

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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**BILL:** CS/SB 86

**INTRODUCER:** Governmental Oversight and Accountability Committee and Senator Negron and others

**SUBJECT:** Scrutinized Companies

**DATE:** October 19, 2015      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	<b>Fav/CS</b>
2.	Davis	DeLoach	AGG	<b>Recommend: Favorable</b>
3.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/SB 86 requires the State Board of Administration (SBA) to identify and assemble a list of companies that boycott Israel. The bill requires the SBA to update and make publicly available on a quarterly basis a Scrutinized Companies that Boycott Israel List (List). The List must be distributed to the trustees of the SBA, the President of the Florida Senate, and the Speaker of the Florida House of Representatives.

The SBA must provide written notice to the companies that may be placed on the List and give those companies an opportunity to respond prior to the company becoming subject to investment prohibition and placement on the List.

In terms of its investment responsibilities relating to the Florida Retirement System (FRS) pension plan, the SBA is not permitted to acquire securities, as direct holdings, of companies that appear on the List. The bill provides an exception for securities that are not subject to this prohibition. The bill requires the investment policy statement for the FRS pension plan to be updated to include the limitations set forth in this bill.

CS/SB 86 limits governmental entities from contracting with scrutinized companies on the List. Specifically, the bill prohibits a state agency or local governmental entity from contracting for goods and services of \$1 million or more with a company that has been placed on the List. In addition, the bill requires certain governmental contracts to contain provisions allowing the awarding body to terminate the contract if a company is placed on the List. Additionally, the bill

requires certification by a company that the company is not on the List upon submission of bid or renewal of existing contract. A case-by-case exception is provided to state agencies and local governmental entities for contracting with companies on the List under specified circumstances.

The fiscal impact on state and local governments is indeterminate.

## II. Present Situation:

### State Board of Administration Investing Duties

The State Board of Administration (SBA) was created by Article IV, section 4(e) of the Florida Constitution. Its members are the Governor, the Chief Financial Officer, and the Attorney General. The board derives its powers to oversee state funds from Article XII, section 9 of the Florida Constitution and ch. 215, F.S.

The SBA has oversight over the Florida Retirement System (FRS) pension plan and the FRS investment plan, which represent approximately \$157.14 billion, or 87.3 percent, of the \$180 billion in assets managed by the SBA, as of June 30, 2015.<sup>1</sup> The pension plan is a defined benefit plan and the investment plan is a defined contribution plan, that employees may choose in lieu of the pension plan. The SBA also manages over 30 other investment portfolios, with combined assets of \$22.86 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Prepaid College Plan, and various debt-service accounts for state bond issues.<sup>2</sup>

### State Sponsors of Terrorism

The United States Department of State maintains a list of countries determined to have repeatedly provided support for acts of international terrorism.<sup>3</sup> The countries are designated "terrorist nations" under requirements in three federal laws: the Export Administration Act<sup>4</sup>; the Arms Export Control Act<sup>5</sup>; and the Foreign Assistance Act<sup>6</sup>. Taken together, the four main categories of sanctions resulting from designation under these authorities include restrictions on U.S. foreign assistance; a ban on defense exports and sales; certain controls over exports of dual use items; and miscellaneous financial and other restrictions.<sup>7</sup>

Currently, the State Department designates three countries under these authorities: Iran, Sudan and Syria.<sup>8</sup> The chart on the following page shows the date each country was designated a terrorist nation.

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<sup>1</sup> State Board of Administration "Performance Report to the Trustees" dated June 30, 2015, and issued on August 12, 2015.

<sup>2</sup> *Id.*

<sup>3</sup> U.S. Department of State, Diplomacy in Action can be found online at <http://www.state.gov/j/ct/list/c14151.htm> (last visited Sept. 9, 2015).

<sup>4</sup> 50 U.S.C. App 2405(j)

<sup>5</sup> 22 U.S.C. s. 2780

<sup>6</sup> 22 U.S.C. s. 2371

<sup>7</sup> *See* <http://www.state.gov/s/ct/c14151.htm>.

