

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5C Scrutinized Companies
SPONSOR(S): Snyder
TIED BILLS: IDEN./SIM. BILLS: SB 10-C

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) State Affairs Committee	17 Y, 4 N	Villa	Williamson

SUMMARY ANALYSIS

The State Board of Administration (SBA) has responsibility for investing the assets of the Florida Retirement System (FRS) Pension Plan and administering the FRS Investment Plan, which represents approximately \$203.8 billion, or approximately 84.4 percent of the \$241.4 billion in assets managed by the SBA. The SBA's ability to invest the FRS assets is governed by an authorized list of investments established in law. SBA investments are also governed by the Protecting Florida's Investment Act, which, in part, requires the SBA to identify and maintain a list of scrutinized companies with business operations in Iran called the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (Iran Petroleum List) and to divest from such companies.

Current law also regulates state agency procurement of commodities and contractual services and prohibits a company on the Iran Petroleum List from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or a local governmental entity for goods or services of \$1 million or more, with certain exceptions.

The bill redesignates the Iran Petroleum List as the Scrutinized Companies with Activities in Iran Terrorism Sectors List (Iran Terrorism List) and specifies that companies currently on the Iran Petroleum List are deemed to be on the Iran Terrorism List. The bill expands the definition of "scrutinized company" to include a company with business operations linked to the government of Iran and, on or after January 10, 2024:

- More than 10 percent of the company's total revenues or assets are linked to Iran and involve the energy, petrochemical, financial, construction, manufacturing, textile, mining, metals, shipping, shipbuilding, or port sectors of Iran, and the company has failed to take substantial action; or
- The company has an investment of \$20 million or more, or any combination of investments of at least \$10 million each that equal or exceed \$20 million in any 12-month period, and involves oil-related activities, mineral-extraction activities, or the energy, petrochemical, financial, construction, manufacturing, textile, mining, metals, shipping, shipbuilding, or port sectors of Iran.

The bill applies the processes and requirements currently applicable to the Iran Petroleum List to the Iran Terrorism List. Accordingly, the SBA must maintain the Iran Terrorism List and divest from companies on the list; however, if Congress and the President affirmatively and unambiguously state that the government of Iran has taken certain actions and the United States revokes all sanctions imposed against the government of Iran, then the SBA is no longer required to maintain the Iran Terrorism List or divest from such companies.

In accordance with current law, a company on the Iran Terrorism List is prohibited from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or a local governmental entity for goods or services of \$1 million or more, with certain exceptions. A company must certify that it is not on the Iran Terrorism List at the time the company submits a bid or proposal for, or before the company enters into or renews, a contract with an agency or a local governmental entity for goods or services of \$1 million or more. Any such contract must include a provision allowing for its termination at the option of the awarding body if the company is found to have submitted a false certification or been placed on the Iran Terrorism List.

The bill appears to have an indeterminate fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Board of Administration

The State Board of Administration (SBA) is established by Art. IV, s. 4(e) of the Florida Constitution, and is composed of the Governor as Chair, the Chief Financial Officer, and the Attorney General, commonly referred to as the “Board of Trustees.”¹ The SBA has responsibility for investing the assets of the Florida Retirement System (FRS) Pension Plan² and administering the FRS Investment Plan,³ which combined represent approximately \$203.8 billion, or approximately 84.4 percent of the \$241.4 billion in assets managed by the SBA, as of July 31, 2023.⁴ The SBA also manages over 25 other investment portfolios, with combined assets of approximately \$37.6 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.

Investment decisions for the pension plan are made by fiduciaries hired by the state. Under Florida law, an SBA fiduciary charged with an investment decision must act as a prudent expert would under similar circumstances, considering all relevant substantive factors. A nine-member Investment Advisory Council (IAC) provides recommendations to the SBA on investment policy, strategy, and procedures and serves as a resource to the Board of Trustees.⁵

The SBA’s authority to invest the funds, including FRS assets, is governed by an authorized list of investments established in law.⁶ The authorized list specifies the permitted types of investments as well as the total percentage that may be invested in each type of investment. The authorized list provides that:

- No more than 80 percent of any fund may be invested in domestic equity securities.
- No more than 75 percent of any fund may be invested in internally managed equity securities.
- No more than 3 percent of equity assets may be invested in the equity securities of any one issuing entity, except to the extent a higher percentage of the same issue is included in a nationally recognized market index, based on market values, or except upon a specific finding by the SBA that such higher percentage is in the best interest of the fund.
- No more than 25 percent of any fund may be invested in specific instruments, such as certain bonds or other obligations of other states or of municipalities or other political subdivisions, notes secured by first mortgages insured or guaranteed by the Federal Housing Administration or the United States Department of Veterans Affairs, investment-grade group annuity contracts of the pension investment type, certain interests in real property, certain bonds or instruments issued by the government of Israel, foreign government general obligations, or other asset-backed securities.
- No more than 50 percent of any fund may be invested in foreign corporate or commercial securities or obligations.
- No more than 30 percent of any fund may be invested in alternative investments.^{7,8}

¹ See also Art. XII, s. 9, FLA. CONST.

² Section 121.151, F.S.

³ Section 121.4501(8), F.S. See also, rule 19-13.001, F.A.C.

