

CHAPTER 2016-215

Senate Bill No. 7028

An act relating to the State Board of Administration; creating s. 215.4702, F.S.; defining terms; encouraging the State Board of Administration to determine which publicly traded companies in which the Florida Retirement System Trust Fund is invested operate in Northern Ireland; encouraging the state board to take certain action upon making a determination; authorizing the state board to rely on public information in making a determination; providing that the state board is not liable or subject to a cause of action under the act; amending s. 215.473, F.S.; redefining the term “public fund”; defining the term “board”; requiring the board, rather than the public fund, to maintain a list of certain scrutinized companies rather than assembling the list by a certain time; clarifying provisions; deleting a condition that may no longer be used by the board in scrutinizing companies, relating to a specified declaration; requiring the board to monitor certain events and make specified reports at certain meetings of trustees; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 215.4702, Florida Statutes, is created to read:

215.4702 Investments in publicly traded companies operating in Northern Ireland.—

(1) As used in this section, the term:

(a) “MacBride Principles” means the objectives for companies operating in Northern Ireland to:

1. Increase the representation of individuals from underrepresented religious groups in the workforce, including managerial, supervisory, administrative, clerical, and technical jobs.

2. Provide adequate security for the protection of minority employees both at the workplace and while traveling to and from work.

3. Ban provocative religious or political emblems from the workplace.

4. Publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups.

5. Provide that layoff, recall, and termination procedures should not in practice favor particular religious groups.

6. Abolish job reservations, apprenticeship restrictions, and differential employment criteria that discriminate on the basis of religion or ethnic origin.

7. Develop training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees.

8. Establish procedures to assess, identify, and actively recruit minority employees with potential for further advancement.

9. Appoint senior management staff members to oversee affirmative action efforts and to set up timetables to carry out affirmative action principles.

(b) "Operating" means actively engaging in commerce geographically in Northern Ireland through the acquisition, development, maintenance, ownership, sale, possession, lease, or operation of equipment, facilities, personnel, products, services, or personal property.

(c) "Publicly traded company" means any business organization having equity securities listed on a national or an international exchange that is regulated by a national or an international regulatory authority.

(d) "State board" means the State Board of Administration.

(2) The state board is encouraged to determine which publicly traded companies in which the Florida Retirement System Trust Fund is invested operate in Northern Ireland. If the state board determines that a publicly traded company meets such criteria, the state board is encouraged to:

(a) Notify the publicly traded company that the state board supports the MacBride Principles;

(b) Inquire regarding the actions that the publicly traded company has taken in support of or furtherance of the MacBride Principles;

(c) Encourage a publicly traded company that has not adopted the MacBride Principles to make all lawful efforts to implement the fair employment practices embodied in the MacBride Principles; and

(d) Support the adoption of the MacBride Principles in exercising its proxy voting authority. For these purposes, the state board may not be a fiduciary under this section in exercising its proxy voting authority.

(3) In making the determination specified in subsection (2), the state board may, to the extent it deems appropriate, rely on available public information, including information provided by nonprofit organizations, research firms, international organizations, and government entities.

(4) The state board may not be held liable for, and a cause of action does not arise from, any action or inaction by the state board in the administration of this section.

Section 2. Present paragraphs (b) through (x) of subsection (1) of section 215.473, Florida Statutes, are redesignated as paragraphs (c) through (y), respectively, present paragraph (r) of that subsection is amended, a new paragraph (b) is added to that subsection, and subsections (2) through (7) of that section are amended, to read:

215.473 Divestiture by the State Board of Administration; Sudan; Iran.

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

(b) “Board” means the State Board of Administration.

~~(s)(r)~~ “Public fund” means all funds, assets of the Florida Retirement System held by, trustee, and other designates under the State Board of Administration in its capacity as a fiduciary pursuant to chapter 121.

(2) IDENTIFICATION OF COMPANIES.—

~~(a) Within 90 days after June 8, 2007, The board public fund shall make its best efforts to identify all scrutinized companies in which the public fund has direct or indirect holdings or could possibly have such holdings in the future. Such efforts include:~~

1. Reviewing and relying, as appropriate in the board’s public fund’s judgment, on publicly available information regarding companies having business operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

2. Contacting asset managers contracted by the board public fund which invest in companies having business operations in Sudan;

3. Contacting other institutional investors that have divested from or engaged with companies that have business operations in Sudan; or

4. Reviewing the laws of the United States regarding the levels of business activity that would cause application of sanctions for companies conducting business or investing in countries that are designated state sponsors of terror.

~~(b) By the first meeting of the public fund following the 90-day period described in paragraph (a), The board public fund shall assemble all scrutinized companies that fit criteria specified in subparagraphs (1)(v)1., 2., and 3. labeled the (1)(u)1., 2., and 3. into a “Scrutinized Companies with Activities in Sudan List” and a list of all scrutinized companies that fit criteria specified in subparagraph (1)(v)4. labeled the~~

~~(1)(u)4.~~ into a “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.”

