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CS/CS/HB 959

2012 Legislature

1
2 An act relating to state and local government
3 relations with Cuba or Syria; amending s. 215.471,
4 F.S.; prohibiting the State Board of Administration
5 from being a fiduciary with respect to voting on any
6 proxy resolution advocating expanded United States
7 trade with Cuba or Syria; prohibiting the State Board
8 of Administration from being a fiduciary with respect
9 to having the right to vote in favor of any proxy
10 resolution advocating expanded United States trade
11 with Cuba or Syria; creating reporting requirements;
12 amending s. 287.135, F.S.; prohibiting a state agency
13 or local governmental entity from contracting for
14 goods and services of more than a certain amount with
15 a company that has business operations in Cuba or
16 Syria; requiring a contract provision that allows for
17 termination of the contract if the company is found to
18 have business operations in Cuba or Syria; providing
19 exceptions; requiring certification upon submission of
20 a bid or proposal for a contract, or before a company
21 enters into or renews a contract, with an agency or
22 governmental entity that the company is not engaged in
23 business operations in Cuba or Syria; providing
24 procedures upon determination that a company has
25 submitted a false certification; providing for civil
26 action; providing penalties; providing attorney fees
27 and costs; providing a statute of repose; prohibiting
28 a private right of action; requiring the Department of

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29 Management Services to notify the Attorney General of
30 the United States after the act becomes law; providing
31 an effective date.

32

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

34

35 Section 1. Section 215.471, Florida Statutes, is amended
36 to read:

37 215.471 Divestiture by the State Board of Administration;
38 reporting requirements.—

39 (1) The State Board of Administration shall divest any
40 investment under s. 121.151 and ss. 215.44-215.53, and is
41 prohibited from investment in stocks, securities, or other
42 obligations of:

43 (a)~~(1)~~ Any institution or company domiciled in the United
44 States, or foreign subsidiary of a company domiciled in the
45 United States, doing business in or with Cuba, or with agencies
46 or instrumentalities thereof in violation of federal law.

47 (b)~~(2)~~ Any institution or company domiciled outside of the
48 United States if the President of the United States has applied
49 sanctions against the foreign country in which the institution
50 or company is domiciled pursuant to s. 4 of the Cuban Democracy
51 Act of 1992.

52 (2) The State Board of Administration may not be a
53 fiduciary under this section with respect to voting on, and may
54 not have the right to vote in favor of, any proxy resolution
55 advocating expanded United States trade with Cuba or Syria. The
56 board's staff shall report on its activities in its annual proxy

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57 voting report.

58 Section 2. Section 287.135, Florida Statutes, is amended
59 to read:

60 287.135 Prohibition against contracting with scrutinized
61 companies.—

62 (1) In addition to the terms defined in ss. 287.012 and
63 215.473, as used in this section, the term:

64 (a) "Awarding body" means, for purposes of state
65 contracts, an agency or the department, and for purposes of
66 local contracts, the governing body of the local governmental
67 entity.

68 (b) "Business operations" means, for purposes specifically
69 related to Cuba or Syria, engaging in commerce in any form in
70 Cuba or Syria, including, but not limited to, acquiring,
71 developing, maintaining, owning, selling, possessing, leasing,
72 or operating equipment, facilities, personnel, products,
73 services, personal property, real property, military equipment,
74 or any other apparatus of business or commerce.

75 (c) ~~(b)~~ "Local governmental entity" means a county,
76 municipality, special district, or other political subdivision
77 of the state.

78 (2) A company that, at the time of bidding or submitting a
79 proposal for a new contract or renewal of an existing contract,
80 is on the Scrutinized Companies with Activities in Sudan List or
81 the Scrutinized Companies with Activities in the Iran Petroleum
82 Energy Sector List, created pursuant to s. 215.473, or is
83 engaged in business operations in Cuba or Syria, is ineligible
84 for, and may not bid on, submit a proposal for, or enter into or

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85 renew a contract with an agency or local governmental entity for
86 goods or services of \$1 million or more.

87 (3) (a) Any contract with an agency or local governmental
88 entity for goods or services of \$1 million or more entered into
89 or renewed on or after July 1, 2011, through June 30, 2012, must
90 contain a provision that allows for the termination of such
91 contract at the option of the awarding body if the company is
92 found to have submitted a false certification as provided under
93 subsection (5) or been placed on the Scrutinized Companies with
94 Activities in Sudan List or the Scrutinized Companies with
95 Activities in the Iran Petroleum Energy Sector List.

96 (b) Any contract with an agency or local governmental
97 entity for goods or services of \$1 million or more entered into
98 or renewed on or after July 1, 2012, must contain a provision
99 that allows for the termination of such contract at the option
100 of the awarding body if the company is found to have submitted a
101 false certification as provided under subsection (5), been
102 placed on the Scrutinized Companies with Activities in Sudan
103 List or the Scrutinized Companies with Activities in the Iran
104 Petroleum Energy Sector List, or been engaged in business
105 operations in Cuba or Syria.