<sup>8</sup> *Id.*

Country	Designation Date
Iran	January 19, 1984
Sudan	August 12, 1993
Syria	December 29, 1979

Cuba had been designated as a State Sponsor of Terrorism on March 1, 1982. In December 2014, President Obama requested the Secretary of State to review Cuba's designation as a state sponsor of terrorism, and to provide him a report within six months in regard to Cuba's support for international terrorism.<sup>9</sup> On April 8, 2015, the Secretary of State completed his review and recommended to the President that Cuba no longer be designated as a state sponsor of terrorism.<sup>10</sup>

On April 14, 2015, the President submitted this report to Congress indicating the administration's intent to rescind Cuba's state sponsor of terrorism designation, including the certification that Cuba has not provided any support for international terrorism during the previous six months and that Cuba has provided assurances that it will not support acts of international terrorism in the future.<sup>11</sup>

After the 45-day Congressional pre-notification period expired, Cuba was officially removed from the list on May 29, 2015.<sup>12</sup>

### **Protecting Florida Investments Act**

In 2007, the Legislature enacted the Protecting Florida's Investments Act (PFIA).<sup>13</sup> The PFIA requires the SBA, acting on behalf of the Florida Retirement System Trust Fund (FRSTF), to assemble and publish a list of "Scrutinized Companies" that have prohibited business operations in Sudan and Iran. Once placed on the list of Scrutinized Companies, the SBA and its investment managers are prohibited from acquiring those companies' securities<sup>14</sup> and are required to divest those securities if the companies<sup>15</sup> do not cease the prohibited activities or take certain compensating actions. The implementation of the PFIA by the SBA does not affect any FRSTF investments in U.S. companies; the PFIA affects foreign companies with certain business operations in Sudan and Iran involving the petroleum or energy sector, oil or mineral extraction, power production, or military support activities.

The definition of "company" for purposes of the PFIA includes all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations.

<sup>9</sup> U.S. Department of State, Diplomacy in Action, Recession of Cuba as a State Sponsor of Terrorism, at <http://www.state.gov/r/pa/prs/ps/2015/05/242986.htm> (last visited on Sept. 15, 2015).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Chapter 2007-88, Laws of Florida; *also, see* Senate Bill 2142 (reg. session 2007).

<sup>14</sup> Section 215.473(3)(c), F.S.

<sup>15</sup> Section 215.473(3)(b), F.S.

The term “public fund” is defined as “all funds, assets, trustee, and other designates under the State Board of Administration pursuant to chapter 121.”<sup>16</sup> This means those assets of the Florida Retirement System - both the pension plan as well as the investment plan.

According to staff of the SBA, the PFIA imposes the following reporting, engagement, and investment requirements on the SBA:

- Quarterly reporting to the Board of Trustees of every equity security in which the SBA has invested for the quarter, along with its industry category. This report is posted on the SBA website.
- Quarterly presentation to the Trustees of a “Scrutinized Companies” list for both Sudan and Iran for their approval. Scrutinized Company lists are available on the SBA’s website<sup>17</sup>, along with information on the FRSTF direct and indirect holdings of Scrutinized Companies.
- Written notice to external investment managers of all PFIA requirements. Letters request that the managers of actively managed commingled vehicles (i.e., those with FRSTF and other clients’ assets) consider removing Scrutinized Companies from the product or create a similar actively managed product that excludes such companies. Similar written requests must be provided to relevant investment managers within the Investment Plan.
- Written notice to any company with inactive business operations in Sudan or Iran, informing the company of the PFIA and encouraging it to continue to refrain from reinitiating active business operations.<sup>18</sup> Such correspondence continues semiannually.<sup>19</sup>
- Written notice to any Scrutinized Company with active business operations, informing the company of its Scrutinized Company status and that it may become subject to divestment.<sup>20</sup> The written notice must inform the company of the opportunity to clarify its Sudan-related or Iran-related activities and encourage the company, within 90 days, to cease its scrutinized business operations or convert such operations to inactive status.<sup>21</sup>
- A prohibition on further investment on behalf of the FRSTF in any Scrutinized Company once the Sudan and Iran scrutinized lists have been approved by the Trustees. All publicly traded securities of Scrutinized Companies must be divested within 12 months after the company’s initial (and continued) appearance on the Scrutinized Companies list. Divestment does not apply to indirect holdings in actively managed commingled investment funds—i.e., where the SBA is not the sole investor in the fund. Private equity funds are considered to be actively managed.
- Reporting to each member of the Board of Trustees, President of the Senate, and the Speaker of the House of Representatives of Scrutinized Company lists within 30 days of creation, and public disclosure of each list.<sup>22</sup>
- Quarterly reporting to each member of the Board of Trustees, the President of the Senate, the Speaker of the House of Representatives, the United States Presidential Special Envoy to

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<sup>16</sup> Section 215.473(1)(r), F.S.

