company has business operations that involve  
 243 contracts with or provision of supplies or services to the  
 244 Government of Sudan, companies in which the Government of Sudan  
 245 has any direct or indirect equity share, consortiums or projects  
 246 commissioned by the Government of Sudan, or companies involved  
 247 in consortiums or projects commissioned by the Government of  
 248 Sudan and:

249 a. More than 10 percent of the company's revenues or  
 250 assets linked to Sudan involve oil-related activities or  
 251 mineral-extraction activities; less than 75 percent of the  
 252 company's revenues or assets linked to Sudan involve contracts

HB 1431

2007

253 with or provision of oil-related or mineral-extracting products  
254 or services to the regional government of southern Sudan or a  
255 project or consortium created exclusively by that regional  
256 government; and the company has failed to take substantial  
257 action; or

258 b. More than 10 percent of the company's revenues or  
259 assets linked to Sudan involve power-production activities; less  
260 than 75 percent of the company's power-production activities  
261 include projects whose intent is to provide power or electricity  
262 to the marginalized populations of Sudan; and the company has  
263 failed to take substantial action.

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

265 3. The company supplies military equipment within Sudan,  
266 unless it clearly shows that the military equipment cannot be  
267 used to facilitate offensive military actions in Sudan or the  
268 company implements rigorous and verifiable safeguards to prevent  
269 use of that equipment by forces actively participating in armed  
270 conflict. Examples of safeguards include post-sale tracking of  
271 such equipment by the company, certification from a reputable  
272 and objective third party that such equipment is not being used  
273 by a party participating in armed conflict in Sudan, or sale of  
274 such equipment solely to the regional government of southern  
275 Sudan or any internationally recognized peacekeeping force or  
276 humanitarian organization.

277  
278 Notwithstanding the provisions of this act, a social-development  
279 company that is not complicit in the Darfur genocide is not  
280 considered a scrutinized company.

281 (p) "Social-development company" means a company whose  
 282 primary purpose in Sudan is to provide humanitarian goods or  
 283 services, including medicine or medical equipment; agricultural  
 284 supplies or infrastructure, educational opportunities;  
 285 journalism-related activities; information or information  
 286 materials; spiritual-related activities; services of a purely  
 287 clerical or reporting nature; food, clothing, or general  
 288 consumer goods that are unrelated to oil-related activities;  
 289 mineral-extraction activities; or power-production activities.

290 (q) "Substantial action" means adopting, publicizing, and  
 291 implementing a formal plan to cease scrutinized business  
 292 operations within 1 year and to refrain from any such new  
 293 business operations; undertaking significant humanitarian  
 294 efforts on behalf of one or more marginalized populations of  
 295 Sudan; or, through engagement with the Government of Sudan,  
 296 materially improving conditions for the genocidally victimized  
 297 population in Darfur.

298 (3) IDENTIFICATION OF COMPANIES.--

299 (a) Within 90 days after the effective date of this act,  
 300 the Public Fund shall make its best efforts to identify all  
 301 scrutinized companies in which the Public Fund has direct or  
 302 indirect holdings or could possibly have such holdings in the  
 303 future. Such efforts include:

- 304 1. Reviewing and relying, as appropriate in the Public  
 305 Fund's judgment, on publicly available information regarding  
 306 companies having business operations in Sudan, including  
 307 information provided by nonprofit organizations, research firms,  
 308 international organizations, and government entities;

HB 1431

2007

309        2. Contacting asset managers contracted by the Public Fund  
310 which invest in companies having business operations in Sudan;  
311 or

312        3. Contacting other institutional investors that have  
313 divested from or engaged with companies that have business  
314 operations in Sudan.

315        (b) By the first meeting of the Public Fund following the  
316 90-day period described in paragraph (a), the Public Fund shall  
317 assemble all scrutinized companies identified into a  
318 "Scrutinized Companies List."

319        (c) The Public Fund shall update the Scrutinized Companies  
320 List quarterly based on evolving information from, among other  
321 sources, those listed in paragraph (a).

