

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.