⁴ State Board of Administration, *Performance Report Month Ending: July 31, 2023*, <https://www.sbafla.com/fsb/Portals/FSB/Content/Performance/Trustees/2023/July%202023%20Monthly%20Trustee%20Report.pdf?ver=2023-09-27-160309-997> (last visited October 19, 2023).

⁵ Section 215.444(1), F.S.

⁶ Section 215.47, F.S.

⁷ “Alternative investment” means an investment by the SBA in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company through an investment manager. Section 215.4401(3)(a), F.S.

⁸ Section 215.47, F.S.

In addition, the SBA may invest up to 5 percent of any fund as it deems appropriate. However, before making such investment, the SBA must present a proposed plan for such investment to the IAC. The proposed plan must include a detailed analysis of the investment, the expected benefits and potential risks, and methods for monitoring and measuring performance.⁹

Divestment of Securities

Divestment of securities is one method of applying economic pressure to companies, groups, or countries whose practices are not condoned by shareholders. Divestment may be used in conjunction with or in lieu of other sanctioning methods, such as economic embargoes and diplomatic and military activities. Alternatively, divestment may be used as a protective device if a particular investment carries a high level of risk to the performance of a fund.

State Divestment Laws

The state has practiced divestment several times in modern history. From 1986 to 1993, the Legislature directed the SBA to divest from companies doing business with South Africa. From 1988 to 2015, the Legislature placed restrictions on investments in any institution or company doing business in or with Northern Ireland. From 1993 to the present, the Legislature has required the SBA to divest from companies doing business in or with Cuba and prohibited state agencies from investing in companies engaging in certain business activities with Cuba.¹⁰ From 1997 until 2001, the SBA decided to divest from 16 tobacco stocks due to pending litigation involving the state and those companies. From 2007 to the present, the Legislature has directed the SBA to divest funds from companies that are actively seeking and providing certain business opportunities with Iran and Sudan.¹¹ From 2016 to the present, the Legislature has prohibited the SBA from investing in companies that engage in an economic boycott against Israel,¹² and in 2023, required the SBA to divest from such companies.¹³ From 2018 to the present, the Legislature has required the SBA to divest from companies doing business in or with Venezuela and prohibited state agencies from investing in companies engaging in certain business activities with Venezuela.¹⁴

State Divestment Laws Targeting Iran

In 2007, the Legislature unanimously passed the Protecting Florida's Investment Act (PFIA), which, in part, requires the SBA to divest from companies¹⁵ with certain business operations¹⁶ in Iran.¹⁷ Specifically, the PFIA requires the SBA to maintain the Scrutinized Companies with Activities in the Iran

⁹ Section 215.47(6), F.S.

¹⁰ Sections 215.471(1)(a) and (b) and 215.472(1) and (2), F.S.

¹¹ Section 215.473, F.S.

¹² Section 215.4725, F.S. "Boycott Israel" or "boycott of Israel" means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. 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 SBA to be evidence that a company is participating in a boycott of Israel. The term includes taking adverse action, including changes to published commercial financial ratings, risk ratings, and controversy ratings based on nonpecuniary factors, to inflict economic harm on Israel or persons or entities doing business in Israel or in Israeli-controlled territories. The term includes trade practices prohibited by federal regulations issued in compliance with 50 U.S.C. s. 4842 and does not include trade practices preempted by federal law. Section 215.4725(1)(a), F.S.

¹³ Chapter 2023-111, L.O.F.

¹⁴ Sections 215.471(1)(c) and 215.472(3), F.S.

¹⁵ "Company" means 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, or affiliates of such entities or business associations, that exists for the purpose of making profit. Section 215.473(1)(d), F.S.

¹⁶ "Business operations" means engaging in commerce in any form in Iran, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce. Section 215.473(1)(c), F.S.

¹⁷ "Iran" means the Islamic Republic of Iran. Section 215.473(1)(l), F.S.

Petroleum Energy Sector List (Iran Petroleum List), which lists all of the companies that have a material business relationship with the government of Iran and:

- More than 10 percent of the company's total revenues or assets are linked to Iran and involve oil-related activities¹⁸ or mineral-extraction activities,¹⁹ and the company has failed to take substantial action;²⁰ or
- The company has made an investment of \$20 million or more, or any combination of investments of at least \$10 million each, which in the aggregate equals or exceeds \$20 million in any 12-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop its petroleum resources.^{21,22}

The Iran Petroleum List must be updated quarterly and made publicly available.²³ The SBA must file a report with each member of its Board of Trustees, the President of the Senate, and the Speaker of the House of Representatives that includes the companies on the Iran Petroleum List,²⁴ and at each quarterly meeting of the Board of Trustees, the SBA must file a report detailing any action taken towards companies on the Iran Petroleum List.²⁵

The SBA must provide written notice to any company with *inactive* business operations²⁶ that has been included on the Iran Petroleum List encouraging the company to refrain from initiating active business operations.²⁷ The SBA must continue such correspondence semiannually.²⁸

If a scrutinized company is determined to have *active* business operations in Iran, the SBA must send written notice informing the company of its scrutinized status and that it may become subject to divestment. If, within 90 days, the company ceases scrutinized business operations, then that company must be removed from the Iran Petroleum List. If, after 90 days, the company continues scrutinized active business operations, the SBA must sell, redeem, divest, or withdraw all publicly traded securities of the company from the public fund²⁹ within 12 months.³⁰

The SBA is further prohibited from acquiring, on behalf of the public fund, securities of companies on the Iran Petroleum List that have active business operations.³¹

¹⁸ "Oil-related activities" include, but are not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including providing supplies or services in support of such activities, except that the mere retail sale of gasoline and related consumer products is not considered an oil-related activity. Section 215.473(1)(p), F.S.

