

By the Committee on Governmental Oversight and Accountability

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1 A bill to be entitled
 2 An act relating to the State Board of Administration;
 3 amending s. 215.473, F.S.; redefining the term "public
 4 fund"; defining the term "board"; requiring the board,
 5 rather than the public fund, to maintain a list of
 6 certain scrutinized companies rather than assembling
 7 the list by a certain time; clarifying provisions;
 8 deleting a condition that may no longer be used by the
 9 board in scrutinizing companies, relating to a
 10 specified declaration; requiring the board to monitor
 11 certain events and make specified reports at certain
 12 meetings of trustees; conforming provisions to changes
 13 made by the act; providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Present paragraphs (b) through (x) of subsection
 18 (1) of section 215.473, Florida Statutes, are redesignated as
 19 paragraphs (c) through (y), respectively, present paragraph (r)
 20 of that subsection is amended, a new paragraph (b) is added to
 21 that subsection, and subsections (2) through (7) of that section
 22 are amended, to read:

23 215.473 Divestiture by the State Board of Administration;
 24 Sudan; Iran.—

25 (1) DEFINITIONS.—As used in this section, the term:

26 (b) "Board" means the State Board of Administration.

27 (s) ~~(r)~~ "Public fund" means all funds, assets of the Florida
 28 Retirement System held by, trustee, and other designates under
 29 the State Board of Administration in its capacity as a fiduciary

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30 pursuant to chapter 121.

31 (2) IDENTIFICATION OF COMPANIES.—

32 (a) ~~Within 90 days after June 8, 2007,~~ The board public
33 ~~fund~~ shall make its best efforts to identify all scrutinized
34 companies in which the public fund has direct or indirect
35 holdings or could possibly have such holdings in the future.
36 Such efforts include:

37 1. Reviewing and relying, as appropriate in the board's
38 ~~public fund's~~ judgment, on publicly available information
39 regarding companies having business operations in Sudan,
40 including information provided by nonprofit organizations,
41 research firms, international organizations, and government
42 entities;

43 2. Contacting asset managers contracted by the board public
44 ~~fund~~ which invest in companies having business operations in
45 Sudan;

46 3. Contacting other institutional investors that have
47 divested from or engaged with companies that have business
48 operations in Sudan; or

49 4. Reviewing the laws of the United States regarding the
50 levels of business activity that would cause application of
51 sanctions for companies conducting business or investing in
52 countries that are designated state sponsors of terror.

53 (b) ~~By the first meeting of the public fund following the~~
54 ~~90-day period described in paragraph (a),~~ The board public fund
55 shall maintain a list of ~~assemble~~ all scrutinized companies that
56 fit criteria specified in subparagraphs (1) (v) 1., 2., and 3.
57 ~~labeled the (1) (u) 1., 2., and 3. into a~~ "Scrutinized Companies
58 with Activities in Sudan List" and a list of all scrutinized

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59 companies that fit criteria specified in subparagraph (1) (v) 4.
60 labeled the ~~(1) (u) 4.~~ into a "Scrutinized Companies with
61 Activities in the Iran Petroleum Energy Sector List."

62 (c) The board ~~public fund~~ shall update and make publicly
63 available quarterly the Scrutinized Companies with Activities in
64 Sudan List and the Scrutinized Companies with Activities in the
65 Iran Petroleum Energy Sector List based on evolving information
66 from, among other sources, those listed in paragraph (a).

67 (d) Notwithstanding ~~the provisions of~~ this section, a
68 social-development company that is not complicit in the Darfur
69 genocide is not considered a scrutinized company under
70 subparagraph (1) (v) 1. ~~(1) (u) 1.~~, subparagraph (1) (v) 2. ~~(1) (u) 2.~~,
71 or subparagraph (1) (v) 3. ~~(1) (u) 3.~~

72 (3) REQUIRED ACTIONS.—The board ~~public fund~~ shall adhere to
73 the following procedure for assembling companies on the
74 Scrutinized Companies with Activities in Sudan List and the
75 Scrutinized Companies with Activities in the Iran Petroleum
76 Energy Sector List:

77 (a) *Engagement.*—

78 1. The board ~~public fund~~ shall immediately determine the
79 companies on the Scrutinized Companies with Activities in Sudan
80 List and the Scrutinized Companies with Activities in the Iran
81 Petroleum Energy Sector List in which the public fund owns
82 direct or indirect holdings.

