

1 A bill to be entitled
 2 An act relating to scrutinized companies; creating s.
 3 287.135, F.S.; providing definitions; prohibiting a state
 4 agency or local governmental entity from contracting for
 5 goods and services of more than a certain amount with a
 6 company that is on the Scrutinized Companies with
 7 Activities in Sudan List or the Scrutinized Companies with
 8 Activities in the Iran Petroleum Energy Sector List;
 9 providing for a contract provision that allows for
 10 termination of the contract if the company is found to
 11 have been placed on such list; providing exceptions;
 12 providing for civil action; providing penalties; providing
 13 a statute of repose; prohibiting a private right of
 14 action; requiring the Department of Management Services to
 15 notify the Attorney General after the act becomes law;
 16 providing that the act becomes inoperative if federal law
 17 ceases to authorize states to enact such contracting
 18 prohibitions; providing an effective date.

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

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 22 Section 1. Section 287.135, Florida Statutes, is created
 23 to read:

24 287.135 Prohibition against contracting with scrutinized
 25 companies.—

26 (1) In addition to the terms defined in ss. 287.012 and
 27 215.473, as used in this section, the term:

28 (a) "Awarding body" means, for purposes of state

29 contracts, an agency or the department, and for purposes of
30 local contracts, the governing body of the local governmental
31 entity.

32 (b) "Local governmental entity" means a county,
33 municipality, special district, or other political subdivision
34 of the state.

35 (2) A company that, at the time of bidding or submitting a
36 proposal for a new contract or renewal of an existing contract,
37 is on the Scrutinized Companies with Activities in Sudan List or
38 the Scrutinized Companies with Activities in the Iran Petroleum
39 Energy Sector List, created pursuant to s. 215.473, is
40 ineligible for, and may not bid on, submit a proposal for, or
41 enter into or renew a contract with an agency or local
42 governmental entity for goods or services of \$1 million or more.

43 (3) Any contract with an agency or local governmental
44 entity for goods or services of \$1 million or more entered into
45 or renewed on or after July 1, 2011, must contain a provision
46 that allows for the termination of such contract at the option
47 of the awarding body if the company is found to have submitted a
48 false certification as provided under subsection (5) or been
49 placed on the Scrutinized Companies with Activities in Sudan
50 List or the Scrutinized Companies with Activities in the Iran
51 Petroleum Energy Sector List.

52 (4) Notwithstanding subsection (2) or subsection (3), an
53 agency or local governmental entity, on a case-by-case basis,
54 may permit a company on the Scrutinized Companies with
55 Activities in Sudan List or the Scrutinized Companies with
56 Activities in the Iran Petroleum Energy Sector List to be

57 eligible for, bid on, submit a proposal for, or enter into or
 58 renew a contract for goods or services of \$1 million or more
 59 under either of the following conditions:

60 (a) All of the following occur:

61 1. The scrutinized business operations were made before
 62 July 1, 2011.

63 2. The scrutinized business operations have not been
 64 expanded or renewed after July 1, 2011.

65 3. The agency or local governmental entity determines that
 66 it is in the best interest of the state or local community to
 67 contract with the company.

68 4. The company has adopted, has publicized, and is
 69 implementing a formal plan to cease scrutinized business
 70 operations and to refrain from engaging in any new scrutinized
 71 business operations.

72 (b) One of the following occurs:

73 1. The local governmental entity makes a public finding
 74 that, absent such an exemption, the local governmental entity
 75 would be unable to obtain the goods or services for which the
 76 contract is offered.

77 2. For a contract with an executive agency, the Governor
 78 makes a public finding that, absent such an exemption, the
 79 agency would be unable to obtain the goods or services for which
 80 the contract is offered.

81 3. For a contract with an office of a state constitutional
 82 officer other than the Governor, the state constitutional
 83 officer makes a public finding that, absent such an exemption,
 84 the office would be unable to obtain the goods or services for

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85 which the contract is offered.

86 (5) At the time a company submits a bid or proposal for a
87 contract or before the company enters into or renews a contract
88 with an agency or governmental entity for goods or services of
89 \$1 million or more, the company must certify that the company is
90 not on the Scrutinized Companies with Activities in Sudan List
91 or the Scrutinized Companies with Activities in the Iran
92 Petroleum Energy Sector List.

93 (a) If, after the agency or the local governmental entity
94 determines, using credible information available to the public,
95 that the company has submitted a false certification, the agency
96 or local governmental entity shall provide the company with
97 written notice of its determination. The company shall have 90
98 days following receipt of the notice to respond in writing and
99 to demonstrate that the determination of false certification was
100 made in error. If the company does not make such demonstration
101 within 90 days after receipt of the notice, the agency or the
102 local governmental entity shall bring a civil action against the
103 company. If a civil action is brought and the court determines
104 that the company submitted a false certification, the company
105 shall pay the penalty described in subparagraph 1. and all
106 reasonable attorneys' fees and costs, including any costs for
107 investigations that led to the finding of false certification.

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

111 2. The company is ineligible to bid on any contract with
112 an agency or local governmental entity for 3 years after the

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113 date the agency or local governmental entity determined that the
114 company submitted a false certification.

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

118 (6) Only the agency or local governmental entity that is a
119 party to the contract may cause a civil action to be brought
120 under this section. This section does not create or authorize a
121 private right of action or enforcement of the penalties provided
122 in this section. An unsuccessful bidder, or any other person
123 other than the agency or local governmental entity, may not
124 protest the award of a contract or contract renewal on the basis
125 of a false certification.

126 (7) This section preempts any ordinance or rule of any
127 agency or local governmental entity involving public contracts
128 for goods or services of \$1 million or more with a company
129 engaged in scrutinized business operations.

130 (8) The department shall submit to the Attorney General of
131 the United States a written notice describing this section
132 within 30 days after July 1, 2011. This section becomes
133 inoperative on the date that federal law ceases to authorize the
134 states to adopt and enforce the contracting prohibitions of the
135 type provided for in this section.

136 Section 2. This act shall take effect July 1, 2011.