¹⁹ "Mineral-extraction activities" include the exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including providing supplies or services in support of such activities. Section 215.473(1)(o), F.S.

²⁰ "Substantial action specific to Iran" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one year and to refrain from such new business operations. Section 215.473(1)(x), F.S.

²¹ "Petroleum resources" means petroleum, petroleum byproducts, or natural gas. Section 215.473(1)(q), F.S.

²² Section 215.473(2)(b), F.S.

²³ Section 215.473(2)(c), F.S.

²⁴ Section 215.473(4)(a), F.S. The PFIA also contains a quarterly reporting requirement for the SBA to the Board of Trustees, the President of the Senate, the Speaker of the House of Representatives, and the U.S. Presidential Special Envoy to Iran summarizing the actions taken pursuant to the act. *See s. 215.473(4)(b)*, F.S.

²⁵ Section 215.473(4)(b), F.S.

²⁶ "Inactive business operations" means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose. Section 215.473(1)(j), F.S.

²⁷ "Active business operations" means all business operations that are not inactive business operations. Section 215.473(1)(a), F.S.

²⁸ Section 215.473(3)(a)2., F.S.

²⁹ "Public fund" means all FRS assets held by the SBA in its capacity as a fiduciary pursuant to ch. 121, F.S., which is the FRS Act. Section 215.473(1)(s), F.S.

³⁰ Section 215.473(3), F.S.

³¹ Section 215.473(3)(c), F.S. A company the U.S. Government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Iran, indirect holdings in actively managed investment funds, and exchange-traded funds are not subject to divestment or the investment prohibition. Section 215.473(3)(d) and (e), F.S. In addition, the SBA may cease divesting and reinvest in certain scrutinized companies if clear and convincing evidence shows that the value of all assets of the public fund become equal to or less than 99.5 percent, or 50 basis points, of the hypothetical value of all assets of the public fund assuming no divestment had occurred. However, for any cessation of divestment or reinvestment, the SBA must provide a written report to each member of its

The SBA may no longer assemble the Iran Petroleum List, must cease engagement with and divestment from such companies, and may reinvest in such companies if:

- Congress or the President affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Iran has ceased to acquire weapons of mass destruction and support international terrorism; or
- The U.S. revokes all sanctions imposed against the government of Iran.³²

Government Contracting and Procurement

Current law sets forth the procurement and contracting procedures for most state agencies.³³ In general, the law requires the use of a competitive solicitation³⁴ process when agencies wish to procure commodities or contractual services that cost more than \$35,000,³⁵ with certain exceptions.³⁶ Depending on the type of contract and scope of work or goods sought, an agency may use one of three procurement methods:

- Invitation to bid (ITB) — An agency must use an ITB when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.³⁷
- Request for proposals (RFP) — An agency must use an RFP when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables.³⁸
- Invitation to negotiate (ITN) — An ITN is a solicitation used by an agency that is intended to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value.³⁹

The Department of Management Services (DMS) is statutorily designated as the primary state agency overseeing procurement⁴⁰ and its responsibilities include creating uniform agency procurement rules,⁴¹ implementing the online procurement program,⁴² and procuring state term contracts.⁴³ DMS is also responsible for registering vendors that wish to provide goods or services to the state⁴⁴ and maintaining lists of vendors who may not submit bids, proposals, or replies to agency solicitations.⁴⁵

Board of Trustees, the President of the Senate, and the Speaker of the House of Representatives setting forth the reasons and justifications for its decisions to cease divestment, reinvest, or remain invested in companies having scrutinized active business operations. Section 215.473(7), F.S.

³² Section 215.473(5)(b), F.S.

³³ See ch. 287, 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. Section 287.012(1), F.S.

³⁴ “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. Section 287.012(6), F.S.

³⁵ Sections 287.057 and 287.017, F.S.

³⁶ See s. 287.057(3)(e), F.S.

³⁷ Section 287.057(1)(a), F.S.

³⁸ Section 287.057(1)(b), F.S.

³⁹ Section 287.057(1)(c), F.S.

⁴⁰ See ss. 287.032 and 287.042, F.S.

⁴¹ See ss. 287.032(2) and 287.042(3), (4), and (12), F.S.

⁴² See s. 287.057(24), F.S.

⁴³ See ss. 287.042(2) and 287.056, F.S.

⁴⁴ See ss. 287.032 and 287.042, F.S.; see also Department of Management Services, *Vendor Registration and Vendor Lists*,

https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists (last visited October 19, 2023).

⁴⁵ Sections 287.1351, 287.133, 287.134, and 287.137, F.S.

