

Agenda Item #: **5B-2**

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: May 20, 2008 Consent Regular
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For: The Investment Policy Committee

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: a resolution of the Board of County Commissioners of Palm Beach County, Florida declaring the intent of Palm Beach County to ensure that County funds be invested consistently with the "Protecting Florida's Investments Act" by identifying companies doing business with Iran's energy sector and with the Sudan, and divesting from those companies; and providing for an effective date.

Summary: This resolution will implement, as to County investment funds, the provisions of the State's "Protecting Florida's Investments Act," Chapter 2007-88, Laws of Florida, by divesting from companies doing business with Iran's energy sector and the Sudan. The Investment Policy Committee recommends adopting this resolution, which will not affect the County's investment strategy. Countywide (PFK)

Background and Policy Issues: The Investment Policy Committee unanimously approved this resolution for Board adoption.

Attachment:

1. Resolution.

Recommended by: DM Weman Date 4/22/08
County Attorney Date

Approved by: N/A Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>see note</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____

Budget Account No.: Fund _____ Department _____ Unit _____ Object _____

Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:
Fiscal impact indeterminable at this time.

Ad Atwill 4-23-08 *Jim J. J...* 4/23/08
 OFMB 88 4/23/08 *CA* 4/22/08 Contract Development and Control

B. Legal Sufficiency:
Paul F. J... 4/21/08 *this item reflects the action taken by the Investment Policy Committee.*
 Assistant County Attorney

C. Other Department Review:

 Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

RESOLUTION NO. R-2008-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, DECLARING THE INTENT OF PALM BEACH COUNTY TO ENSURE THAT COUNTY FUNDS BE INVESTED CONSISTENTLY WITH THE "PROTECTING FLORIDA'S INVESTMENTS ACT" BY IDENTIFYING COMPANIES DOING BUSINESS WITH IRAN'S ENERGY SECTOR AND WITH THE SUDAN, AND DIVESTING FROM THOSE COMPANIES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Palm Beach County, Florida (the "Board") has the responsibility to ensure that equity investments of Palm Beach County (the "County") funds are made in a responsible and prudent manner; and

WHEREAS, the Board has the authority to direct the County's Clerk & Comptroller, the custodian of County funds, as to which investments are appropriate for County funds; and

WHEREAS, a resolution of the United Nations Security Council imposes sanctions on Iran for its failure to suspend its uranium-enrichment activities; and

WHEREAS, the United Nations Security Council voted unanimously for an additional embargo on Iranian arms exports, which is a freeze on assets abroad of an expanded list of individuals and companies involved in Iran's nuclear and ballistic missile programs, and calls for nations and institutions to bar new grants or loans to Iran, except for humanitarian and developmental purposes; and

WHEREAS, Iran's financial ability to pay its debts to foreign entities involved in the petroleum-energy sector amounting to more than \$20 million is put at risk by the Iran and Libya Sanctions Act embargo and sanctions; and

WHEREAS, foreign entities have invested in Iran's petroleum-energy sector despite United States and United Nations sanctions against Iran; and

WHEREAS, all United States and foreign entities that have invested more than \$20 million in Iran's energy sector since August 5, 1996, are subject to sanctions under United States law pursuant to the Iran and Libya Sanctions Act of 1996; and

WHEREAS, the United States renewed the Iran and Libya Sanctions Act of 1996 in 2001 and 2006; and

WHEREAS, on July 23, 2004, the United States Congress declared that "the atrocities unfolding in Darfur, Sudan are genocide;" and

WHEREAS, on December 7, 2004, Congress found that "the Government of Sudan has restricted access by humanitarian and human rights workers to the Darfur area through intimidation by military and security forces, and through bureaucratic and administrative obstruction, in an attempt to inflict the most devastating harm on those individuals displaced from their villages and homes without any means of sustenance or shelter; and

WHEREAS, on September 25, 2006, Congress reaffirmed that "the genocide unfolding in the Darfur region of Sudan is characterized by acts of terrorism and atrocities directed against civilians, including mass murder, rape, and sexual violence committed by the Janjaweed and associated militias with the complicity and support of the National Congress Party-led faction of the Government of Sudan"; and

