

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

27 | scrutinized companies; prohibiting a state agency or
 28 | local governmental entity from contracting for goods
 29 | and services that exceed a specified amount if the
 30 | company has been placed on the Scrutinized Companies
 31 | that Boycott Israel List; requiring inclusion of a
 32 | contract provision that authorizes termination of a
 33 | contract under certain circumstances; providing
 34 | exceptions; requiring certification upon submission of
 35 | a bid or proposal for a contract, or before a company
 36 | enters into or renews a contract, with an agency or
 37 | governmental entity that the company is not on the
 38 | Scrutinized Companies that Boycott Israel List;
 39 | providing that certain contracting prohibitions become
 40 | inoperative if federal law ceases to authorize the
 41 | states to enforce certain contracting prohibitions;
 42 | providing effective dates.

43 |

44 | Be It Enacted by the Legislature of the State of Florida:

45 |

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

48 | 215.4725 Prohibited investments by the State Board of
 49 | Administration; companies that boycott Israel.-

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

51 | (a) "Boycott Israel" or "boycott of Israel" means refusing
 52 | to deal with, terminating business activities with, or taking

53 other actions that are intended to penalize, inflict economic
54 harm, or otherwise limit commercial relations with Israel or
55 persons or entities doing business in Israel or in Israeli-
56 controlled territories for reasons other than business,
57 investment, or commercial reasons. The term does not apply to
58 decisions made during the course of a company's ordinary
59 business or for other business, investment, or commercial
60 reasons. A statement by a company that it is participating in a
61 boycott of Israel, or that it has initiated a boycott in
62 response to a request for a boycott of Israel or in compliance
63 with, or in furtherance of, calls for a boycott of Israel, may
64 be considered by the State Board of Administration to be
65 evidence that a company is participating in a boycott of Israel.

66 (b) "Company" means a sole proprietorship, organization,
67 association, corporation, partnership, joint venture, limited
68 partnership, limited liability partnership, limited liability
69 company, or other entity or business association, including all
70 wholly owned subsidiaries, majority-owned subsidiaries, and
71 parent companies, that exists for the purpose of making profit.

72 (c) "Direct holdings" in a company means all securities of
73 that company that are held directly by the state board on behalf
74 of the public fund or in an account or fund in which the state
75 board, on behalf of the public fund, owns all shares or
76 interests.

77 (d) "Indirect holdings" in a company means all securities
78 of that company that are held in a commingled fund or other

79 collective investment, such as a mutual fund, in which the state
 80 board, on behalf of the public fund, owns shares or interests
 81 together with other investors not subject to this section or
 82 that are held in an index fund.

83 (e) "Public fund" means the System Trust Fund as defined
 84 in s. 121.021(36).

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

87 (g) "State board" means the State Board of Administration.

88 (h) "Trustees" means the Board of Trustees of the State
 89 Board of Administration.

90 (2) IDENTIFICATION OF COMPANIES.—

91 (a) By August 1, 2016, the state board shall make its best
 92 efforts to identify all scrutinized companies in which the state
 93 board, on behalf of the public fund, has direct or indirect
 94 holdings or could possibly have such holdings in the future.
 95 Such efforts include:

96 1. To the extent that the state board finds it
 97 appropriate, reviewing and relying on publicly available
 98 information regarding companies that boycott Israel, including
 99 information provided by nonprofit organizations, research firms,
 100 international organizations, and government entities.

101 2. Contacting asset managers contracted by the state
 102 board, on behalf of the public fund, for information regarding
 103 companies that boycott Israel.

104 3. Contacting other institutional investors that prohibit

105 such investments or that have engaged with companies that
106 boycott Israel.

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

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

115 (3) REQUIRED ACTIONS.—The state board shall adhere to the
116 following procedures for assembling companies on the Scrutinized
117 Companies that Boycott Israel List.

118 (a) Engagement.—

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

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

131 qualifying for investment prohibition.

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

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

142 (c) Excluded securities.—Notwithstanding this section,
143 paragraph (b) does not apply to:

144 1. Indirect holdings. However, the state board shall
145 submit letters to the managers of such investment funds
146 containing companies that boycott Israel requesting that they
147 consider removing such companies from the fund or create a
148 similar fund having indirect holdings devoid of such companies.
149 If the manager creates a similar fund, the state board, on
150 behalf of the public fund, shall replace all applicable
151 investments with investments in the similar fund in an expedited
152 timeframe consistent with prudent investing standards. For the
153 purposes of this section, an alternative investment, as the term
154 is defined in s. 215.4401, and securities that are not publicly
155 traded are deemed to be indirect holdings.

156 2. Exchange-traded funds.

157 (4) REPORTING.—

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

163 (b) At each quarterly meeting of the trustees thereafter,
164 the state board shall file a report, which shall be made
165 available to the public and to each member of the trustees, the
166 President of the Senate, and the Speaker of the House of
167 Representatives, which includes:

168 1. A summary of correspondence with companies engaged by
169 the state board under subparagraph (3) (a)2.

