The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 86

INTRODUCER: Senator Negron

SUBJECT: State Contracts

DATE: October 5, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	**Pre-meeting**
2.			AGG	
3.			AP	

I. Summary:

SB 86 requires all contracts between a public entity and a business for supplies, services, information technology, or construction to contain a representation by the business that it is not engaged in and will not engage in the boycott of any person or entity that is based in, or doing business with a member of the World Trade Organization and those other jurisdictions that have federal trade agreements with the United States.

Also, SB 86 amends the Protecting Florida Investments Act (PFIA) to ban companies on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List from contracting with the state.

II. Present Situation:

World Trade Organization

The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations.[1] The WTO, which was established in 1995, currently has 161 members, of which 117 are developing countries or separate customs territories.[2] The WTO provides a forum for negotiating agreements aimed at reducing obstacles to international trade and ensuring a level playing field for all and contributing to economic growth and development. The WTO also provides a legal and institutional framework for the implementation and monitoring of these agreements, as well as settling disputes arising from their interpretation and application.[3]

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[1] See https://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm (last visited on Sept. 14, 2015).
[2] See https://www.wto.org/english/thewto_e/whatis_e/wto_dg_stat_e.htm (last visited on Sept. 14, 2015).
[3] *Id*.

The 161 members of the WTO are as follows:

Albania	Ecuador	Luxembourg	Samoa
Angola	Egypt	Macao, China	Kingdom of Saudi Arabia
Antigua and Barbuda	El Salvador	Madagascar	Senegal
Argentina	Estonia	Malawi	Seychelles
Armenia	European Union	Malaysia	Sierra Leone
Australia	Fiji	Maldives	Singapore
Austria	Finland	Mali	Slovak Republic
Kingdom of Bahrain	France	Malta	Slovenia
Bangladesh	Gabon	Mauritania	Solomon Islands
Barbados	The Gambia	Mauritius	South Africa
Belgium	Georgia	Mexico	Spain
Belize	Germany	Republic of Moldova	Sri Lanka
Benin	Ghana	Mongolia	Suriname
Plurinational State of Bolivia	Greece	Montenegro	Swaziland
Botswana	Grenada	Morocco	Sweden
Brazil	Guatemala	Mozambique	Switzerland
Brunei Darussalam	Guinea	Myanmar	Chinese Taipei
Bulgaria	Guinea-Bissau	Namibia	Tajikistan
Burkina Faso	Guyana	Nepal	Tanzania
Burundi	Haiti	Netherlands	Thailand
Cabo Verde	Honduras	New Zealand	The Former Yugoslav Republic of Macedonia
Cambodia	Hong Kong, China	Nicaragua	Togo
Cameroon	Hungary	Niger	Tonga
Canada	Iceland	Nigeria	Trinidad and Tobago
Central African Republic	India	Norway	Tunisia
Chad	Indonesia	Oman	Turkey
Chile	Ireland	Pakistan	Uganda
China	Israel	Panama	Ukraine
Colombia	Italy	Papua New Guinea	United Arab Empire
Congo	Jamaica	Paraguay	United Kingdom
Costa Rica	Japan	Peru	United States of America
Côte d'Ivoire	Jordan	Philippines	Uruguay
Croatia	Kenya	Poland	Vanuatu
Cuba	Republic of Korea	Portugal	Bolivarian Republic of Venezuela
Cyprus	The State of Kuwait	Qatar	Viet Nam
Czech Republic	Kyrgyz Republic	Romania	Yemen
Democratic Republic of the Congo	Lao People's Democratic Republic	Russian Federation	Zambia
Denmark	Latvia	Rwanda	Zimbabwe
Dijibouti	Lesotho	Saint Kitts and Nevis	
Dominica	Liechtenstein	Saint Lucia	
Dominican Republic	Lithuania	Saint Vincent & The Grenadines	

WTO is located in Geneva, Switzerland. Decisions in the WTO are generally taken by a consensus of the entire membership.[4] The WTO's main activities are:[5]

- Negotiating the reduction or elimination of obstacles to trade (import tariffs, other barriers to trade) and agreeing on rules governing the conduct of international trade (e.g. antidumping, subsidies, product standards, etc.);
- Administering and monitoring the application of the WTO's agreed rules for trade in goods, trade in services, and trade-related intellectual property rights;
- Monitoring and reviewing the trade policies of members, as well as ensuring transparency of regional and bilateral trade agreements;
- Building capacity of developing country government officials in international trade matters;
- Assisting the process of accession of some 30 countries who are not yet members of the organization;
- Conducting economic research and collecting and disseminating trade data in support of the WTO's main activities; and
- Explaining to and educating the public about the WTO, its mission and activities.

