

HB 811

2014

1 A bill to be entitled

2 An act relating to foreign investments; amending s.
3 215.47, F.S.; revising the percentage of investments
4 that the State Board of Administration may invest in
5 foreign securities; amending s. 215.473, F.S.;
6 revising and providing definitions with respect to
7 requirements that the board divest securities in which
8 public moneys are invested in certain companies doing
9 specified types of business in or with Sudan or Iran;
10 revising exclusions from the divestment requirements;
11 conforming cross-references; creating s. 624.449,
12 F.S.; providing legislative intent and definitions;
13 providing that certain assets shall be treated as
14 nonadmitted assets; requiring insurers to identify,
15 report, and divest certain assets within a specified
16 period; providing applicability; providing for
17 severability; providing an effective date.

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

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

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

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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27 may be invested as follows:

28 (20) Notwithstanding the provisions in subsection (5)
29 limiting such investments to 25 percent of any fund, the board
30 may invest no more than 50 ~~35~~ percent of any fund in corporate
31 obligations and securities of any kind of a foreign corporation
32 or a foreign commercial entity having its principal office
33 located in any country other than the United States or its
34 possessions or territories, not including United States dollar-
35 denominated securities listed and traded on a United States
36 exchange that are a part of the ordinary investment strategy of
37 the board.

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

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

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

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

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

52 (c) "Company" means any sole proprietorship, organization,

53 association, corporation, partnership, joint venture, limited
54 partnership, limited liability partnership, limited liability
55 company, or other entity or business association, ~~including all~~
56 ~~wholly owned subsidiaries, majority-owned subsidiaries, parent~~
57 ~~companies, or affiliates of such entities or business~~
58 ~~associations,~~ that exists for the purpose of making profit.

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

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

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

74 (g) "Government of South Sudan" means the Republic of
75 South Sudan, with its capital in Juba, South Sudan.

76 (h) ~~(g)~~ "Government of Sudan" means the Republic of the
77 Sudan with its capital ~~government~~ in Khartoum, Sudan, ~~that is~~
78 ~~led by the National Congress Party, formerly known as the~~

79 ~~National Islamic Front, or any successor government formed on or~~
 80 ~~after October 13, 2006, including the coalition National Unity~~
 81 ~~Government agreed upon in the Comprehensive Peace Agreement for~~
 82 ~~Sudan, and does not include the regional government of southern~~
 83 ~~Sudan.~~

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

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

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

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

104 (m)~~(l)~~ "Military equipment" means weapons, arms, military

105 supplies, and equipment that may readily be used for military
106 purposes, including, but not limited to, radar systems,
107 military-grade transport vehicles, or supplies or services sold
108 or provided directly or indirectly to any force actively
109 participating in armed conflict in Sudan.

110 (n)~~(m)~~ "Mineral-extraction activities" include the
111 exploring, extracting, processing, transporting, or wholesale
112 selling or trading of elemental minerals or associated metal
113 alloys or oxides (ore), including gold, copper, chromium,
114 chromite, diamonds, iron, iron ore, silver, tungsten, uranium,
115 and zinc, as well as facilitating such activities, including
116 providing supplies or services in support of such activities.

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

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

128 (q)~~(p)~~ "Power-production activities" means any business
129 operation that involves a project commissioned by the National
130 Electricity Corporation (NEC) of Sudan or other similar entity

131 of the government of Sudan whose purpose is to facilitate power
132 generation and delivery, including, but not limited to,
133 establishing power-generating plants or hydroelectric dams,
134 selling or installing components for the project, providing
135 service contracts related to the installation or maintenance of
136 the project, as well as facilitating such activities, including
137 providing supplies or services in support of such activities.

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

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

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

147 (u)~~(t)~~ "Scrutinized company" means any company that meets
148 any of the following criteria:

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

156 a. More than 10 percent of the company's revenues or

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

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

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

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

183 force or humanitarian organization.

