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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2011	.	
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The Committee on Community Affairs (Ring) recommended the following:

**Senate Amendment**

Delete everything after the enacting clause and insert:

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

287.135 Prohibition against contracting with scrutinized companies.—

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

(a) "Awarding body" means, for purposes of state contracts, an agency or the department, and for purposes of local



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13 contracts, the governing body of the local governmental entity.

14 (b) "Local governmental entity" means a county,  
15 municipality, special district, or other political subdivision  
16 of the state.

17 (2) A company that, at the time of bidding or submitting a  
18 proposal for a new contract or renewal of an existing contract,  
19 is on the Scrutinized Companies with Activities in Sudan List or  
20 the Scrutinized Companies with Activities in the Iran Petroleum  
21 Energy Sector List, created pursuant to s. 215.473, is  
22 ineligible for, and may not bid on, submit a proposal for, or  
23 enter into or renew a contract with an agency or local  
24 governmental entity for goods or services of \$1 million or more.

25 (3) Any contract with an agency or local governmental  
26 entity for goods or services of \$1 million or more entered into  
27 or renewed on or after July 1, 2011, must contain a provision  
28 that allows for the termination of such contract at the option  
29 of the awarding body if the company is found to have submitted a  
30 false certification as provided under subsection (5) or been  
31 placed on the Scrutinized Companies with Activities in Sudan  
32 List or the Scrutinized Companies with Activities in the Iran  
33 Petroleum Energy Sector List.

34 (4) Notwithstanding subsection (2) or subsection (3), an  
35 agency or local governmental entity, on a case-by-case basis,  
36 may permit a company on the Scrutinized Companies with  
37 Activities in Sudan List or the Scrutinized Companies with  
38 Activities in the Iran Petroleum Energy Sector List to be  
39 eligible for, bid on, submit a proposal for, or enter into or  
40 renew a contract for goods or services of \$1 million or more  
41 under either of the following conditions:



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42           (a) All of the following occur:

43           1. The scrutinized business operations were made before  
44 July 1, 2011.

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

47           3. The agency or local governmental entity determines that  
48 it is in the best interest of the state or local community to  
49 contract with the company.

50           4. The company has adopted, has publicized, and is  
51 implementing a formal plan to cease scrutinized business  
52 operations and to refrain from engaging in any new scrutinized  
53 business operations.

54           (b) One of the following occurs:

55           1. The local governmental entity makes a public finding  
56 that, absent such an exemption, the local governmental entity  
57 would be unable to obtain the goods or services for which the  
58 contract is offered.

59           2. For a contract with an executive agency, the Governor  
60 makes a public finding that, absent such an exemption, the  
61 agency would be unable to obtain the goods or services for which  
62 the contract is offered.

63           3. For a contract with an office of a state constitutional  
64 officer other than the Governor, the state constitutional  
65 officer makes a public finding that, absent such an exemption,  
66 the office would be unable to obtain the goods or services for  
67 which the contract is offered.

68           (5) At the time a company submits a bid or proposal for a  
69 contract or before the company enters into or renews a contract  
70 with an agency or governmental entity for goods or services of



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71 \$1 million or more, the company must certify that the company is  
72 not on the Scrutinized Companies with Activities in Sudan List  
73 or the Scrutinized Companies with Activities in the Iran  
74 Petroleum Energy Sector List.

75 (a) If, after the agency or the local governmental entity  
76 determines, using credible information available to the public,  
77 that the company has submitted a false certification, the agency  
78 or local governmental entity shall provide the company with  
79 written notice of its determination. The company shall have 90  
80 days following receipt of the notice to respond in writing and  
81 to demonstrate that the determination of false certification was  
82 made in error. If the company does not make such demonstration  
83 within 90 days after receipt of the notice, the agency or the  
84 local governmental entity shall bring a civil action against the  
85 company. If a civil action is brought and the court determines  
86 that the company submitted a false certification, the company  
87 shall pay the penalty described in subparagraph 1. and all  
88 reasonable attorney's fees and costs, including any costs for  
89 investigations that led to the finding of false certification.

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

93 2. The company is ineligible to bid on any contract with an  
94 agency or local governmental entity for 3 years after the date  
95 the agency or local governmental entity determined that the  
96 company submitted a false certification.

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



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100       (6) Only the agency or local governmental entity that is a  
101 party to the contract may cause a civil action to be brought  
102 under this section. This section does not create or authorize a  
103 private right of action or enforcement of the penalties provided  
104 in this section. An unsuccessful bidder, or any other person  
105 other than the agency or local governmental entity, may not  
106 protest the award of a contract or contract renewal on the basis  
107 of a false certification.

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

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

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

119 ===== T I T L E   A M E N D M E N T =====

120 And the title is amended as follows:

121       Delete everything before the enacting clause  
122 and insert:

123                   A bill to be entitled

124       An act relating to scrutinized companies; creating s.  
125       287.135, F.S.; providing definitions; prohibiting a  
126       state agency or local governmental entity from  
127       contracting for goods and services of more than a  
128       certain amount with a company that is on the



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129 Scrutinized Companies with Activities in Sudan List or  
130 the Scrutinized Companies with Activities in the Iran  
131 Petroleum Energy Sector List; providing for a contract  
132 provision that allows for termination of the contract  
133 if the company is found to have been placed on such  
134 list; providing exceptions; providing for a civil  
135 action; providing penalties; providing a statute of  
136 repose; prohibiting a private right of action;  
137 requiring the Department of Management Services to  
138 notify the Attorney General after the act becomes law;  
139 providing that the act becomes inoperative if federal  
140 law ceases to authorize states to enact such  
141 contracting prohibitions; providing an effective date.  
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