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Contracting with Entities of Foreign Countries of Concern

Current law prohibits governmental entities⁴⁶ from entering into a contract with a company that would give the company access to an individual's personal identifying information if:

- The company is owned by a government of a foreign country of concern;⁴⁷
- The government of a foreign country of concern has a controlling interest⁴⁸ in the company; or
- The company is organized under the laws of or has its principal place of business in a foreign country of concern.⁴⁹

Beginning January 1, 2024, before a governmental entity can enter into a contract with a company that would grant the company access to an individual's personal identifying information, the company must provide the governmental entity with an affidavit attesting under penalty of perjury that the company does not meet any of the foregoing criteria.⁵⁰

Scrutinized List of Prohibited Companies

A company is ineligible to bid on, submit a proposal for, or enter into or renew a contract with an agency or a local governmental entity⁵¹ for goods or services worth \$1 million or more if the company is on the Iran Petroleum List or is engaged in certain scrutinized business operations⁵² in Sudan or Syria.⁵³ In addition, a company that engages in a boycott of Israel is ineligible to bid on, submit a proposal for, or enter into or renew a contract with an agency or a local governmental entity for goods or services of any amount.⁵⁴

An agency or a local governmental entity may permit a scrutinized company to be eligible for, bid on, submit a proposal for, or enter into or renew a contract if the agency or local governmental entity would otherwise be unable to obtain the goods or services for which the contract is offered⁵⁵ or if specified

⁴⁶ "Governmental entity" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, but not limited to, the Commission on Ethics, the Public Service Commission, the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. Section 287.138(1)(d), F.S.

⁴⁷ "Foreign country of concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern. Section 287.138(1)(c), F.S.

⁴⁸ "Controlling interest" means possession of the power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person or entity that directly or indirectly has the right to vote 25 percent or more of the voting interests of the company or is entitled to 25 percent or more of its profits is presumed to possess a controlling interest. Section 215.473(1)(a), F.S.

⁴⁹ Section 287.138(2), F.S.

⁵⁰ Section 287.138(4)(a), F.S.

⁵¹ "Local governmental entity" means a county, municipality, special district, or other political subdivision of the state. Section 287.135(1)(d), F.S.

⁵² "Business operations" means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce. Section 287.135(1)(c), F.S.

⁵³ Section 287.135(2)(b), F.S. Current law also prohibits agencies and local governmental entities from contracting with companies engaged in certain scrutinized business operations in Cuba; however, in *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 prohibiting enforcement of the provision restricting certain companies that have scrutinized business operations with Cuba from bidding on or contracting with the State of Florida. The court found the provision was preempted by an extensive federal sanctions regime promulgated by the legislative and executive branches and would undermine the President's discretionary authority concerning federal policy toward Cuba.

⁵⁴ Section 287.135(2)(a), F.S.

⁵⁵ Section 287.135(4)(b), F.S.

conditions are met. With respect to scrutinized companies on the Iran Petroleum List, all of the following conditions must occur:

- The scrutinized business operations were made before July 1, 2011, and 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.⁵⁶

A company must certify that it is not a scrutinized company at the time a bid or proposal is submitted or before the company enters into or renews a contract with an agency or a local governmental entity. However, if the company is a scrutinized company, the agency or local governmental entity must provide the company with written notice. The company then has 90 days to demonstrate that the false certification was made in error, otherwise the agency or local governmental entity must file a civil action. If the court determines the company submitted a false certification, the company must pay a civil penalty⁵⁷ and the company is ineligible to bid on any contract with an agency or a local governmental entity for three years.⁵⁸

In addition, a contract for goods or services of \$1 million or more entered into or renewed on or after July 1, 2018, must contain a provision that allows for the termination of the contract, at the option of the awarding body,⁵⁹ if the company is found to have submitted a false certification or been engaged in certain scrutinized business operations, including being placed on the Iran Petroleum List.⁶⁰

The above contracting prohibitions applicable to companies on the Iran Petroleum List become inoperative when federal law ceases to authorize states to adopt and enforce such contracting prohibitions.⁶¹

Office of Insurance Regulation

The Financial Services Commission (commission) is created within the Department of Financial Services, and is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The Office of Insurance Regulation (OIR), within the commission, is responsible for all activities concerning insurers⁶² and other risk bearing entities.⁶³ Current law governs accounting, investments, and deposits by insurers and specifies the assets that are allowed and not allowed for purposes of determining the financial condition of an insurer.

In 2014, the Legislature required a domestic insurer to report a list of investments that the insurer has in companies included on the Scrutinized Companies with Activities in Sudan List or the Iran Petroleum List. The list must be reported annually to OIR.

⁵⁶ Section 287.135(4)(a)1., F.S.

⁵⁷ The civil penalty must be the greater of \$2 million or twice the amount of the contract for which the false certification was submitted. Section 287.135(5)(a)1., F.S.

⁵⁸ Section 287.135(5)(a), F.S.

⁵⁹ “Awarding body” means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity. Section 287.135(1)(a), F.S.

⁶⁰ Section 287.135(3)(a)4., F.S. A similar requirement applies to companies that engage in a boycott of Israel for contracts for goods or services of any contract amount. Section 287.135(3)(b), F.S.

⁶¹ Section 287.135(8), F.S.

⁶² “Insurer” means every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuity. Section 624.03, F.S.