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

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

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

202 (v) ~~(u)~~ "Social-development company" means a company whose
203 primary purpose in Sudan is to provide humanitarian goods or
204 services, including medicine or medical equipment; agricultural
205 supplies or infrastructure; educational opportunities;
206 journalism-related activities; information or information
207 materials; spiritual-related activities; services of a purely
208 clerical or reporting nature; food, clothing, or general

209 consumer goods that are unrelated to oil-related activities;
 210 mineral-extraction activities; or power-production activities.

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

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

227 (2) IDENTIFICATION OF COMPANIES.—

228 (a) Within 90 days after the effective date of this act,
 229 the public fund shall make its best efforts to identify all
 230 scrutinized companies in which the public fund has direct or
 231 indirect holdings or could possibly have such holdings in the
 232 future. Such efforts include:

233 1. Reviewing and relying, as appropriate in the public
 234 fund's judgment, on publicly available information regarding

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235 companies having business operations in Sudan, including
236 information provided by nonprofit organizations, research firms,
237 international organizations, and government entities;

238 2. Contacting asset managers contracted by the public fund
239 that invest in companies having business operations in Sudan; or

240 3. Contacting other institutional investors that have
241 divested from or engaged with companies that have business
242 operations in Sudan.

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

247 (b) By the first meeting of the public fund following the
248 90-day period described in paragraph (a), the public fund shall
249 assemble all scrutinized companies that fit criteria specified
250 in subparagraphs (1)(u)1., 2., and 3. ~~(1)(t)1., 2., and 3.~~ into
251 a "Scrutinized Companies with Activities in Sudan List" and
252 shall assemble all scrutinized companies that fit criteria
253 specified in subparagraph (1)(u)4. ~~(1)(t)4.~~ into a "Scrutinized
254 Companies with Activities in the Iran Petroleum Energy Sector
255 List."

256 (c) The public fund shall update and make publicly
257 available quarterly the Scrutinized Companies with Activities in
258 Sudan List and the Scrutinized Companies with Activities in the
259 Iran Petroleum Energy Sector List based on evolving information
260 from, among other sources, those listed in paragraph (a).

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

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

271 (e) Excluded securities.—

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

285 2. Notwithstanding the provisions of this act, paragraphs
 286 (b) and (c) do not apply to exchange-traded funds.

287 (5) EXPIRATION.—This act expires upon the occurrence of
 288 all of the following:

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

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

303 2. The United States revokes all sanctions imposed against
 304 the government of Sudan;

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

313 and voluntary return of refugees and internally displaced
 314 persons; or

315 4. The Congress or President of the United States
 316 affirmatively and unambiguously states, by means including, but
 317 not limited to, legislation, executive order, or written
 318 certification from the President to Congress, that mandatory
 319 divestment of the type provided for in this act interferes with
 320 the conduct of United States foreign policy.

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

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

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

337 3. The Congress or President of the United States
 338 affirmatively and unambiguously declares, by means including,

339 but not limited to, legislation, executive order, or written
340 certification from the President to Congress, that mandatory
341 divestment of the type provided for in this act interferes with
342 the conduct of United States foreign policy.

343 Section 3. Section 624.449, Florida Statutes, is created
344 to read:

345 624.449 Assets of insurers; foreign states sponsoring
346 terrorism.-

347 (1) The Legislature finds that:

348 (a) The federal Securities and Exchange Commission has
349 determined that business activities in foreign nations
350 sponsoring terrorism, such as Iran and Sudan, that are subject
351 to sanctions by the United States may materially harm the share
352 value of foreign companies. Shares in these foreign companies
353 may be held in the portfolio of insurance companies issuing
354 policies to consumers in this state.

355 (b) Publicly traded companies in the United States are
356 substantially restricted from doing business in or with foreign
357 nations that the United States Department of State has
358 identified as sponsoring terrorism.