170 2. All prohibited investments under paragraph (3) (b).

171 3. Any progress made under paragraph (3) (c).

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

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

179 (6) INVESTMENT IN CERTAIN SCRUTINIZED COMPANIES.—

180 Notwithstanding any other provision of this section, the state
181 board, on behalf of the public fund, may invest in certain
182 scrutinized companies if clear and convincing evidence shows

183 that the value of all assets under management by the state
184 board, on behalf of the public fund, becomes equal to or less
185 than 99.5 percent, or 50 basis points, of the hypothetical value
186 of all assets under management by the state board, on behalf of
187 the public fund, assuming no investment prohibition for any
188 company had occurred under paragraph (3) (b). Cessation of the
189 investment prohibition and any new investment in a scrutinized
190 company is limited to the minimum steps necessary to avoid the
191 contingency described in this subsection. For any cessation of
192 the investment prohibition and new investment authorized by this
193 subsection, the state board shall provide a written report to
194 each member of the trustees, the President of the Senate, and
195 the Speaker of the House of Representatives in advance of the
196 new investment, updated semiannually thereafter as applicable,
197 setting forth the reasons and justification, supported by clear
198 and convincing evidence, for its decisions to cease the
199 investment prohibition in scrutinized companies.

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

202 287.135 Prohibition against contracting with scrutinized
203 companies.—

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

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

209 entity.

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

217 (c) "Local governmental entity" means a county,
 218 municipality, special district, or other political subdivision
 219 of the state.

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

226 (a) Is on the Scrutinized Companies that Boycott Israel
 227 List, created pursuant to s. 215.4725;

228 (b) Is on the Scrutinized Companies with Activities in
 229 Sudan List or the Scrutinized Companies with Activities in the
 230 Iran Petroleum Energy Sector List, created pursuant to s.
 231 215.473; or

232 (c) Is engaged in business operations in Cuba or Syria,~~is~~
 233 ~~ineligible for, and may not bid on, submit a proposal for, or~~
 234 ~~enter into or renew a contract with an agency or local~~

235 ~~governmental entity for goods or services of \$1 million or more.~~

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

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

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

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

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

261 2. Has been placed on the Scrutinized Companies that
 262 Boycott Israel List;

263 3. Has been placed on the Scrutinized Companies with
 264 Activities in Sudan List or the Scrutinized Companies with
 265 Activities in the Iran Petroleum Energy Sector List; or

266 4. Has been engaged in business operations in Cuba or
 267 Syria.

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

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

282 a. The scrutinized business operations were made before
 283 July 1, 2011.

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

286 c. The agency or local governmental entity determines that

287 | it is in the best interest of the state or local community to
 288 | contract with the company.

289 | d. The company has adopted, has publicized, and is
 290 | implementing a formal plan to cease scrutinized business
 291 | operations and to refrain from engaging in any new scrutinized
 292 | business operations.

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

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

296 | b. The business operations have not been expanded or
 297 | renewed after July 1, 2012.

298 | c. The agency or local governmental entity determines that
 299 | it is in the best interest of the state or local community to
 300 | contract with the company.

301 | d. The company has adopted, has publicized, and is
 302 | implementing a formal plan to cease business operations and to
 303 | refrain from engaging in any new business operations.

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

306 | a. The scrutinized business operations were made before
 307 | October 1, 2016.

308 | b. The scrutinized business operations have not been
 309 | expanded or renewed after October 1, 2016.

310 | c. The agency or local governmental entity determines that
 311 | it is in the best interest of the state or local community to
 312 | contract with the company.

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

317 (b) One of the following occurs:

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

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

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

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

339 in Cuba or Syria.

340 (a) If, after the agency or the local governmental entity
341 determines, using credible information available to the public,
342 that the company has submitted a false certification, the agency
343 or local governmental entity shall provide the company with
344 written notice of its determination. The company shall have 90
345 days following receipt of the notice to respond in writing and
346 to demonstrate that the determination of false certification was
347 made in error. If the company does not make such demonstration
348 within 90 days after receipt of the notice, the agency or the
349 local governmental entity shall bring a civil action against the
350 company. If a civil action is brought and the court determines
351 that the company submitted a false certification, the company
352 shall pay the penalty described in subparagraph 1. and all
353 reasonable attorney fees and costs, including any costs for
354 investigations that led to the finding of false certification.

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

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

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

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

373 (7) This section preempts any ordinance or rule of any
374 agency or local governmental entity involving public contracts
375 for goods or services of \$1 million or more with a company
376 engaged in scrutinized business operations.

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

386 Section 3. Except as otherwise expressly provided in this
387 act, this act shall take effect upon becoming a law.