⁶³ Section 20.121(3)(a), F.S.

Federal Authority to Divest from Iran

The federal government has expressly given states and local governments authority to divest⁶⁴ from entities with significant investments in the energy sector of Iran through enactment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA).⁶⁵ Specifically, CISADA authorizes states and local governments to divest their assets from, or prohibit investment of their assets in, any entity the state or local government determines, using credible information available to the public:

- Has an investment of \$20 million or more in the energy sector of Iran, including in a person that provides oil or liquified natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquified natural gas, for the energy sector of Iran; or
- Is a financial institution that extends \$20 million or more in credit to another person, for 45 days or more, if that person will use the credit for investment in the energy sector of Iran.⁶⁶

In addition, CISADA authorizes prior enacted state or local government divestment measures towards persons with investments or other business activities in Iran to continue in effect provided the scrutinized entity is provided with notice and an opportunity to respond in writing within 90 days.⁶⁷ Florida's PFI, which requires the SBA to divest from certain companies with business operations in Iran, was enacted in 2007,⁶⁸ three years before the CISADA, and provides the required 90-days' notice.

CISADA specifies that the authorization for a state or local government to divest ends 30 days after the President certifies to Congress that the government of Iran no longer satisfies the requirements for designation as a state sponsor of terrorism and has ceased the pursuit, acquisition, and development of certain weapons.⁶⁹

State Sponsors of Terrorism

The U.S. Secretary of State may designate a country as a state sponsor of terrorism if it is found to have repeatedly provided support for acts of international terrorism.⁷⁰ The country remains on the state sponsor of terrorism list until the President certifies either:

- The country has not provided any support for acts of international terrorism during the previous six months and has provided assurances that it will not support acts of international terrorism in the future; or
- The country has undergone a fundamental change in its leadership and policies, is not supporting acts of international terrorism, and has provided assurances it will not support acts of international terrorism in the future.⁷¹

The four main categories of sanctions resulting from such designation 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.⁷² Designation as a state sponsor of terrorism also implicates other sanctions laws that penalize persons and countries engaging in certain trade with state sponsors of terrorism.⁷³

⁶⁴ The federal statute defines a state or local "investment" to include a commitment or contribution of funds or property, a loan or other extension of credit, and the entry into or renewal of a contract for goods or services.

⁶⁵ 22 U.S.C. ss. 8501-8566.

⁶⁶ 22 U.S.C. s. 8532(b) and (c).

⁶⁷ 22 U.S.C. s. 8532(i).

⁶⁸ Chapter 2007-88, L.O.F.

⁶⁹ 22 U.S.C. s. 8551(a).

⁷⁰ U.S. Department of State, *Country Reports on Terrorism 2021*, available at https://www.state.gov/wp-content/uploads/2023/02/Country_Reports_2021_Complete_MASTER.no_maps-011323-Accessible.pdf (last visited on October 30, 2023).

⁷¹ *Id.*

⁷² U.S. Department of State, *State Sponsors of Terrorism*, <https://www.state.gov/state-sponsors-of-terrorism/> (last visited October 31, 2023).

⁷³ *Id.*

Currently there are four countries designated under these authorities: Cuba, North Korea, Iran, and Syria.⁷⁴

U.S.-Iran Sanctions

The U.S. has been at the forefront of international efforts to influence Iran's behavior through a series of sanctions.⁷⁵ These sanctions have been complex and evolving in response to shifting geopolitical priorities and concerns. Restrictions have been imposed for various reasons, including Iran's support for international terrorism and its human rights abuses.⁷⁶

The sanctions are usually categorized as either primary or secondary. Primary sanctions restrict U.S. individuals and entities from engaging in specific activities or transactions with certain foreign individuals, entities, or countries,⁷⁷ and secondary sanctions target non-U.S. individuals, entities, or countries that engage in certain activities with entities or countries subject to primary sanctions, often by threatening to impose penalties on their access to the U.S. market or financial system.⁷⁸

In 2015, the U.S., in alignment with the Joint Comprehensive Plan of Action (JCPOA), suspended a significant portion of its secondary sanctions targeting Iran. The JCPOA was a pact negotiated between Iran and several global powers, including the U.S., under which Iran committed to dismantling a significant portion of its nuclear program and granting broader access to its facilities for inspections, in return for substantial sanctions relief. Primary sanctions imposed on direct U.S.-Iran trade remained in effect during the JCPOA.⁷⁹

In 2018, the U.S. ceased participation in the JCPOA and reinstated all previously eased U.S. sanctions, citing Iran's ongoing malign activities. These, along with additional sanctions, were implemented as part of a "maximum pressure" policy, with the stated objective of pressuring Iran into entering negotiations for a new and broader agreement.⁸⁰ As part of this policy, several executive orders were issued blocking the assets and transactions of, or authorizing various other sanctions on, persons determined to be operating in Iran's energy, petrochemical, financial, construction, manufacturing, textile, mining, metals, shipping, shipbuilding, and port sectors.⁸¹ These executive orders are still in effect.

Effect of the Bill

Divestment

The bill redesignates the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List as the Scrutinized Companies with Activities in Iran Terrorism Sectors List (Iran Terrorism List). The bill specifies that companies currently on the Iran Petroleum List as of November 6, 2023, are deemed to be on the Iran Terrorism List effective November 10, 2023.