<sup>17</sup> The quarterly reports are available at <http://www.sbafla.com/fsb/Portals/Internet/PFIA/CurrentProhibitedCompaniesList.pdf>

<sup>18</sup> Section 215.473(3)(a)2., F.S.

<sup>19</sup> *Id.*

<sup>20</sup> Section 215.473(3)(a)3., F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Section 215.473(4)(a), F.S.

Sudan, and the United States Presidential Special Envoy to Iran.<sup>23</sup> The report must include the following:<sup>24</sup>

- A summary of correspondence with engaged companies;
- A listing of all investments sold, redeemed, divested, or withdrawn;
- A listing of all prohibited investments;
- A description of any progress related to external managers offering PFIA compliant funds; and
- A list of all publicly traded securities held directly by the state.
- Adoption and incorporation into the FRSTF Investment Policy Statement (IPS) of SBA actions taken in accordance with the PFIA. Changes to the IPS are reviewed by the Investment Advisory Council (IAC) and approved by the Trustees.
- Relevant Sudan or Iran portions of the PFIA are discontinued if the Congress or President of the United States passes legislation, executive order, or other written certification that:
  - Darfur genocide has been halted for at least 12 months;<sup>25</sup>
  - Sanctions imposed against the Government of Sudan are revoked;<sup>26</sup>
  - Government of Sudan honors its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons;<sup>27</sup>
  - Government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;<sup>28</sup>
  - Sanctions imposed against the government of Iran are revoked;<sup>29</sup> or
  - Mandatory divestment of the type provided for by the PFIA interferes with the conduct of U.S. foreign policy.<sup>30</sup>
- Cessation of divestment and/or reinvestment into previously divested companies may occur if the value of all FRSTF assets under management decreases by 50 basis points (0.5 percent) or more as a result of divestment.<sup>31</sup> If cessation of divestment is triggered, the SBA is required to provide a written report to each member of the Board of Trustees, the President of the Senate, and the Speaker of the House of Representatives prior to initial reinvestment.<sup>32</sup> Such condition is required to be updated semiannually.<sup>33</sup>

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<sup>23</sup> Section 215.473(4)(b), F.S.

<sup>24</sup> Section 215.473(4)(b)1.-5., F.S.

<sup>25</sup> Section 215.473(5)(a)1., F.S.

<sup>26</sup> Section 215.473(5)(a)2., F.S.

<sup>27</sup> Section 215.473(5)(a)3., F.S.

<sup>28</sup> Section 215.473(5)(b)1., F.S.

<sup>29</sup> Section 215.473(5)(b)2., F.S.

<sup>30</sup> Section 215.473(5)(b)3., F.S.

<sup>31</sup> Section 215.473(7), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

## Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency<sup>34</sup> procurement of personal property and services.<sup>35</sup> Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposals," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.<sup>36</sup>

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.<sup>37</sup> However, specified contractual services and commodities are not subject to competitive-solicitation requirements.<sup>38</sup>

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the Department of Management Services (DMS), a water management district, or state agencies.<sup>39</sup>

The DMS is statutorily designated as the central executive agency procurement authority and its responsibilities include: overseeing agency implementation of the ch. 287, F.S., competitive procurement process;<sup>40</sup> creating uniform agency procurement rules;<sup>41</sup> implementing the online procurement program;<sup>42</sup> and establishing state term contracts.<sup>43</sup> The agency procurement process is partly decentralized in that agencies, except in the case of state term contracts, may procure

<sup>34</sup> As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

<sup>35</sup> Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

<sup>36</sup> See ss. 287.012(6) and 287.057, F.S.

<sup>37</sup> Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

<sup>38</sup> See s. 287.057(3)(e), F.S.

<sup>39</sup> See ss. 287.042(2)(c) and 120.57(3), F.S.

<sup>40</sup> Sections 287.032 and 287.042, F.S.

<sup>41</sup> Sections 287.032(2) and 287.042(3), (4), and (12), F.S.

<sup>42</sup> Section 287.057(22), F.S.

<sup>43</sup> Sections 287.042(2) and 287.056, F.S.

goods and services themselves in accordance with requirements set forth in statute and rule, rather than placing orders through the DMS.

### **Prohibition Against Contracting with Scrutinized Companies and Companies Engaged in Business Operations in Cuba or Syria**

Section 287.135(2), F.S., prohibits a company on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations in Cuba<sup>44</sup> or Syria from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency<sup>45</sup> or local governmental entity for goods or services of \$1 million or more. “Local governmental entity,” for the purposes of s. 287.135, F.S., means a county, municipality, special district, or other political subdivision of the state.