Free Trade Agreements

The United States has free trade agreements with the following 20 countries: Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru and Singapore.[6] The U.S. is also in negotiations for a regional, Asia-Pacific trade agreement, known as the Trans-Pacific Partnership (TPP) Agreement and the Transatlantic Trade and Investment Partnership (T-TIP) with the European Union.[7]

State Sponsors of Terrorism

The United States Department of State maintains a list of countries determined to have repeatedly provided support for acts of international terrorism.[8] The countries are designated "terrorist nations" under requirements in three federal laws: the Export Administration Act[9]; the Arms Export Control Act[10]; and the Foreign Assistance Act[11]. Taken together, the four main categories of sanctions resulting from designation under these authorities 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.[12]

[4] *Id*.
[5] *Id*.
[6] Office of the U.S. Trade Representative, Executive Office of the President, can be found online at http://www.ustr.gov/trade-agreements/free-trade-agreements (last visited Sept. 14, 2015).
[7] *Id*.
[8] U.S. Department of State, Diplomacy in Action can be found online at http://www.state.gov/j/ct/list/c14151.htm (last visited Sept. 9, 2015).
[9] 50 U.S.C. App 2405(j)
[10] 22 U.S.C. s. 2780
[11] 22 U.S.C. s. 2371
[12] *See* http://www.state.gov/s/ct/c14151.htm.

Currently, the State Department designates three countries under these authorities: Iran, Sudan and Syria.[13] The chart below shows the date each country was designated a terrorist nation.

Country	Designation Date
Iran	January 19, 1984
Sudan	August 12, 1993
Syria	December 29, 1979

Cuba had been designated as a State Sponsor of Terrorism on March 1, 1982. In December 2014, President Obama requested the Secretary of State to review Cuba's designation as a state sponsor of terrorism, and to provide him a report within six months in regards to Cuba's support for international terrorism.[14] On April 8, 2015, the Secretary of State completed his review and recommended to the President that Cuba no longer be designated as a state sponsor of terrorism.[15]

On April 14, 2015, the President submitted this report to Congress indicating the administration's intent to rescind Cuba's state sponsor of terrorism designation, including the certification that Cuba has not provided any support for international terrorism during the previous six months and that Cuba has provided assurances that it will not support acts of international terrorism in the future.[16]

After the 45-day Congressional pre-notification period expired, Cuba was officially removed from the list on May 29, 2015.[17]

State Board of Administration Investing Duties

The State Board of Administration (SBA) is created in Article IV, section 4(e) of the Florida Constitution. Its members are the Governor, the Chief Financial Officer, and the Attorney General. The board derives its powers to oversee state funds from Article XII, section 9 of the Florida Constitution.

The SBA has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan and the FRS Investment Plan, which represent approximately $157.14 billion, or 87.3 percent, of the $180 billion in assets managed by the SBA, as of June 30, 2015.[18] The Pension Plan is a defined benefit plan and the Investment Plan is a defined contribution plan that employees may choose in lieu of the Pension Plan. The SBA also manages over 30 other investment portfolios, with combined assets of $22.86 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.[19]

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[13] *Id.*
[14] U.S. Department of State, Diplomacy in Action, Recession of Cuba as a State Sponsor of Terrorism, at http://www.state.gov/r/pa/prs/ps/2015/05/242986.htm (last visited on Sept. 15, 2015).
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] State Board of Administration "Performance Report to the Trustees" dated June 30, 2015, and issued on August 12, 2015.
[19] *Id.*

Protecting Florida Investments Act

In 2007, the Legislature enacted the Protecting Florida's Investments Act (PFIA).[20] The PFIA requires the SBA, acting on behalf of the Florida Retirement System Trust Fund (FRSTF), to assemble and publish a list of "Scrutinized Companies" that have prohibited business operations in Sudan and Iran. Once placed on the list of Scrutinized Companies, the SBA and its investment managers are prohibited from acquiring those companies' securities[21] and are required to divest those securities if the companies[22] do not cease the prohibited activities or take certain compensating actions. The implementation of the PFIA by the SBA does not affect any FRSTF investments in U.S. companies; the PFIA affects foreign companies with certain business operations in Sudan and Iran involving the petroleum or energy sector, oil or mineral extraction, power production, or military support activities.

The definition of "company" for purposes of the PFIA includes all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations.

