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585-00678A-16

Proposed Committee Substitute by the Committee on Governmental  
Oversight and Accountability

A bill to be entitled

An act relating to scrutinized companies; creating s.  
215.4725, F.S.; providing definitions; requiring the  
State Board of Administration to identify all  
companies that are boycotting Israel or are engaged in  
a boycott of Israel in which the public fund owns  
direct or indirect holdings in; requiring the public  
fund to create and maintain a scrutinized companies  
list that names all such companies; requiring the  
public fund to provide written notice to a company  
that is identified as a scrutinized company;  
specifying contents of the notice; specifying  
circumstances under which a company may be removed  
from the list; prohibiting the acquisition of certain  
securities of scrutinized companies; prescribing  
reporting requirements; requiring certain information  
to be included in the investment policy statement;  
authorizing the public fund to invest in certain  
scrutinized companies if the value of all assets under  
management by the public fund becomes equal to or less  
than a specified amount; requiring the public fund to  
provide a written report to the Board of Trustees of  
the state board and the Legislature before such  
investment occurs; specifying required contents of the  
report; reenacting and amending s. 287.135, F.S.,  
relating to the prohibition against contracting with  
scrutinized companies; prohibiting a state agency or



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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 if a company has been placed on the  
34 Scrutinized Companies that Boycott Israel List;  
35 providing exceptions; requiring certification upon  
36 submission of a bid or proposal for a contract, or  
37 before a company enters into or renews a contract,  
38 with an agency or governmental entity that the  
39 company; providing procedures upon determination that  
40 a company has submitted a false certification;  
41 providing for civil action; providing penalties;  
42 providing attorney fees and costs; providing a statute  
43 of repose; prohibiting a private right of action;  
44 providing for preemption of conflicting ordinances and  
45 rules; revising provisions relating to federal  
46 preemption; providing effective dates.

47

48 Be It Enacted by the Legislature of the State of Florida:

49

50 Section 1. Section 215.4725, Florida Statutes, is created  
51 to read:

52 215.4725 Prohibited investments by the State Board of  
53 Administration; companies that boycott Israel.-

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

55 (a) "Boycott Israel" or "boycott of Israel" means refusing  
56 to deal, terminating business activities, or taking other



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

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

76 (c) "Direct holdings" in a company means all securities of  
77 that company that are held directly by the public fund or in an  
78 account or fund in which the public fund owns all shares or  
79 interests.

80 (d) "Indirect holdings" in a company means all securities  
81 of that company that are held in a commingled fund or other  
82 collective investment, such as a mutual fund, in which the  
83 public fund owns shares or interests, together with other  
84 investors not subject to this section or which are held in an  
85 index fund.



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86 (e) "Public fund" means all funds, assets, trustee, and  
87 other designates under the State Board of Administration  
88 pursuant to part I of chapter 121.

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

91 (2) IDENTIFICATION OF COMPANIES.-

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

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

101 2. Contacting asset managers contracted by the public fund  
102 for information regarding companies that boycott Israel; or

103 3. Contacting other institutional investors that prohibit  
104 such investments or that have engaged with companies that  
105 boycott Israel.

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

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

114 (3) REQUIRED ACTIONS.-The public fund shall adhere to the



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115 following procedures for assembling companies on the Scrutinized  
116 Companies that Boycott Israel List.

117 (a) Engagement.—

118 1. The public fund shall immediately determine the  
119 companies on the Scrutinized Companies that Boycott Israel List  
120 in which the public fund owns direct or indirect holdings.

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

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

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

139 (c) Excluded securities.—Notwithstanding the provisions of  
140 this section, paragraph (b) does not apply to:

141 1. Indirect holdings. However, the public fund shall submit  
142 letters to the managers of such investment funds containing  
143 companies that boycott Israel requesting that they consider



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144 removing such companies from the fund or create a similar fund  
145 having indirect holdings devoid of such companies. If the  
146 manager creates a similar fund, the public fund shall replace  
147 all applicable investments with investments in the similar fund  
148 in an expedited timeframe consistent with prudent investing  
149 standards. For the purposes of this section, an alternative  
150 investment, as the term is defined in s. 215.4401, and  
151 securities that are not publicly traded are deemed to be  
152 indirect holdings.

153 2. Exchange-traded funds.