83 2. For each company identified in this paragraph that has
84 only inactive business operations, the board ~~public fund~~ shall
85 send a written notice informing the company of this act and
86 encouraging it to continue to refrain from initiating active
87 business operations in Sudan or Iran until it is able to avoid

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88 scrutinized business operations. The board ~~public fund~~ shall
89 continue such correspondence semiannually.

90 3. For each company newly identified under this paragraph
91 which ~~that~~ has active business operations, the board ~~public fund~~
92 shall send a written notice informing the company of its
93 scrutinized company status and that it may become subject to
94 divestment by the public fund. The notice must inform the
95 company of the opportunity to clarify its Sudan-related or Iran-
96 related activities and encourage the company, ~~within 90 days,~~ to
97 cease its scrutinized business operations or convert such
98 operations to inactive business operations within 90 days in
99 order to avoid qualifying for divestment by the public fund.

100 4. If, within 90 days after the board's ~~public fund's~~ first
101 engagement with a company pursuant to this paragraph, that
102 company ceases scrutinized business operations, the company
103 shall be removed from the Scrutinized Companies with Activities
104 in Sudan List and the Scrutinized Companies with Activities in
105 the Iran Petroleum Energy Sector List, and the provisions of
106 this act shall cease to apply to that company unless that
107 company resumes scrutinized business operations. If, within 90
108 days after the board's ~~public fund's~~ first engagement, the
109 company converts its scrutinized active business operations to
110 inactive business operations, the company is subject to all
111 provisions relating to inactive business operations. A company
112 may be removed from one list but remain on the other list, in
113 which case the company shall be subject to the provisions
114 applicable to the list on which the company remains.

115 (b) *Divestment.*—

116 1. If, after 90 days following the board's ~~public fund's~~

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117 first engagement with a company pursuant to paragraph (a), the
118 company continues to have scrutinized active business
119 operations, and only while such company continues to have
120 scrutinized active business operations, the board ~~public fund~~
121 shall sell, redeem, divest, or withdraw all publicly traded
122 securities of the company, except as provided in paragraph (d),
123 from the public fund ~~fund's assets under management~~ within 12
124 months after the company's most recent appearance on the
125 Scrutinized Companies with Activities in Sudan List or on the
126 Scrutinized Companies with Activities in the Iran Petroleum
127 Energy Sector List.

128 2. If a company that ceased scrutinized active business
129 operations following engagement pursuant to paragraph (a)
130 resumes such operations, this paragraph immediately applies, and
131 the board ~~public fund~~ shall send a written notice to the
132 company. The company shall also be immediately reintroduced onto
133 the Scrutinized Companies with Activities in Sudan List or on
134 the Scrutinized Companies with Activities in the Iran Petroleum
135 Energy Sector List, as applicable.

136 (c) *Prohibition.*—The board ~~public fund~~ may not acquire, on
137 behalf of the public fund, securities of companies on the
138 Scrutinized Companies with Activities in Sudan List or the
139 Scrutinized Companies with Activities in the Iran Petroleum
140 Energy Sector List that have active business operations, except
141 as provided in paragraph (d).

142 (d) *Exemption.*—A company that the United States Government
143 affirmatively declares to be excluded from its present or any
144 future federal sanctions regime relating to Sudan or Iran is not
145 subject to divestment or the investment prohibition pursuant to

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146 paragraphs (b) and (c).

147 (e) *Excluded securities.*—

148 1. Notwithstanding ~~the provisions of~~ this section,
149 paragraphs (b) and (c) do not apply to indirect holdings in
150 actively managed investment funds. However, the board ~~public~~
151 ~~fund~~ shall submit letters to the managers of such investment
152 funds containing companies that have scrutinized active business
153 operations requesting that they consider removing such companies
154 from the fund or create a similar actively managed fund having
155 indirect holdings devoid of such companies. If the manager
156 creates a similar fund, the board, on behalf of the public fund,
157 shall replace all applicable investments with investments in the
158 similar fund in an expedited timeframe consistent with prudent
159 investing standards. For the purposes of this section, a private
160 equity fund is deemed to be an actively managed investment fund.