The term "public fund" is defined as "all funds, assets, trustee, and other designates under the State Board of Administration pursuant to chapter 121."[23] This means those assets of the Florida Retirement System - both the pension plan as well as the investment plan.

According to staff of the SBA, the PFIA imposes the following reporting, engagement, and investment requirements on the SBA:

- Quarterly reporting to the Board of Trustees of every equity security in which the SBA has invested for the quarter, along with its industry category. This report is posted on the SBA website.
- Quarterly presentation to the Trustees of a "Scrutinized Companies" list for both Sudan and Iran for their approval. Scrutinized Company lists are available on the SBA's website[24], along with information on the FRSTF direct and indirect holdings of Scrutinized Companies.
- Written notice to external investment managers of all PFIA requirements. Letters request that the managers of actively managed commingled vehicles (i.e., those with FRSTF and other clients' assets) consider removing Scrutinized Companies from the product or create a similar actively managed product that excludes such companies. Similar written requests must be provided to relevant investment managers within the Investment Plan.
- Written notice to any company with inactive business operations in Sudan or Iran, informing the company of the PFIA and encouraging it to continue to refrain from reinitiating active business operations.[25] Such correspondence continues semiannually.[26]

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[20] Chapter 2007-88, Laws of Florida; *also, see* Senate Bill 2142 (reg. session 2007).
[21] Section 215.473(3)(c), F.S.
[22] Section 215.473(3)(b), F.S.
[23] Section 215.473(1)(r), F.S.
[24] The quarterly reports are available at http://www.sbafla.com/fsb/Portals/Internet/PFIA/CurrentProhibitedCompaniesList.pdf
[25] Section 215.473(3)(a)2., F.S.
[26] *Id*.

- Written notice to any Scrutinized Company with active business operations, informing the company of its Scrutinized Company status and that it may become subject to divestment.[27] The written 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 status.[28]
- A prohibition on further investment on behalf of the FRSTF in any Scrutinized Company once the Sudan and Iran scrutinized lists have been approved by the Trustees. All publicly traded securities of Scrutinized Companies must be divested within 12 months after the company's initial (and continued) appearance on the Scrutinized Companies list. Divestment does not apply to indirect holdings in actively managed commingled investment funds—i.e., where the SBA is not the sole investor in the fund. Private equity funds are considered to be actively managed.
- Reporting to each member of the Board of Trustees, President of the Senate, and the Speaker of the House of Representatives of Scrutinized Company lists within 30 days of creation, and public disclosure of each list.[29]
- Quarterly reporting to each member of the Board of Trustees, the President of the Senate, the Speaker of the House of Representatives, the United States Presidential Special Envoy to Sudan, and the United States Presidential Special Envoy to Iran.[30] The report must include the following:[31]
  - A summary of correspondence with engaged companies;
  - A listing of all investments sold, redeemed, divested, or withdrawn;
  - A listing of all prohibited investments;
  - A description of any progress related to external managers offering PFIA compliant funds; and
  - A list of all publicly traded securities held directly by the state.
- Adoption and incorporation into the FRSTF Investment Policy Statement (IPS) of SBA actions taken in accordance with the PFIA. Changes to the IPS are reviewed by the Investment Advisory Council (IAC) and approved by the Trustees.
- Relevant Sudan or Iran portions of the PFIA are discontinued if the Congress or President of the United States passes legislation, executive order, or other written certification that:
  - Darfur genocide has been halted for at least 12 months;[32]
  - Sanctions imposed against the Government of Sudan are revoked;[33]
  - Government of Sudan honors 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;[34]
  - Government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;[35]

[27] Section 215.473(3)(a)3., F.S.
[28] *Id*.
[29] Section 215.473(4)(a), F.S.
[30] Section 215.473(4)(b), F.S.
[31] Section 215.473(4)(b)1.-5., F.S.
[32] Section 215.473(5)(a)1., F.S.
[33] Section 215.473(5)(a)2., F.S.
[34] Section 215.473(5)(a)3., F.S.
[35] Section 215.473(5)(b)1., F.S.