154 (4) REPORTING.—

155 (a) The public fund shall file a report with each member of  
156 the Board of Trustees of the State Board of Administration, the  
157 President of the Senate, and the Speaker of the House of  
158 Representatives which includes the Scrutinized Companies that  
159 Boycott Israel List within 30 days after the list is created.  
160 This report shall be made available to the public.

161 (b) At each quarterly meeting of the Board of Trustees  
162 thereafter, the public fund shall file a report, which shall be  
163 made available to the public and to each member of the Board of  
164 Trustees of the State Board of Administration, the President of  
165 the Senate, and the Speaker of the House of Representatives,  
166 which includes:

167 1. A summary of correspondence with companies engaged by  
168 the public fund under subparagraph (3) (a)2.;

169 2. All prohibited investments under paragraph (3) (b);

170 3. Any progress made under paragraph (3) (c); and

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



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

178       (6) INVESTMENT IN CERTAIN SCRUTINIZED COMPANIES.—  
179 Notwithstanding any other provision of this section, the public  
180 fund may invest in certain scrutinized companies if clear and  
181 convincing evidence shows that the value of all assets under  
182 management by the public fund becomes equal to or less than  
183 99.50 percent, or 50 basis points, of the hypothetical value of  
184 all assets under management by the public fund assuming no  
185 investment prohibition for any company had occurred under  
186 paragraph (3) (b). Cessation of the investment prohibition and  
187 any new investment in a scrutinized company is limited to the  
188 minimum steps necessary to avoid the contingency described in  
189 this subsection. For any cessation of the investment prohibition  
190 and new investment authorized by this subsection, the public  
191 fund shall provide a written report to each member of the Board  
192 of Trustees of the State Board of Administration, the President  
193 of the Senate, and the Speaker of the House of Representatives  
194 in advance of the new investment, updated semiannually  
195 thereafter as applicable, setting forth the reasons and  
196 justification, supported by clear and convincing evidence, for  
197 its decisions to cease the investment prohibition in scrutinized  
198 companies.

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

201       287.135 Prohibition against contracting with scrutinized



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202 companies.—

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

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

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

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

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

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

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

230 (c) Is engaged in business operations in Cuba or Syria,~~is~~



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231 ~~ineligible for, and may not bid on, submit a proposal for, or~~  
232 ~~enter into or renew a contract with an agency or local~~  
233 ~~governmental entity for goods or services of \$1 million or more.~~

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

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

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

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

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

259 2. Has been placed on the Scrutinized Companies that



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260 Boycott Israel List;

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

264 4. Has been engaged in business operations in Cuba or  
265 Syria.

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

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

280 a. The scrutinized business operations were made before  
281 July 1, 2011.

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

284 c. The agency or local governmental entity determines that  
285 it is in the best interest of the state or local community to  
286 contract with the company.

287 d. The company has adopted, has publicized, and is  
288 implementing a formal plan to cease scrutinized business



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289 operations and to refrain from engaging in any new scrutinized  
290 business operations.

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

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

294 b. The business operations have not been expanded or  
295 renewed after July 1, 2012.

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

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

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

304 a. The scrutinized business operations were made before  
305 October 1, 2016.

306 b. The scrutinized business operations have not been  
307 expanded or renewed after October 1, 2016.

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

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

315 (b) One of the following occurs:

316 1. The local governmental entity makes a public finding  
317 that, absent such an exemption, the local governmental entity



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318 would be unable to obtain the goods or services for which the  
319 contract is offered.

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

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

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

338         (a) If, after the agency or the local governmental entity  
339 determines, using credible information available to the public,  
340 that the company has submitted a false certification, the agency  
341 or local governmental entity shall provide the company with  
342 written notice of its determination. The company shall have 90  
343 days following receipt of the notice to respond in writing and  
344 to demonstrate that the determination of false certification was  
345 made in error. If the company does not make such demonstration  
346 within 90 days after receipt of the notice, the agency or the



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347 local governmental entity shall bring a civil action against the  
348 company. If a civil action is brought and the court determines  
349 that the company submitted a false certification, the company  
350 shall pay the penalty described in subparagraph 1. and all  
351 reasonable attorney fees and costs, including any costs for  
352 investigations that led to the finding of false certification.

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

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

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

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

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

375 (8) The contracting prohibitions in this section applicable



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

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