Section 287.135(3)(b), F.S., provides that any contract with an agency or local governmental entity for goods or services of \$1 million or more entered into or renewed on or after July 1, 2012, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or have been engaged in business operations in Cuba or Syria.

Section 287.135(4)(a)1., F.S., allows an agency or local governmental entity to make a case-by-case exception to the prohibition for a company on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List if:

- The scrutinized business operations<sup>46</sup> were made before July 1, 2011;
- The scrutinized business operations have not been expanded or renewed after July 1, 2011;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company;
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations; *and*
- *One* of the following occurs:
  - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.

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<sup>44</sup> See *Odebrecht Const., Inc. v. Secretary, Fla. Dep’t of Transp.*, 715 F.3d 1268 (11th Cir. 2013). The Eleventh Circuit Court of Appeals affirmed an injunction against enforcement of the “Cuba Amendment,” a 2012 Florida law (s. 287.135, F.S.) that banned companies with subsidiaries doing business with Cuba, from bidding on state or local contracts in Florida. The Court found that the Cuba Amendment was preempted by extensive federal statutory and administrative sanctions and would undermine the President’s discretionary authority concerning federal policy with Cuba.

<sup>45</sup> Agency is defined in s. 287.012(1), F.S., as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges. Also, see s. 287.135(1), F.S. Definitions contained in ss. 287.012 and 215.473, F.S. are incorporated into s. 287.135, F.S.

<sup>46</sup> Section 215.473(1)(t), F.S., defines “scrutinized business operations” to mean business operations that result in a company becoming a scrutinized company.

- For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
- For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

Section 287.135(4)(a)2., F.S., allows an agency or local governmental entity to make a case-by-case exception to the prohibition for a company engaged in business operations in Cuba or Syria if:

- The business operations were made before July 1, 2012;
- The business operations have not been expanded or renewed after July 1, 2012;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company;
- The company has adopted, has publicized, and is implementing a formal plan to cease business operations and to refrain from engaging in any new business operations; *and*
- *One* of the following occurs:
  - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
  - For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
  - For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

An agency or local governmental entity must require a company that submits a bid or proposal for, or that otherwise proposes to enter into or renew, a contract with the agency or local governmental entity for goods or services of \$1 million or more to certify, at the time a bid or proposal is submitted or before a contract is executed or renewed, that the company is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operation in Cuba or Syria.<sup>47</sup>

If an agency or local governmental entity determines that a company has submitted a false certification, it shall provide the company with written notice, and the company will have 90 days to respond in writing to such determination.<sup>48</sup> If the company fails to demonstrate that the determination of false certification was made in error, then the awarding body *must* bring a civil action against the company.<sup>49</sup> If a civil action is brought and the court determines that the company submitted a false certification, the company shall pay all reasonable attorney's fees and costs (including costs for investigations that led to the finding of false certification).<sup>50</sup> Also, a

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<sup>47</sup> Section 287.135(5), F.S.

<sup>48</sup> Section 287.135(5)(a), F.S.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*



civil penalty equal to the greater of \$2 million or twice the amount of the contract for which the false certification was submitted shall be imposed.<sup>51</sup> The company is ineligible to bid on any contract with an agency or local governmental entity for three years after the date the agency or local governmental entity determined that the company submitted a false certification.<sup>52</sup> A civil action to collect the penalties must commence within three years after the date the false certification is made.<sup>53</sup>

Section 287.135(6), F.S., specifies that only the awarding body may cause a civil action to be brought, and that the section does not create or authorize a private right of action or enforcement of the provided penalties. An unsuccessful bidder, or any other person other than the awarding body, may not protest the award or contract renewal on the basis of a false certification.

Section 287.135(7), F.S., specifies that this section preempts any ordinance or rule of any agency or local governmental entity involving public contracts for goods or services of \$1 million or more with a company engaged in scrutinized business operations.

Section 287.135 (8), F.S., provides that this provision becomes inoperative on the date that federal law ceases to authorize the state to adopt and enforce the contracting prohibitions of the type provided for in this section.

### III. Effect of Proposed Changes:

**Section 1** creates s. 215.4725, F.S., entitled “Prohibited Investments by the State Board of Administration; companies that boycott Israel,” and defines certain terms. This section is effective upon becoming a law.