  - Sanctions imposed against the government of Iran are revoked;[36] or
  - Mandatory divestment of the type provided for by the PFIA interferes with the conduct of U.S. foreign policy.[37]
- Cessation of divestment and/or reinvestment into previously divested companies may occur if the value of all FRSTF assets under management decreases by 50 basis points (0.5 percent) or more as a result of divestment.[38] If cessation of divestment is triggered, the SBA is required to provide a written report to each member of the Board of Trustees, the President of the Senate, and the Speaker of the House of Representatives prior to initial reinvestment.[39] Such condition is required to be updated semiannually.[40]

Prohibition Against Contracting with Scrutinized Companies and Companies Engaged in Business Operations in Cuba or Syria

Section 287.135(2), F.S., prohibits a company on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations in Cuba or Syria from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency[41] or local governmental entity for goods or services of $1 million or more. "Local governmental entity," for the purposes of s. 287.135, F.S., means a county, municipality, special district, or other political subdivision of the state.

Section 287.135(3)(b), F.S., provides that any contract with an agency or local governmental entity for goods or services of $1 million or more entered into or renewed on or after July 1, 2012, must 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 has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or have been engaged in business operations in Cuba or Syria.

Section 287.135(4)(a)1., F.S., allows an agency or local governmental entity to make a case-by-case exception to the prohibition for a company on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List if:
- The scrutinized business operations[42] were made before July 1, 2011;
- The scrutinized business operations 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;

[36] Section 215.473(5)(b)2., F.S.
[37] Section 215.473(5)(b)3., F.S.
[38] Section 215.473(7), F.S.
[39] *Id*.
[40] *Id*.
[41] Agency is defined in s. 287.012(1), F.S., as 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. Also, see s. 287.135(1), F.S. Definitions contained in ss. 287.012 and 215.473, F.S. are incorporated into s. 287.135, F.S.
[42] Section 215.473(1)(t), F.S., defines "scrutinized business operations" to mean business operations that result in a company becoming a scrutinized 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; *and*
- *One* of the following occurs:
  - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
  - For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
  - For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

Section 287.135(4)(a)2., F.S., allows an agency or local governmental entity to make a case-by-case exception to the prohibition for a company engaged in business operations in Cuba or Syria if:
- The business operations were made before July 1, 2012;
- The business operations have not been expanded or renewed after July 1, 2012;
- 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 business operations and to refrain from engaging in any new business operations; *and*
- *One* of the following occurs:
  - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
  - For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
  - For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

An agency or local governmental entity must require a company that submits a bid or proposal for, or that otherwise proposes to enter into or renew, a contract with the agency or local governmental entity for goods or services of $1 million or more to certify, at the time a bid or proposal is submitted or before a contract is executed or renewed, that the company is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operation in Cuba or Syria.[43]

If an agency or local governmental entity determines that a company has submitted a false certification, it shall provide the company with written notice, and the company will have 90

[43] Section 287.135(5), F.S.

days to respond in writing to such determination.[44] If the company fails to demonstrate that the determination of false certification was made in error, then the awarding body *must* bring a civil action against the company.[45] If a civil action is brought and the court determines that the company submitted a false certification, the company shall pay all reasonable attorney's fees and costs (including costs for investigations that led to the finding of false certification).[46] Also, a civil penalty equal to the greater of $2 million or twice the amount of the contract for which the false certification was submitted shall be imposed.[47] The company is ineligible to bid on any contract with an agency or local governmental entity for 3 years after the date the agency or local governmental entity determined that the company submitted a false certification.[48] A civil action to collect the penalties must commence within 3 years after the date the false certification is made.[49]

Section 287.135(6), F.S., specifies that only the awarding body may cause a civil action to be brought, and that the section does not create or authorize a private right of action or enforcement of the provided penalties. An unsuccessful bidder, or any other person other than the awarding body, may not protest the award or contract renewal on the basis of a false certification.

Section 287.135(7), F.S., specifies that this section preempts any ordinance or rule of any agency or local governmental entity involving public contracts for goods or services of $1 million or more with a company engaged in scrutinized business operations.

Section 287.135 (8), F.S., provides that this provision becomes inoperative on the date that federal law ceases to authorize the state to adopt and enforce the contracting prohibitions of the type provided for in this section.

III. Effect of Proposed Changes:

Section 1 creates s. 215.4725, F.S., to require a public entity contracting for supplies, services, information technology, or construction to obtain a representation by the business that it is not engaged in and will not engage in the boycott of any person or entity that is based in, or doing business with a jurisdiction which the state enjoys open trade.

The bill defines "boycott" as meaning to blacklist, divert from, or otherwise refuse to engage with a person or entity on the basis of the race, color, religion, gender, or national origin of the person or entity. The term excludes:

1. A decision by a business that is based on economic reasons or specific conduct of the person or entity;
2. A boycott against a public entity of a foreign state if the boycott is applied in a nondiscriminatory manner; and
3. Conduct required for compliance with applicable law in the business's home jurisdiction.