The bill expands the definition of "scrutinized company" to include companies that have business operations that involve contracts with or provision of supplies or services to the government of Iran; companies in which the government of Iran has any direct or indirect equity share, consortiums, or

⁷⁴ *Id.*

⁷⁵ See Congressional Research Service, *Iran Sanctions*, <https://crsreports.congress.gov/product/pdf/RS/RS20871> (last visited October 31, 2023).

⁷⁶ *Id.*

⁷⁷ Congressional Research Service, *U.S. Sanctions on Iran*, <https://crsreports.congress.gov/product/pdf/IF/IF12452> (last visited October 31, 2023).

⁷⁸ *Id.*

⁷⁹ Congressional Research Service, *supra* note 75.

⁸⁰ Congressional Research Service, *supra* note 77.

⁸¹ Executive Orders No.: 13846 (2018), 13871 (2019), and 13902 (2020). See also Iran Freedom and Counter-Proliferation Act of 2012, P.L. 112-239, 22 U.S.C. §§ 8701 et seq.

projects commissioned by the government of Iran; or companies involved in consortiums or projects commissioned by the government of Iran and, on or after January 10, 2024:

- More than 10 percent of the company's total revenues or assets are linked to Iran and involve the energy,⁸² petrochemical,⁸³ financial,⁸⁴ construction,⁸⁵ manufacturing,⁸⁶ textile,⁸⁷ mining,⁸⁸ metals,⁸⁹ shipping,⁹⁰ shipbuilding,⁹¹ or port sectors⁹² of Iran, and the company has failed to take substantial action; or
- The company has, with actual knowledge, an investment of \$20 million or more, or any combination of investments of at least \$10 million each, which in the aggregate equals or exceeds \$20 million in any 12-month period and involves oil-related activities in Iran, mineral-extraction activities in Iran, or the energy, petrochemical, financial, construction, manufacturing, textile, mining, metals, shipping, shipbuilding, or port sectors of Iran.

The bill makes the processes and requirements applicable to the current Iran Petroleum List applicable to the new Iran Terrorism List. Accordingly, the SBA must maintain the Iran Terrorism List and send written notice to any scrutinized company having active business operations with Iran informing the company of its scrutinized status and that it may become subject to divestment.⁹³ If a company ceases scrutinized business operations within 90 days, then that company must be removed from the Iran Terrorism List. If, after 90 days, the company continues scrutinized active business operations, then the SBA must sell, redeem, divest, or withdraw all publicly traded securities of the company from the public

⁸² The bill defines the term "energy sector" to mean those activities involving the exploration, extraction, production, refinement, or liquefaction of petroleum, natural gas, or petroleum products in Iran.

⁸³ The bill defines the term "petrochemical sector" to mean those activities involving any aromatic, olefin, or synthesis gas, or any of their derivatives, including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol, and urea.

⁸⁴ The bill defines the term "financial sector" to mean any entity, including foreign branches wherever located, organized under the laws of Iran or any jurisdiction within Iran, or owned or controlled by the Government of Iran, or located in Iran, or owned or controlled by any such entities, which is engaged in the business, as principal or agent, of accepting deposits; making, granting, transferring, holding, or brokering loans or credits; or purchasing or selling foreign exchange, securities, or commodity futures or options, or procuring purchasers and sellers thereof. Entities that operate in the financial sector of the Iranian economy include, but are not limited to, depository institutions, banks, savings banks, money service businesses, trust companies, insurance companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, dealers in precious metals, stones, or jewels, and holding companies, affiliates, or subsidiaries of any such entities.

⁸⁵ The bill defines the term "construction sector" to mean the production, procurement, devising, framing, or arranging in Iran of parts or materials to fabricate, shape, or form buildings or structures, including the onsite development, assembly, or construction of residential, commercial, or institutional buildings in Iran.

⁸⁶ The bill defines the term "manufacturing" to mean the creation of goods in Iran by manual labor or machinery which are for export from Iran or for sale within Iran.

⁸⁷ The bill defines the term "textile sector" to mean the fiber synthesis, dyeing, weaving, knitting, or felting in Iran of textiles, including apparel, carpets, cloths, fabric, or related goods, which are for export from Iran

⁸⁸ The bill defines the term "mining sector" to mean any act, process, or industry of extracting, at the surface or underground, ores, coal, precious stones, or any other minerals or geological materials from the earth in Iran.

⁸⁹ The bill defines the term "metals sector" to mean the sale, supply, or transfer, directly or indirectly, to or from Iran of raw or semifinished metals, including, but not limited to, the following types of such materials and all alloys or compounds containing such materials: aluminum, americium, antimony, barium, beryllium, bismuth, boron, cadmium, calcium, cerium, cesium, chromium, cobalt, copper, dysprosium, erbium, europium, gadolinium, gallium, germanium, gold, hafnium, hastelloy, inconel, indium, iridium, iron, lanthanum, lead, lithium, lutetium, magnesium, manganese, mercury, molybdenum, monel, neodymium, neptunium, nickel, niobium, osmium, palladium, platinum, plutonium, polonium, potassium, praseodymium, promethium, radium, rhenium, rhodium, ruthenium, samarium, scandium, silicon, silver, sodium, steels, strontium, tantalum, technetium, tellurium, terbium, thallium, thorium, tin, titanium, tungsten, uranium, vanadium, ytterbium, yttrium, zinc, and zirconium.