322        (4) REQUIRED ACTIONS.--The Public Fund shall adhere to the  
323 following procedure for companies on the Scrutinized Companies  
324 List:

325        (a) Engagement.--

326        1. The Public Fund shall immediately determine the  
327 companies on the Scrutinized Companies List in which the Public  
328 Fund owns direct or indirect holdings.

329        2. For each company identified in this paragraph which has  
330 only inactive business operations, the Public Fund shall send a  
331 written notice informing the company of this act and encouraging  
332 it to continue to refrain from initiating active business  
333 operations in Sudan until it is able to avoid scrutinized  
334 business operations. The Public Fund shall continue such  
335 correspondence semiannually.

336        3. For each company newly identified under this paragraph

HB 1431

2007

337 which has active business operations, the Public Fund shall send  
338 a written notice informing the company of its scrutinized  
339 company status and that it may become subject to divestment by  
340 the Public Fund. The notice must inform the company of the  
341 opportunity to clarify its Sudan-related activities and  
342 encourage the company, within 90 days, to cease its scrutinized  
343 business operations or convert such operations to inactive  
344 business operations in order to avoid qualifying for divestment  
345 by the Public Fund.

346 4. If, within 90 days after the Public Fund's first  
347 engagement with a company pursuant to this paragraph, that  
348 company ceases scrutinized business operations, the company  
349 shall be removed from the Scrutinized Companies List and the  
350 provisions of this act shall cease to apply to it unless it  
351 resumes scrutinized business operations. If, within 90 days  
352 after the Public Fund's first engagement, the company converts  
353 its scrutinized active business operations to inactive business  
354 operations, the company is subject to all provisions relating  
355 thereto.

356 (b) Divestment.--

357 1. If, after 90 days following the Public Fund's first  
358 engagement with a company pursuant to paragraph (a), the company  
359 continues to have scrutinized active business operations, and  
360 only while such company continues to have scrutinized active  
361 business operations, the Public Fund shall sell, redeem, divest,  
362 or withdraw all publicly traded securities of the company,  
363 except as provided in paragraph (d), according to the following  
364 schedule:

HB 1431

2007

365 a. At least 50 percent of such assets shall be removed  
366 from the Public Fund's assets under management by 9 months after  
367 the company's most recent appearance on the Scrutinized  
368 Companies List.

369 b. One hundred percent of such assets shall be removed  
370 from the Public Fund's assets under management within 15 months  
371 after the company's most recent appearance on the Scrutinized  
372 Companies List.

373 2. If a company that ceased scrutinized active business  
374 operations following engagement pursuant to paragraph (a)  
375 resumes such operations, this paragraph immediately applies, and  
376 the Public Fund shall send a written notice to the company. The  
377 company shall also be immediately reintroduced onto the  
378 Scrutinized Companies List.

379 (c) Prohibition.--The Public Fund may not acquire  
380 securities of companies on the Scrutinized Companies List which  
381 have active business operations, except as provided in paragraph  
382 (d).

383 (d) Exemption.--A company that the United States  
384 Government affirmatively declares to be excluded from its  
385 present or any future federal sanctions regime relating to Sudan  
386 is not subject to divestment or the investment prohibition  
387 pursuant to paragraphs (b) and (c).

388 (e) Excluded securities.--Notwithstanding the provisions  
389 of this act, paragraphs (b) and (c) do not apply to indirect  
390 holdings in actively managed investment funds. However, the  
391 Public Fund shall submit letters to the managers of such  
392 investment funds containing companies that have scrutinized

393 active business operations requesting that they consider  
 394 removing such companies from the fund or create a similar  
 395 actively managed fund having indirect holdings devoid of such  
 396 companies. If the manager creates a similar fund, the Public  
 397 Fund shall replace all applicable investments with investments  
 398 in the similar fund in an expedited timeframe consistent with  
 399 prudent investing standards. For the purposes of this section, a  
 400 private equity fund is deemed to be an actively managed  
 401 investment fund.

402 (5) REPORTING.--

403 (a) The Public Fund shall file a report with the Governor,  
 404 the President of the Senate, the Speaker of the House of  
 405 Representatives, and the Attorney General that includes the  
 406 Scrutinized Companies List within 30 days after the list is  
 407 created. This report shall be made available to the public.