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[44] Section 287.135(5)(a), F.S.
[45] *Id*.
[46] *Id*.
[47] Section 287.135(5)(a)1., F.S.
[48] Section 287.135(5)(a)2., F.S.
[49] Section 287.135(5)(b), F.S.

The bill defines the term "Jurisdiction with which the state can enjoy open trade" as members of the World Trade Organization and those jurisdictions with whom the United States has free trade or other agreements aimed at ensuring open and nondiscriminatory trade relations.

The term "public entity" is defined as the state, any of its departments or agencies, or any political subdivision of the state.

Additionally, the provisions of this section do not apply to contracts in which the business agrees to provide goods or services at a cost at least 20 percent less than the next lowest bidder, or to contracts with a total potential value of less than $10,000.

Section 2 amends s. 215.473, F.S., to prohibit companies that appear on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (list) from contracting with the state. The bill also renumbers existing sections (4) and (5) to sections (5) and (6).

The proposed subsection (4) is similar, but not identical to the current provisions of s. 287.135, F.S., which prohibits Scrutinized Companies with Activities in Sudan List and Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List from contracting with state agencies and local government entities for contracts of $1 million or more.

If a company appears on the list, the SBA/public fund is required to send written notice to the company specifying that it may be removed from the list if it ceases engagement in investment activities in Iran. The company must be granted an opportunity to respond in writing that it does not engage in such activities. If the company demonstrates to the public fund that it is not engaged in investment activities in Iran, the company shall be removed from the list.

A company engaged in investment activities in Iran may contract with the state only if:

1. The investment activities in Iran were made before January 1, 2016, the investment activities in Iran have not been expanded or renewed after the effective date of the act, and the company has adopted, publicized, and is implementing a formal plan to cease the investment activities and to refrain from engaging in any new investments in Iran; or
2. The state agency makes a determination that the commodities or services are necessary to perform its functions, and that, absent such an exemption, the state agency would be unable to obtain the commodities or services for which the contract is offered. The determination must be entered into the procurement record.

This section also requires a company that seeks a contract with the state, including a renewal or assumption, to include a certification with the bid submission that the company or assignee does not appear on the list. The state agency must include certification information in the procurement record. Certification is not required for contracts between public procurement units, or contracts between public procurement units and external procurement activities.
"External procurement activity" is defined as meaning the procurement activity of a buying organization located outside this state which would qualify as a public procurement unit or the procurement activity of the U.S. government.

The bill defines "local public procurement unit" as any political subdivision or unit that expends public funds for the procurement of supplies, services, or construction.

"Public procurement unit" is defined as a local public procurement unit or a state public procurement unit.

The bill defines "state public procurement unit" as the offices of the chief procurement officers and any other purchasing agency of the state.

Additionally, this section prohibits a company from subcontracting, on a state contract, with a company on the list.

Further, if the state receives information that the company is engaging in activity contrary to the certification submitted, the state agency or entity shall review the information and offer the company an opportunity to respond. If, within 90 days, the company has failed to demonstrate that it has ceased activity, the state agency or entity may take action as appropriate and provided for by law, rule, or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the contractor in default.

This section requires that if competitive bidding is required, any bid to be submitted to a political subdivision of the state or official shall include a specified statement signed under oath or affirmation by the bidder under penalty of perjury that such bidder does not appear on the list. The statement may be made electronically. Certification is not required for contracts between public procurement units or contracts of public procurement units for external procurement activities.

If a bidder cannot make the required certification, it shall provide a signed statement that provides the reasons for failing to do so. A political subdivision may award the bid to a bidder who cannot make the certification if:

1. The investment activities in Iran were made before January 1, 2016, the investment activities in Iran have not made expanded or renewed after the effective date of this act, and the company has adopted, publicized, and implementing a formal plan to cease investment activities and to refrain from engaging in any new investments in Iran; or
2. The political subdivision makes a determination that the goods and services that are subject of the contract are necessary for the political subdivision to perform its functions and that, absent such an exemption, the political subdivision would be unable to obtain them. The determination must be made in writing and is a public document.

Section 3 of the bill provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate. All public entities will need to develop appropriate contract language for inclusion in all contracts executed on or after the effective date of the law in regards to the proposed prohibition on boycotting.

Also, all public entities must develop appropriate solicitation language and contract terms related to certification of not being on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 215.4725 of the Florida Statutes.

This bill substantially amends section 215.473 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.