⁹⁰ The bill defines the term "shipping sector" to mean those activities involving the transportation of goods by seagoing vessels, including oil tankers and cargo vessels, flying the flag of the Islamic Republic of Iran, or owned, controlled, chartered, or operated directly or indirectly by the government of Iran.

⁹¹ The bill defines the term "shipbuilding sector" to mean those activities involving the construction of seagoing vessels, including oil tankers and cargo vessels, in Iran.

⁹² The bill defines the term "port sector" to mean those activities involving the loading and unloading of cargo and passengers or the transporting of goods and raw materials.

⁹³ As provided in current law, the SBA must provide written notice to any company with inactive business operations that has been included on the Iran Terrorism List encouraging the company to refrain from initiating active business operations. Such correspondence must occur semiannually.

fund within 12 months. The SBA is also prohibited from acquiring, on behalf of the public fund, securities of companies on the Iran Terrorism List that have active business operations.⁹⁴

In accordance with current law, the Iran Terrorism List must be updated quarterly. In addition to the current reporting requirements, the bill requires the SBA to file a report with its Board of Trustees, the President of the Senate, and the Speaker of the House of Representatives that includes the companies on the Iran Terrorism List within 30 days after the list is created or updated, which must be made publicly available.

The bill alters the expiration provisions in current law to require Congress *and* the President to act together and requires both of the following to occur before the SBA may cease maintaining the Iran Terrorism List:

- Congress and the President affirmatively and unambiguously state, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Iran has ceased to acquire weapons of mass destruction and support international terrorism.
- The U.S. revokes all sanctions imposed against the government of Iran.

Procurement

In accordance with current law, a company is prohibited from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or a local governmental entity for goods or services worth \$1 million or more if the company is on the Iran Terrorism List. However, the bill authorizes an agency or a local governmental entity, on a case-by-case basis, to allow a company on the Iran Terrorism List to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services of \$1 million or more if the company was not on the Iran Petroleum List as of November 6, 2023⁹⁵ and the agency or local governmental entity would otherwise be unable to obtain the goods or services for which the contract is offered, or all of the following occur:

- The scrutinized business operations were made before January 10, 2024.
- The scrutinized business operations have not been expanded or renewed on or after January 10, 2024.
- The agency or local governmental entity determines 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 those scrutinized business operations and refrain from engaging in any new scrutinized business operations.

In accordance with current law, a company must certify it is not on the Iran Terrorism List at the time the company submits a bid or proposal for a contract or before the company enters into or renews a contract with an agency or a local governmental entity for goods or services of \$1 million or more. If the company is a scrutinized company, the agency or local governmental entity must provide the company with written notice and the company has 90 days to demonstrate that the false certification was made in error, otherwise the agency or local governmental entity must file a civil action. If the court determines

⁹⁴ As provided in current law, a company the U.S. Government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Iran, indirect holdings in actively managed investment funds, and exchange-traded funds are not subject to divestment or the investment prohibition. In addition, as provided in current law, the SBA may cease divesting and reinvest in certain scrutinized companies if clear and convincing evidence shows that the value of all assets of the public fund become equal to or less than 99.5 percent, or 50 basis points, of the hypothetical value of all assets of the public fund assuming no divestment had occurred. However, for any cessation of divestment or reinvestment, the SBA must provide a written report to each member of its Board of Trustees, the President of the Senate, and the Speaker of the House of Representatives setting forth the reasons and justifications for its decisions to cease divestment, reinvest, or remain invested in companies having scrutinized active business operations.

⁹⁵ The bill authorizes agencies and local governmental entities to continue to allow companies on the Iran Terrorism List that were on the Iran Petroleum List as of November 6, 2023, to procure and contract with the agency or local governmental entity as currently provided in law.

the company submitted a false certification, the company must pay a civil penalty⁹⁶ and the company is ineligible to bid on any contract with an agency or a local governmental entity for three years.

The bill requires any contract with an agency or a local governmental entity for goods or services of \$1 million or more entered into or renewed on or after July 1, 2018, to 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 been placed on an SBA maintained list relating to scrutinized active business operations in Iran.

In accordance with current law, the contracting prohibitions applicable to companies on the Iran Terrorism List become inoperative when federal law ceases to authorize the states to adopt and enforce such contracting prohibitions.

Office of Insurance Regulation

The bill makes a conforming change by amending a cross-reference to the Iran Petroleum List. Specifically, the bill changes a reference to the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List to the Scrutinized Companies with Activities in Iran Terrorism Sectors List.

Severability

The bill provides that if any of its provisions are found invalid, the invalidity will not affect any other provision of the bill if the surviving portions of the bill can be given effect on their own.

B. SECTION DIRECTORY:

Section 1 amends s. 215.473, F.S., relating to divestiture by the SBA; Sudan; Iran.

Section 2 amends s. 287.135, F.S., relating to the prohibition against contracting with scrutinized companies.

Section 3 amends s. 624.449, F.S., relating to insurer investment in foreign companies.