408 (b) Annually thereafter, the Public Fund shall file a  
 409 report, which shall be made available to the public, with the  
 410 Governor, the President of the Senate, the Speaker of the House  
 411 of Representatives, and the Attorney General and send a copy of  
 412 that report to the United States Presidential Special Envoy to  
 413 Sudan, or an appropriate designee or successor, which includes:

414 1. A summary of correspondence with companies engaged by  
 415 the Public Fund under subparagraphs (4) (a)2. and 3.;

416 2. All investments sold, redeemed, divested, or withdrawn  
 417 in compliance with paragraph (4) (b);

418 3. All prohibited investments under paragraph (4) (c); and

419 4. Any progress made under paragraph (4) (e).

420 (6) EXPIRATION.--This act expires upon the occurrence of

HB 1431

2007

421 any of the following:

422 (a) The Congress or President of the United States  
423 declares that the Darfur genocide has been halted for at least  
424 12 months;

425 (b) The United States revokes all sanctions imposed  
426 against the Government of Sudan;

427 (c) The Congress or President of the United States  
428 declares that the Government of Sudan has honored its  
429 commitments to cease attacks on civilians, demobilize and  
430 demilitarize the Janjaweed and associated militias, grant free  
431 and unfettered access for deliveries of humanitarian assistance,  
432 and allow for the safe and voluntary return of refugees and  
433 internally displaced persons; or

434 (d) The Congress or President of the United States,  
435 through legislation or executive order, declares that mandatory  
436 divestment of the type provided for in this act interferes with  
437 the conduct of United States foreign policy.

438 (7) OTHER LEGAL OBLIGATIONS.--With respect to actions  
439 taken in compliance with this act, including all good faith  
440 determinations regarding companies as required by this act, the  
441 Public Fund is exempt from any conflicting statutory or common  
442 law obligations, including any such obligations with respect to  
443 choice of asset managers, investment funds, or investments for  
444 the Public Fund's securities portfolios.

445 (8) REINVESTMENT IN CERTAIN COMPANIES HAVING SCRUTINIZED  
446 ACTIVE BUSINESS OPERATIONS.--Notwithstanding any other provision  
447 of this act to the contrary, the Public Fund may cease divesting  
448 from certain scrutinized companies pursuant to paragraph (4) (b)

449 or reinvest in certain scrutinized companies from which it  
450 divested pursuant to paragraph (4) (b) if clear and convincing  
451 evidence shows that the value of all assets under management by  
452 the Public Fund becomes equal to or less than 99.50 percent, or  
453 50 basis points, of the hypothetical value of all assets under  
454 management by the Public Fund assuming no divestment for any  
455 company had occurred under paragraph (4) (b). Cessation of  
456 divestment, reinvestment, or any subsequent ongoing investment  
457 authorized by this act is limited to the minimum steps necessary  
458 to avoid the contingency set forth in this subsection. For any  
459 cessation of divestment, reinvestment, or subsequent ongoing  
460 investment authorized by this act, the Public Fund shall provide  
461 a written report to the Governor, the President of the Senate,  
462 the Speaker of the House of Representatives, and the Attorney  
463 General in advance of initial reinvestment, updated semiannually  
464 thereafter as applicable, setting forth the reasons and  
465 justification, supported by clear and convincing evidence, for  
466 its decisions to cease divestment, reinvest, or remain invested  
467 in companies having scrutinized active business operations. This  
468 act does not apply to reinvestment in companies on the grounds  
469 that they have ceased to have scrutinized active business  
470 operations.

471 (9) ENFORCEMENT.--The Attorney General shall enforce the  
472 provisions of this act and may bring any necessary actions in  
473 court through any lawful designee.

474 Section 2. If any provision of this act or its application  
475 to any person or circumstance is held invalid, the invalidity  
476 does not affect other provisions or applications of the act

HB 1431

2007

477 which can be given effect without the invalid provision or  
478 application, and to this end the provisions of this act are  
479 severable.

480       Section 3. This act shall take effect upon becoming a law.