(c) The ~~board public fund~~ shall update and make publicly available quarterly the Scrutinized Companies with Activities in Sudan List and the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List based on evolving information from, among other sources, those listed in paragraph (a).

(d) Notwithstanding the provisions of this section, a social-development company that is not complicit in the Darfur genocide is not considered a scrutinized company under subparagraph ~~(1)(v)1.~~ ~~(1)(u)1.~~, subparagraph ~~(1)(v)2.~~ ~~(1)(u)2.~~, or subparagraph ~~(1)(v)3.~~ ~~(1)(u)3.~~

(3) REQUIRED ACTIONS.—The ~~board public fund~~ shall adhere to the following procedure for assembling companies on the Scrutinized Companies with Activities in Sudan List and the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:

(a) *Engagement.*—

1. The ~~board public fund~~ shall immediately determine the companies on the Scrutinized Companies with Activities in Sudan List and the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List in which the public fund owns direct or indirect holdings.

2. For each company identified in this paragraph that has only inactive business operations, the ~~board public fund~~ shall send a written notice informing the company of this act and encouraging it to continue to refrain from initiating active business operations in Sudan or Iran until it is able to avoid scrutinized business operations. The ~~board public fund~~ shall continue such correspondence semiannually.

3. For each company newly identified under this paragraph ~~which that~~ has active business operations, the ~~board public fund~~ shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the public fund. The 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 business operations within 90 days in order to avoid qualifying for divestment by the public fund.

4. If, within 90 days after the ~~board's public fund's~~ first engagement with a company pursuant to this paragraph, that company ceases scrutinized business operations, the company shall be removed from the Scrutinized Companies with Activities in Sudan List and the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and the provisions of this act shall cease to apply to that company unless that company resumes scrutinized business operations. If, within 90 days after the ~~board's public~~

fund's first engagement, the company converts its scrutinized active business operations to inactive business operations, the company is subject to all provisions relating to inactive business operations. A company may be removed from one list but remain on the other list, in which case the company shall be subject to the provisions applicable to the list on which the company remains.

(b) *Divestment.*—

1. If, after 90 days following the ~~board's public fund's~~ first engagement with a company pursuant to paragraph (a), the company continues to have scrutinized active business operations, and only while such company continues to have scrutinized active business operations, the ~~board public fund~~ shall sell, redeem, divest, or withdraw all publicly traded securities of the company, except as provided in paragraph (d), from the ~~public fund fund's assets under management~~ within 12 months after the company's most recent appearance on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

2. If a company that ceased scrutinized active business operations following engagement pursuant to paragraph (a) resumes such operations, this paragraph immediately applies, and the ~~board public fund~~ shall send a written notice to the company. The company shall also be immediately reintroduced onto the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, as applicable.

(c) *Prohibition.*—The ~~board public fund~~ may not acquire, on behalf of the public fund, securities of companies on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List that have active business operations, except as provided in paragraph (d).

(d) *Exemption.*—A company that the United States Government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Sudan or Iran is not subject to divestment or the investment prohibition pursuant to paragraphs (b) and (c).

(e) *Excluded securities.*—

1. Notwithstanding the ~~provisions of this section~~, paragraphs (b) and (c) do not apply to indirect holdings in actively managed investment funds. However, the ~~board public fund~~ shall submit letters to the managers of such investment funds containing companies that have scrutinized active business operations requesting that they consider removing such companies from the fund or create a similar actively managed fund having indirect holdings devoid of such companies. If the manager creates a similar fund, the board, on behalf of the public fund, shall replace all applicable investments with investments in the similar fund in an expedited timeframe

consistent with prudent investing standards. For the purposes of this section, a private equity fund is deemed to be an actively managed investment fund.

2. Notwithstanding ~~the provisions of~~ this section, paragraphs (b) and (c) do not apply to exchange-traded funds.

(f) *Further exclusions.*—Notwithstanding any other provision of this act, the ~~board public fund~~, when discharging its responsibility for operation of a defined contribution plan, shall engage the manager of the investment offerings in such plans requesting that they consider removing scrutinized companies from the investment offerings or create an alternative investment offering devoid of scrutinized companies. If the manager creates an alternative investment offering and the offering is deemed by the ~~board public fund~~ to be consistent with prudent investor standards, the ~~board public fund~~ shall consider including such investment offering in the plan.

(4) REPORTING.—

(a) The ~~board public fund~~ shall file a report with each member of ~~its~~ the Board of Trustees of the ~~State Board of Administration~~, the President of the Senate, and the Speaker of the House of Representatives ~~which that~~ includes the Scrutinized Companies with Activities in Sudan List and the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List within 30 days after the list is created. This report shall be made available to the public.