The section defines “boycott Israel” or “boycott of Israel” as refusing to deal, terminating business activities, or taking other actions that are intended to penalize, inflict economic harm, or otherwise limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories for reasons other than a business, investment or commercial reason. This definition does not apply to:

- Decisions made during course of a company’s ordinary business; or
- For other business, investment or commercial reasons.

Also, a statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of calls for a boycott of Israel, may be considered by the State Board of Administration (SBA) as evidence that a company is participating in a boycott of Israel.

The term “company” is defined as a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, that exists for the purpose of making profit.

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<sup>51</sup> Section 287.135(5)(a)1., F.S.

<sup>52</sup> Section 287.135(5)(a)2., F.S.

<sup>53</sup> Section 287.135(5)(b), F.S.

“Direct holdings” in a company means all securities of that company that are held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

“Indirect holdings” in a company means all securities of that company that are held in a commingled fund or other collective investment, such as a mutual fund, in which the public fund owns shares or interests together with other investors not subject to this section or which are held in an index fund.

"Public fund" is defined as all funds, assets, trustee; and other designates under the State Board of Administration pursuant to Part I of ch. 121, F.S. This means only those assets of the Florida Retirement System (FRS) pension plan are impacted.

The term “scrutinized companies” is defined as companies that boycott Israel or engage in a boycott of Israel.

By August 1, 2016, the SBA is required to use its best efforts to identify all scrutinized companies that boycott Israel in which the SBA has direct or indirect holdings or could possibly have such holdings in the future. The bill directs the SBA to use the following efforts to identify scrutinized companies:

- Reviewing and relying, as appropriate in the SBA’s judgment, on publicly available information regarding companies that boycott Israel, such as nonprofit organizations, research firms, international organizations, and government entities;
- Contacting asset managers contracted by the SBA for information regarding companies that boycott Israel; and
- Contacting other institutional investors that prohibit such investments or that have engaged with companies that boycott Israel.

By its first meeting following the identification of scrutinized companies, the SBA must compile and make available the Scrutinized Companies that Boycott Israel List (List). The SBA is required to update and make publicly available quarterly the List based on unfolding information from other sources, including publicly available information, asset managers contracted by SBA and other institutional investors.

The SBA must immediately determine companies on the List in which the SBA owns direct or indirect holdings.

This section requires the SBA to send written notice informing a company when it is identified as a scrutinized company and advising the company that it may become subject to investment prohibition by the SBA. Such notice must inform the company of the opportunity to clarify activities, evidence of boycott of Israel and encourage the company, within 90 days, to cease the boycott of Israel in order to avoid qualifying for investment prohibition by the SBA.

If, within 90 days after notification by the SBA, a company ceases a boycott of Israel, that company will be removed from the List, and the provisions of this bill shall cease to apply to that company unless such company resumes a boycott of Israel.

Further, this section prohibits the SBA from acquiring securities of companies on the List as direct holdings. Certain securities, however, are excluded from the prohibition of acquiring securities of companies on the List. These securities include the following:

- Indirect holdings;
- Securities that are not publicly traded. These are deemed to be indirect holdings;
- Alternative investment as defined by s. 215.4401, F.S.<sup>54</sup> These are deemed to be indirect holdings; and
- Exchange-traded funds.

For indirect holdings of the SBA, the SBA is required to submit letters to managers of investment funds which contain companies that boycott Israel requesting that such companies be removed from the fund or create a similar fund having indirect holdings devoid of companies that boycott Israel. If the investment manager creates a similar fund, the SBA is required to replace all applicable investments with investments in the similar fund in an expedited timeframe consistent with prudent investing standards.

The SBA is required to file a report with each member of the SBA, the President of the Florida Senate, and the Speaker of the Florida House of Representatives within 30 days after the List is created. Such report shall be made available to the public.

At each quarterly meeting, the SBA must file a report, which shall be made available to the public and to each member of the SBA, the President of the Senate, and the Speaker of the House of Representatives. This report must include the following:

- A summary of correspondence with companies identified as scrutinized companies;
- All prohibited investments;
- A description of any progress related to external managers of investment funds offering holdings devoid of companies that boycott Israel; and
- A list of all publicly traded securities held directly by the SBA.

The SBA is required to adopt and incorporate the obligations of this act into the SBA's investment policy statement as set forth in s. 215.475, F.S.<sup>55</sup>

Notwithstanding any other provisions of the bill to the contrary, the SBA may cease the investment prohibitions contained in the bill in certain scrutinized companies if clear and

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<sup>54</sup> Section 215.4401(3)(a)1., F.S., defines "alternative investment" as an investment by the State Board of Administration in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company through an investment manager.