161 2. Notwithstanding ~~the provisions of~~ this section,
162 paragraphs (b) and (c) do not apply to exchange-traded funds.

163 (f) *Further exclusions.*—Notwithstanding any other provision
164 of this act, the board ~~public fund~~, when discharging its
165 responsibility for operation of a defined contribution plan,
166 shall engage the manager of the investment offerings in such
167 plans requesting that they consider removing scrutinized
168 companies from the investment offerings or create an alternative
169 investment offering devoid of scrutinized companies. If the
170 manager creates an alternative investment offering and the
171 offering is deemed by the board ~~public fund~~ to be consistent
172 with prudent investor standards, the board ~~public fund~~ shall
173 consider including such investment offering in the plan.

174 (4) REPORTING.—

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175 (a) The board ~~public fund~~ shall file a report with each
 176 member of its ~~the~~ Board of Trustees ~~of the State Board of~~
 177 ~~Administration~~, the President of the Senate, and the Speaker of
 178 the House of Representatives which ~~that~~ includes the Scrutinized
 179 Companies with Activities in Sudan List and the Scrutinized
 180 Companies with Activities in the Iran Petroleum Energy Sector
 181 List within 30 days after the list is created. This report shall
 182 be made available to the public.

183 (b) At each quarterly meeting of the Board of Trustees
 184 thereafter, the board ~~public fund~~ shall file a report regarding
 185 the public fund, which shall be made available to the public and
 186 to each member of its ~~the~~ Board of Trustees ~~of the State Board~~
 187 ~~of Administration~~, the President of the Senate, and the Speaker
 188 of the House of Representatives, and send a copy of that report
 189 to the United States Presidential Special Envoy to Sudan and the
 190 United States Presidential Special Envoy to Iran, or an
 191 appropriate designee or successor, which includes:

192 1. A summary of correspondence with companies engaged by
 193 the board on behalf of the public fund under subparagraphs

194 (3) (a) 2. and 3.;

195 2. All investments sold, redeemed, divested, or withdrawn
 196 in compliance with paragraph (3) (b);

197 3. All prohibited investments under paragraph (3) (c);

198 4. Any progress made under paragraph (3) (e); and

199 5. A list of all publicly traded securities held directly
 200 by the public fund ~~this state~~.

201 (5) EXPIRATION.—This section expires upon the occurrence of
 202 all of the following:

203 (a) If any of the following occurs ~~occur~~, the board may

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204 ~~public fund shall~~ no longer scrutinize companies according to
205 subparagraphs (1)(v)1. ~~(1)(u)1.~~, 2., and 3. and may ~~shall~~ no
206 longer assemble the Scrutinized Companies with Activities in
207 Sudan List, shall cease engagement and divestment of such
208 companies, and may reinvest in such companies if such companies
209 do not satisfy the criteria for inclusion in the Scrutinized
210 Companies with Activities in the Iran Petroleum Energy Sector
211 List:

212 1. The Congress or President of the United States~~,~~
213 affirmatively and unambiguously states, by means including, but
214 not limited to, legislation, executive order, or written
215 certification from the President to Congress, that the Darfur
216 genocide has been halted for at least 12 months;

217 2. The United States revokes all sanctions imposed against
218 the government of Sudan;

219 3. The Congress or President of the United States
220 affirmatively and unambiguously states, by means including, but
221 not limited to, legislation, executive order, or written
222 certification from the President to Congress, that the
223 government of Sudan has honored its commitments to cease attacks
224 on civilians, demobilize and demilitarize the Janjaweed and
225 associated militias, grant free and unfettered access for
226 deliveries of humanitarian assistance, and allow for the safe
227 and voluntary return of refugees and internally displaced
228 persons; or

229 4. The Congress or President of the United States
230 affirmatively and unambiguously states, by means including, but
231 not limited to, legislation, executive order, or written
232 certification from the President to Congress, that mandatory

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233 divestment of the type provided for in this section interferes
234 with the conduct of United States foreign policy.