Section 4 reenacts s. 215.473, F.S., relating to investments; authorized securities; loan of securities.

Section 5 provides a severability clause.

Section 6 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

⁹⁶ As provided in current law, the civil penalty must be the greater of \$2 million or twice the amount of the contract for which the false certification was submitted.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate fiscal impact on the private sector. Companies placed on the Iran Terrorism List are ineligible to bid on, submit a proposal for, or enter into or renew a contract with an agency or a local governmental entity for goods or services worth \$1 million or more. However, an agency or a local governmental entity may permit a company on the Iran Terrorism List to bid on a contract if the goods or services cannot be obtained elsewhere or if certain conditions are met.

D. FISCAL COMMENTS:

The bill has an indeterminate fiscal impact on state and local governments. The fiscal impact will depend on any potential market impact from the actual divestment of funds in the FRS. In addition, the SBA will likely have transaction and commission costs from the divestiture of current investments in the FRS and may have minimal costs related to staffing, research, and communications.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

While federal and state governments have their respective spheres of sovereignty, the U.S. Constitution, and laws made pursuant thereto, is the supreme law of the land.⁹⁷ State law may be expressly preempted if federal law explicitly prohibits any state action on the matter. State law also may be preempted by implication if either the federal government has expressed intent to restrict regulation of a certain field to the federal level, or if a state law conflicts with a federal law.⁹⁸

The U.S. Constitution also contains various provisions that, in total, vest foreign affairs powers exclusively in the federal government.⁹⁹ As such, state laws relating to foreign affairs may be unconstitutional, even if not preempted by a federal treaty or statute, if the state's policy potentially

⁹⁷ Article VI, cl. 2, U.S. CONST.

⁹⁸ *State v. Harden*, 938 So.2d 480 (Fla. 2006) (stating that “[u]nder the Supremacy Clause, a federal law may expressly or impliedly preempt state law. A state cannot assert jurisdiction where Congress clearly intended to preempt a field of law.”) citing *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311 (1981); *Crosby v. Nat’l Foreign Trade Council*, 120 S.Ct. 2288 (2000); *Odebrecht Const., Inc. v. Secretary, Fla. Dep’t of Transp.*, 715 F.3d 1268 (11th Cir. 2013).

⁹⁹ See Art. I, s. 8, U.S. CONST. (power to declare war, maintain a military, and regulate foreign commerce); art. II, s. 2, U.S. CONST. (power to enter into treaties); art III, s. 2, U.S. CONST. (power to hear cases involving foreign states and citizens); see also *Hines v. Davidowitz*, 312 U.S. 52 (1941) (stating that the “Federal Government, representing as it does the collective interests of the forty-eight states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties.”).

disturbs foreign relations. However, for a state statute to encroach on the federal government's foreign affairs power, it must have more than some incidental or indirect effect in foreign countries.¹⁰⁰

In addition, the Commerce Clause authorizes Congress to regulate foreign and interstate commerce.¹⁰¹ Under judicial construction, it has long been asserted that this allocation of power implicitly contains a negative or dormant aspect, which prohibits certain state action even absent Congressional action.¹⁰² It has also been recognized that the power conferred under the Foreign Commerce Clause is greater than the power conferred by the Commerce Clause. There is an exception to the Commerce Clause when a state acts as a market participant rather than a regulator, which generally applies when a state is acting in its proprietary capacity to spend or invest funds in a manner that comports with the economic or ideological sentiments of its citizens. The market participant exception is not *carte blanche* to impose any condition the state has the economic power to dictate. Under the market participant exception, the state is still prohibited from imposing conditions that have a substantial regulatory effect outside of the particular market in which it operates.¹⁰³ In addition, it is unclear whether the market participant exception applies to the Foreign Commerce Clause.¹⁰⁴

A reviewing court may find that the divestment and contracting provisions implicate the aforementioned constitutional provisions.

B. RULE-MAKING AUTHORITY:

The bill does not appear to provide nor does it appear to require any additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

¹⁰⁰ *Clark v. Allen*, 331 U.S. 503 (1947) (finding a state law that addressed the disposition of personal property of alien decedents valid, in spite of noting that the law would “have some incidental or indirect effect in foreign countries.”); *Zschernig v. Miller*, 389 U.S. 429 (1968); *Am. Ins. Ass’n v. Garamendi*, 123 S.Ct. 2374 (2003); *National Foreign Trade Council, Inc., v. Giannoulis*, 523 F.Supp.2d 731 (N.D. Ill. 2007); *Board of Trustees v. City of Baltimore*, 317 Md. 72 (MD Ct. of App. 1989).

¹⁰¹ Article I, s. 8, U.S. CONST.

¹⁰² *See Okla. Tax Com’n v. Jefferson Lines, Inc.*, 514 U.S. 175 (1995) (“Despite the express grant to Congress of the power to ‘regulate Commerce...among the several States,’ we have consistently held this language to contain a further, negative command, known as the dormant Commerce Clause, prohibiting certain state [action] even when Congress has failed to legislate on the subject.”).

¹⁰³ *Odebrecht Const. Inc., v. Prasad*, 876 F.Supp.2d 1305 (U.S. Dist. Ct. S.D. Fla. 2012).

¹⁰⁴ *Id.*