359 (c) Identifying companies with business activities in
360 foreign nations that sponsor terrorism and ensuring that those
361 investments are financially sound is an important public policy
362 priority.

363 (d) It is the governments of Iran and Sudan, and not the
364 people of Iran or Sudan, that support terrorism and commit

365 egregious violations of human rights under which their own
366 citizens are required to live.

367 (2) As used in this section, the term:

368 (a) "Business operations" means maintaining, selling, or
369 leasing equipment, facilities, personnel, or any other apparatus
370 of business or commerce in Iran or Sudan, including the
371 ownership or possession of real or personal property located in
372 Iran or Sudan.

373 (b) "Company" means a sole proprietorship, organization,
374 association, corporation, partnership, venture, or other entity,
375 including its subsidiary or affiliate, that exists for
376 profitmaking purposes or to otherwise secure economic advantage.
377 The term includes a company owned or controlled, either directly
378 or indirectly, by the government of Iran or Sudan that is
379 established or organized under the laws of or has its principal
380 place of business in the Islamic Republic of Iran or the
381 Republic of the Sudan.

382 (c) "Government of Iran" has the same meaning as provided
383 in s. 215.473. The term includes an individual, company, or
384 public agency located in Iran that provides material or
385 financial support to the Islamic Republic of Iran.

386 (d) "Government of South Sudan" has the same meaning as
387 provided in s. 215.473.

388 (e) "Government of Sudan" has the same meaning as provided
389 in s. 215.473.

390 (f) "Invest" or "investment" means the purchase,

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391 ownership, or control of stock of a company, association, or
392 corporation; the capital stock of a mutual water company or
393 corporation; bonds issued by the government or a political
394 subdivision of Iran or Sudan; corporate bonds or other debt
395 instruments issued by a company; or the commitment of funds or
396 other assets to a company, including a loan or extension of
397 credit to that company.

398 (g) "Iran" means the Islamic Republic of Iran or a
399 territory under the administration or control of Iran.

400 (h) "South Sudan" means the Republic of South Sudan, with
401 its capital in Juba, South Sudan.

402 (i) "Sudan" means the Republic of the Sudan with its
403 capital in Khartoum, Sudan.

404 (3) (a) Investments by a domestic insurer included on the
405 lists of companies compiled by the State Board of Administration
406 pursuant to s. 215.473 shall be treated as nonadmitted assets.

407 (b) On or before June 30, 2014, and quarterly thereafter,
408 the insurer shall determine what investments it has in companies
409 included on the list.

410 (4) The insurer shall provide to the Office of Insurance
411 Regulation, on a quarterly basis, a list of investments that the
412 insurer has in companies included on the list described in
413 subsection (3), including, but not limited to, the issuer, by
414 name, of the stock, bond, security, and other evidence of
415 indebtedness.

416 (5) Within 36 months after a company's appearance on a

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417 list compiled pursuant to subsection (4), the insurer shall
418 sell, redeem, divest, or withdraw all of its investments in the
419 company.

420 (6) (a) This section ceases to apply with respect to
421 Iranian assets upon the occurrence of both of the following:

422 1. Iran is removed from the United States Department of
423 State's list of countries that have been determined to
424 repeatedly provide support for acts of international terrorism.

425 2. Pursuant to federal law, the President of the United
426 States determines and certifies to the United States Congress
427 that Iran has ceased its efforts to design, develop,
428 manufacture, or acquire a nuclear explosive device or related
429 materials and technology.

430 (b) This section ceases to apply with respect to Sudanese
431 assets if the government of Sudan is removed from the United
432 States Department of State's list of countries that have been
433 determined to repeatedly provide support for acts of
434 international terrorism.

435 Section 4. If any provision of this act or the application
436 thereof to any person or circumstance is held invalid, the
437 invalidity does not affect other provisions or applications of
438 the act which can be given effect without the invalid provision
439 or application, and to this end the provisions of this act are
440 declared severable.

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