(b) At each quarterly meeting of the Board of Trustees thereafter, the ~~board public fund~~ shall file a report regarding the public fund, which shall be made available to the public and to each member of ~~its~~ the Board of Trustees of the ~~State Board of Administration~~, the President of the Senate, and the Speaker of the House of Representatives, and send a copy of that report to the United States Presidential Special Envoy to Sudan and the United States Presidential Special Envoy to Iran, or an appropriate designee or successor, which includes:

1. A summary of correspondence with companies engaged by the board on behalf of the public fund under subparagraphs (3)(a)2. and 3.;

2. All investments sold, redeemed, divested, or withdrawn in compliance with paragraph (3)(b);

3. All prohibited investments under paragraph (3)(c);

4. Any progress made under paragraph (3)(e); and

5. A list of all publicly traded securities held directly by the public fund ~~this state~~.

(5) EXPIRATION.—This section expires upon the occurrence of all of the following:

(a) If any of the following occurs ~~occur~~, the board may public fund ~~shall~~ no longer scrutinize companies according to subparagraphs (1)(v)1. ~~(1)(u)1., 2., and 3. and may shall~~ no longer assemble the Scrutinized Companies with Activities in Sudan List, shall cease engagement and divestment of such companies, and may reinvest in such companies if such companies do not satisfy the criteria for inclusion in the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:

1. The Congress or President of the United States, affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the Darfur genocide has been halted for at least 12 months;

2. The United States revokes all sanctions imposed against the government of Sudan;

3. The Congress or President of the United States 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 Sudan has honored 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; or

4. The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this section interferes with the conduct of United States foreign policy.

(b) If either any of the following occurs ~~occur~~, the board may public fund ~~shall~~ no longer scrutinize companies according to subparagraph (1)(v)4., may ~~(1)(u)4. and shall~~ no longer assemble the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and shall cease engagement, investment prohibitions, and divestment: ~~The public fund may reinvest in such companies if such companies do not satisfy the criteria for inclusion in the Scrutinized Companies with Activities in Sudan List:~~

1. The Congress or President of the United States 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

2. The United States revokes all sanctions imposed against the government of Iran; ~~or~~

~~3. The Congress or President of the United States affirmatively and unambiguously declares, by means including, but not limited to, legislation,~~

executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this section interferes with the conduct of United States foreign policy.

The board, on behalf of the public fund, may reinvest in such companies if such companies do not satisfy the criteria for inclusion in the Scrutinized Companies with Activities in Sudan List. The board, acting as a fiduciary in accordance with s. 215.47(10), shall monitor events relating to subparagraphs 1. and 2., and, upon finding that the conditions in subparagraph 1. or subparagraph 2. have occurred, the board shall report such finding at a quarterly meeting of its trustees. At each quarterly meeting of the trustees, the board shall report on the status of events relating to subparagraphs 1. and 2.

(6) INVESTMENT POLICY STATEMENT OBLIGATIONS.—~~The board's public fund's~~ actions taken in compliance with this act, including all good faith determinations regarding companies as required by this act, shall be adopted and incorporated into the public fund's investment policy statement ~~(the IPS)~~ as provided set forth in s. 215.475.

(7) REINVESTMENT IN CERTAIN COMPANIES HAVING SCRUTINIZED ACTIVE BUSINESS OPERATIONS.—Notwithstanding any other provision of this act to the contrary, the public fund may cease divesting from certain scrutinized companies pursuant to paragraph (3)(b) or reinvest in certain scrutinized companies from which it divested pursuant to paragraph (3)(b) if clear and convincing evidence shows that the value of all assets of under management by the public fund becomes equal to or less than 99.50 percent, or 50 basis points, of the hypothetical value of all assets of under management by the public fund assuming no divestment for any company had occurred under paragraph (3)(b). Cessation of divestment, reinvestment, or any subsequent ongoing investment authorized by this act is limited to the minimum steps necessary to avoid the contingency set forth in this subsection or that no divestment of any company is required for less than fair value. For any cessation of divestment, reinvestment, or subsequent ongoing investment authorized by this act, the ~~board public fund~~ shall provide a written report to each member of ~~its the~~ Board of Trustees ~~of the State Board of Administration~~, the President of the Senate, and the Speaker of the House of Representatives in advance of initial reinvestment, updated semiannually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease divestment, reinvest, or remain invested in companies having scrutinized active business operations. This act does not apply to reinvestment in companies on the grounds that they have ceased to have scrutinized active business operations.

Section 3. This act shall take effect July 1, 2016.

Approved by the Governor April 8, 2016.

Filed in Office Secretary of State April 8, 2016.