106 (4) Notwithstanding subsection (2) or subsection (3), an
107 agency or local governmental entity, on a case-by-case basis,
108 may permit a company on the Scrutinized Companies with
109 Activities in Sudan List or the Scrutinized Companies with
110 Activities in the Iran Petroleum Energy Sector List, or a
111 company with business operations in Cuba or Syria, to be
112 eligible for, bid on, submit a proposal for, or enter into or

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113 renew a contract for goods or services of \$1 million or more
114 under ~~either of the following~~ conditions set forth in paragraph
115 (a) or the conditions set forth in paragraph (b):

116 (a)1. With respect to a company on the Scrutinized
117 Companies with Activities in Sudan List or the Scrutinized
118 Companies with Activities in the Iran Petroleum Energy Sector
119 List, all of the following occur:

120 ~~a.1.~~ The scrutinized business operations were made before
121 July 1, 2011.

122 ~~b.2.~~ The scrutinized business operations have not been
123 expanded or renewed after July 1, 2011.

124 ~~c.3.~~ The agency or local governmental entity determines
125 that it is in the best interest of the state or local community
126 to contract with the company.

127 ~~d.4.~~ The company has adopted, has publicized, and is
128 implementing a formal plan to cease scrutinized business
129 operations and to refrain from engaging in any new scrutinized
130 business operations.

131 2. With respect to a company engaged in business
132 operations in Cuba or Syria, all of the following occur:

133 a. The business operations were made before July 1, 2012.

134 b. The business operations have not been expanded or
135 renewed after July 1, 2012.

136 c. The agency or local governmental entity determines that
137 it is in the best interest of the state or local community to
138 contract with the company.

139 d. The company has adopted, has publicized, and is
140 implementing a formal plan to cease business operations and to

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141 refrain from engaging in any new business operations.

142 (b) One of the following occurs:

143 1. The local governmental entity makes a public finding
144 that, absent such an exemption, the local governmental entity
145 would be unable to obtain the goods or services for which the
146 contract is offered.

147 2. For a contract with an executive agency, the Governor
148 makes a public finding that, absent such an exemption, the
149 agency would be unable to obtain the goods or services for which
150 the contract is offered.

151 3. For a contract with an office of a state constitutional
152 officer other than the Governor, the state constitutional
153 officer makes a public finding that, absent such an exemption,
154 the office would be unable to obtain the goods or services for
155 which the contract is offered.

156 (5) At the time a company submits a bid or proposal for a
157 contract or before the company enters into or renews a contract
158 with an agency or governmental entity for goods or services of
159 \$1 million or more, the company must certify that the company is
160 not on the Scrutinized Companies with Activities in Sudan List
161 or the Scrutinized Companies with Activities in the Iran
162 Petroleum Energy Sector List, or that it does not have business
163 operations in Cuba or Syria.

164 (a) If, after the agency or the local governmental entity
165 determines, using credible information available to the public,
166 that the company has submitted a false certification, the agency
167 or local governmental entity shall provide the company with
168 written notice of its determination. The company shall have 90

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169 days following receipt of the notice to respond in writing and
170 to demonstrate that the determination of false certification was
171 made in error. If the company does not make such demonstration
172 within 90 days after receipt of the notice, the agency or the
173 local governmental entity shall bring a civil action against the
174 company. If a civil action is brought and the court determines
175 that the company submitted a false certification, the company
176 shall pay the penalty described in subparagraph 1. and all
177 reasonable attorney ~~attorney's~~ fees and costs, including any
178 costs for investigations that led to the finding of false
179 certification.

180 1. A civil penalty equal to the greater of \$2 million or
181 twice the amount of the contract for which the false
182 certification was submitted shall be imposed.

183 2. The company is ineligible to bid on any contract with
184 an agency or local governmental entity for 3 years after the
185 date the agency or local governmental entity determined that the
186 company submitted a false certification.

187 (b) A civil action to collect the penalties described in
188 paragraph (a) must commence within 3 years after the date the
189 false certification is submitted.

190 (6) Only the agency or local governmental entity that is a
191 party to the contract may cause a civil action to be brought
192 under this section. This section does not create or authorize a
193 private right of action or enforcement of the penalties provided
194 in this section. An unsuccessful bidder, or any other person
195 other than the agency or local governmental entity, may not
196 protest the award of a contract or contract renewal on the basis

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197 | of a false certification.

198 | (7) This section preempts any ordinance or rule of any
199 | agency or local governmental entity involving public contracts
200 | for goods or services of \$1 million or more with a company
201 | engaged in scrutinized business operations.

202 | (8) The department shall submit to the Attorney General of
203 | the United States a written notice:

204 | (a) Describing this section within 30 days after July 1,
205 | 2011.

206 | (b) Within 30 days after July 1, 2012, apprising the
207 | Attorney General of the United States of the inclusion of
208 | companies with business operations in Cuba or Syria within the
209 | provisions of this section.

210 | (9) This section becomes inoperative on the date that
211 | federal law ceases to authorize the states to adopt and enforce
212 | the contracting prohibitions of the type provided for in this
213 | section.

214 | Section 3. This act shall take effect July 1, 2012.