<sup>55</sup> Section 215.475, F.S., entitled 'Investment policy statement' provides:

(1) In making investments for the System Trust Fund pursuant to ss. [215.44-215.53](#), the board shall make no investment which is not in conformance with the Florida Retirement System Defined Benefit Plan Investment Policy Statement, hereinafter referred to as "the IPS," as developed by the executive director and approved by the board. The IPS must include, among other items, the investment objectives of the System Trust Fund; permitted types of securities in which the board may invest; and evaluation criteria necessary to measure the investment performance of the fund. As required from time to time, the executive director of the board may present recommended changes in the IPS to the board for approval.

(2) Prior to any recommended changes in the IPS being presented to the board, the executive director of the board shall present such changes to the Investment Advisory Council for review. The council shall present the results of its review to the board prior to the board's final approval of the IPS or changes in the IPS.

convincing evidence shows the value of the assets under management of the SBA becomes equal to or less than 99.50 percent, or 50 basis points, of the hypothetical value of all assets under management of the SBA assuming no investment prohibitions for any company had occurred under the section. For cessation of these investment prohibitions, the SBA must submit a written report to the Board of Trustees, the President of the Florida Senate and the Speaker of the Florida House of Representatives in advance of the new investment, setting forth its justification supported by clear and convincing evidence. Such condition is required to be updated semiannually.

**Section 2** amends and reenacts s. 287.135, F.S., regarding prohibition against contracting with scrutinized companies. This section is effective October 1, 2016.

Each state agency or local governmental entity is prohibited from contracting for goods and services of \$1 million or more if the company has been placed on the List.

Any contract with a state agency or local governmental entity for goods and services of \$1 million or more entered into or renewed on or after October 1, 2016, must contain a provision that authorizes the termination of the contract by the awarding body if the company:

- Is found to have submitted a false certification regarding non-placement on the Scrutinized Companies that Boycott Israel List, the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operations in Cuba or Syria;
- Has been placed on the Scrutinized Companies that Boycott Israel List;
- Has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or
- Has been engaged in business operations in Cuba or Syria.

A state agency or local governmental entity is permitted to make a case-by-case exception to the prohibition for a company on the List if all of the following occur:

- The business operations were made before October 1, 2016;
- The business operations have not been expanded or renewed after October 1, 2016;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company;
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations; *and*
- *One* of the following occurs:
  - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
  - For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
  - For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

At the time a company submits a bid or proposal for a contract or before the company enters into or renews a contract with an agency or governmental entity for goods or services of \$1 million or more, the bill requires the company to certify that the company is not on the List.

**Section 3** provides that the bill takes effect upon becoming a law except as expressly provided in the act.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shares with counties and municipalities.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

CS/SB 86 has an indeterminate fiscal impact. Companies that choose to boycott Israel may not be eligible to contract with state and local governmental entities in Florida which may have an adverse effect. In addition, any investment instruments of those companies may not be held by the State Board of Administration (SBA) as an asset of the Florida Retirement System (FRS) pension plan which may also have an adverse effect.

##### **C. Government Sector Impact:**

The bill has an indeterminate fiscal impact. State agencies and local governments will not be permitted to contract with certain companies that boycott Israel in certain instances. This may eliminate companies that would otherwise have been the least expensive source for certain goods and services.

The SBA will not be permitted to hold certain investments relating to companies that boycott Israel. The financial impact of this limitation is indeterminate. In addition, according to the SBA, compliance to the requirement to identify those scrutinized

companies is estimated to be less than \$25,000 per year, which can be handled within existing resources.<sup>56</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 215.4725 of the Florida Statutes.

This bill amends section 287.135 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Governmental Oversight and Accountability on October 6, 2015**

CS/SB 86 differs from SB 86 in the following ways:

- Limits the newly scrutinized companies to those that boycott Israel rather than companies that boycott any member of the World Trade Organization or other nation with a trade agreement with the United States.
- Limits the State Board of Administration's obligations to new acquisitions of securities related to the scrutinized companies rather than divesting in current holdings relating those companies.
- Limits the application of the investment limitations to the assets of the Florida Retirement System pension plan rather than the pension plan and the investment plan.
- Limits the contractual restrictions to contracts worth \$1 million or more rather than a total potential value of less than \$10,000 or to contracts in which a business agrees to provide the goods or services at a cost at least 20 percent less than the next lowest bidder.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>56</sup> Based on telephone conversation with the SBA staff on October 14, 2015.