235 (b) If either any of the following occurs ~~occur~~, the board
236 may ~~public fund shall~~ no longer scrutinize companies according
237 to subparagraph (1)(v)4., ~~may (1)(u)4. and shall~~ no longer
238 assemble the Scrutinized Companies with Activities in the Iran
239 Petroleum Energy Sector List, and shall cease engagement,
240 investment prohibitions, and divestment. ~~The public fund may~~
241 ~~reinvest in such companies if such companies do not satisfy the~~
242 ~~criteria for inclusion in the Scrutinized Companies with~~
243 ~~Activities in Sudan List:~~

244 1. The Congress or President of the United States
245 affirmatively and unambiguously states, by means including, but
246 not limited to, legislation, executive order, or written
247 certification from the President to Congress, that the
248 government of Iran has ceased to acquire weapons of mass
249 destruction and support international terrorism; or

250 2. The United States revokes all sanctions imposed against
251 the government of Iran; ~~or~~

252 ~~3. The Congress or President of the United States~~
253 ~~affirmatively and unambiguously declares, by means including,~~
254 ~~but not limited to, legislation, executive order, or written~~
255 ~~certification from the President to Congress, that mandatory~~
256 ~~divestment of the type provided for in this section interferes~~
257 ~~with the conduct of United States foreign policy.~~

258
259 The board, on behalf of the public fund, may reinvest in such
260 companies if such companies do not satisfy the criteria for
261 inclusion in the Scrutinized Companies with Activities in Sudan

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262 List. The board, acting as a fiduciary in accordance with s.
263 215.47(10), shall monitor events relating to subparagraphs 1.
264 and 2., and, upon finding that the conditions in subparagraph 1.
265 or subparagraph 2. have occurred, the board shall report such
266 finding at a quarterly meeting of its trustees. At each
267 quarterly meeting of the trustees, the board shall report on the
268 status of events relating to subparagraphs 1. and 2.

269 (6) INVESTMENT POLICY STATEMENT OBLIGATIONS.—The board's
270 ~~public fund's~~ actions taken in compliance with this act,
271 including all good faith determinations regarding companies as
272 required by this act, shall be adopted and incorporated into the
273 public fund's investment policy statement ~~(the IPS)~~ as provided
274 ~~set forth~~ in s. 215.475.

275 (7) REINVESTMENT IN CERTAIN COMPANIES HAVING SCRUTINIZED
276 ACTIVE BUSINESS OPERATIONS.—Notwithstanding any other provision
277 of this act to the contrary, the public fund may cease divesting
278 from certain scrutinized companies pursuant to paragraph (3) (b)
279 or reinvest in certain scrutinized companies from which it
280 divested pursuant to paragraph (3) (b) if clear and convincing
281 evidence shows that the value of all assets of ~~under management~~
282 ~~by~~ the public fund becomes equal to or less than 99.50 percent,
283 or 50 basis points, of the hypothetical value of all assets of
284 ~~under management by~~ the public fund assuming no divestment for
285 any company had occurred under paragraph (3) (b). Cessation of
286 divestment, reinvestment, or any subsequent ongoing investment
287 authorized by this act is limited to the minimum steps necessary
288 to avoid the contingency set forth in this subsection or that no
289 divestment of any company is required for less than fair value.
290 For any cessation of divestment, reinvestment, or subsequent

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291 ongoing investment authorized by this act, the board ~~public fund~~
292 shall provide a written report to each member of its ~~the~~ Board
293 of Trustees ~~of the State Board of Administration~~, the President
294 of the Senate, and the Speaker of the House of Representatives
295 in advance of initial reinvestment, updated semiannually
296 thereafter as applicable, setting forth the reasons and
297 justification, supported by clear and convincing evidence, for
298 its decisions to cease divestment, reinvest, or remain invested
299 in companies having scrutinized active business operations. This
300 act does not apply to reinvestment in companies on the grounds
301 that they have ceased to have scrutinized active business
302 operations.

303 Section 2. This act shall take effect July 1, 2016.