WHEREAS, the Darfur crisis represents the first time the United States Government has labeled ongoing atrocities as genocide; and

WHEREAS, the Federal Government has imposed sanctions against the Government of Sudan since 1997. These sanctions are monitored through the United States Treasury Department's Office of Foreign Assets Control (OFAC); and

WHEREAS, according to a former chair of the United States Securities and Exchange Commission (SEC), the fact that a foreign company is doing material business with a country, government, or entity on OFAC's sanction's list is, in the SEC staff's view, substantially likely to be significant to a reasonable investor's decision about whether to invest in that company; and

WHEREAS, since 1993, the United States Secretary of State has determined that Sudan is a country whose government has repeatedly provided support for acts of international terrorism, and as a result, the United States has restricted assistance, defense exports, defense sales, financial transactions, and various other transactions with the Government of Sudan; and

WHEREAS, a 2006 report by the United States House of Representatives states that "a company's association with sponsors of terrorism and human rights abuses, no matter how large or small, can have a materially adverse result on a public company's operations, financial condition, earnings, and stock prices, all of which can negatively affect the value of an investment"; and

WHEREAS, in response to the financial risk posed by investments in companies doing business with a state that sponsors terrorists, the Securities and Exchange Commission established its Office of Global Security Risk to provide for enhanced disclosure of material information regarding such companies; and

WHEREAS, the current Sudan divestment movement, encompasses nearly 100 universities, municipalities, states, and private pension plans; and

WHEREAS, companies facing such widespread divestment present further material risk to remaining investors; and

WHEREAS, it is a fundamental responsibility of the Board to decide where and how County funds, which are in the Clerk & Comptroller's custody, should be invested, taking into account numerous pertinent factors; and

WHEREAS, it is the prerogative and desire of the Board, with respect to County funds, and to the extent reasonable, with due consideration for return on investment not to participate in an ownership or capital-providing capacity with entities that provide significant practical support for genocide, including certain non-United States companies presently doing business in Sudan; and

WHEREAS, while divestiture should be considered with the intent to improve investment performance, and by the rules of prudence, fiduciaries must take into account all relevant substantive factors in arriving at an investment decision; and

WHEREAS, the Board is deeply concerned about investments in publicly-traded companies that have business activities in and ties to Iran's petroleum-energy sector as a financial risk to the shareholders; and

WHEREAS, by investing in publicly-traded companies having ties to Iran's petroleum-energy sector, the County's funds may be at substantial financial risk; and

WHEREAS, divestiture from markets that are vulnerable to embargo, loan restrictions, and sanctions from the United States and the international community, including the United Nations Security Council, is in accordance with the rules of prudence; and

WHEREAS, the Florida Legislature has adopted Chapter 2007-88, Laws of Florida, the "Protecting Florida's Investments Act," to address this investment of public funds issue at the state level; and

WHEREAS, the Board finds that this Resolution should remain in effect only insofar as it continues to be consistent with and does not unduly interfere with the foreign policy of the United States as determined by the Federal Government; and

WHEREAS, to protect the County's investment funds, it is in the best interest of the County for the Board to direct the Clerk & Comptroller, as custodian of County funds, regarding County investment in companies doing business in Sudan or in Iran's petroleum-energy sector.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1. The foregoing recitals are hereby affirmed and ratified.

Section 2. The Board directs that the Clerk & Comptroller, as custodian of County funds, follow the actions of the Florida State Board of Administration, as mandated by the "Protecting Florida's Investments Act," Chapter 2007-88, Laws of Florida, as those provisions relate to identifying companies doing business with Iran's energy sector and the Sudan and divesting from these companies.

Section 3. This Resolution shall become effective immediately upon adoption.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Commissioner Addie L. Greene, Chairperson	-
Commissioner John F. Koons, Vice Chair	-
Commissioner Karen T. Marcus	-
Commissioner Robert J. Kanjian	-
Commissioner Mary McCarty	-
Commissioner Burt Aaronson	-
Commissioner Jess R. Santamaria	-

The Chairperson thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2008.

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK, CLERK

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: Paul F. J.
County Attorney

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