

By the Committee on Governmental Oversight and Accountability;
and Senators Negron and Gaetz

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

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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
57 actions that are intended to penalize, inflict economic harm, or
58 otherwise limit commercial relations with Israel, or persons or

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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.

86 (e) "Public fund" means all funds, assets, trustee, and
87 other designates under the State Board of Administration

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

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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
144 removing such companies from the fund or create a similar fund
145 having indirect holdings devoid of such companies. If the

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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.

173 (5) INVESTMENT POLICY STATEMENT OBLIGATIONS.—The public
174 fund's actions taken in compliance with this section, including

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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
202 companies.—

203 (1) In addition to the terms defined in ss. 287.012 and

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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;~~7~~ or

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

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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
260 Boycott Israel List;

261 3. Has been placed on the Scrutinized Companies with

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

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

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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
347 local governmental entity shall bring a civil action against the
348 company. If a civil action is brought and the court determines

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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
376 to companies on the Scrutinized Companies with Activities in
377 Sudan List or the Scrutinized Companies with Activities in the

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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.