

By the Committee on Governmental Oversight and Accountability;
and Senator Garcia

585-03772-12

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1 A bill to be entitled
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 a determination that a company has
25 submitted a false certification; providing for civil
26 action; providing penalties; providing for attorney
27 fees and costs; providing a statute of repose;
28 prohibiting a private right of action; requiring the
29 Department of Management Services to notify the

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30 Attorney General after the act becomes law; providing
31 an effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

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35 Section 1. Section 215.471, Florida Statutes, is amended to
36 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 does
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
57 voting report.

58 Section 2. Section 287.135, Florida Statutes, is amended to

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59 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 contracts,
65 an agency or the department, and for purposes of local
66 contracts, the governing body of the local governmental entity.

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

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

77 (2) A company that, at the time of bidding or submitting a
78 proposal for a new contract or renewal of an existing contract,
79 is on the Scrutinized Companies with Activities in Sudan List or
80 the Scrutinized Companies with Activities in the Iran Petroleum
81 Energy Sector List, created pursuant to s. 215.473, or is
82 engaged in business operations in Cuba or Syria, is ineligible
83 for, and may not bid on, submit a proposal for, or enter into or
84 renew a contract with an agency or local governmental entity for
85 goods or services of \$1 million or more.

86 (3) (a) Any contract with an agency or local governmental
87 entity for goods or services of \$1 million or more entered into

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88 or renewed on or after July 1, 2011, through June 30, 2012, must
89 contain a provision that allows for the termination of such
90 contract at the option of the awarding body if the company is
91 found to have submitted a false certification as provided under
92 subsection (5) or been placed on the Scrutinized Companies with
93 Activities in Sudan List or the Scrutinized Companies with
94 Activities in the Iran Petroleum Energy Sector List.

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

105 (4) Notwithstanding subsection (2) or subsection (3), an
106 agency or local governmental entity, on a case-by-case basis,
107 may permit a company on the Scrutinized Companies with
108 Activities in Sudan List or the Scrutinized Companies with
109 Activities in the Iran Petroleum Energy Sector List, or a
110 company with business operations in Cuba or Syria, to be
111 eligible for, bid on, submit a proposal for, or enter into or
112 renew a contract for goods or services of \$1 million or more
113 under ~~either of the following~~ conditions set forth in paragraph
114 (a) or the conditions set forth in paragraph (b):

115 (a)1. With respect to a company on the Scrutinized
116 Companies with Activities in Sudan List or the Scrutinized

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117 Companies with Activities in the Iran Petroleum Energy Sector

118 List, all of the following occur:

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

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

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

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

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

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

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

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

138 d. The company has adopted, has publicized, and is
139 implementing a formal plan to cease business operations and to
140 refrain from engaging in any new business operations.

141 (b) One of the following occurs:

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

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

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

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

163 (a) If, after the agency or the local governmental entity
164 determines, using credible information available to the public,
165 that the company has submitted a false certification, the agency
166 or local governmental entity shall provide the company with
167 written notice of its determination. The company shall have 90
168 days following receipt of the notice to respond in writing and
169 to demonstrate that the determination of false certification was
170 made in error. If the company does not make such demonstration
171 within 90 days after receipt of the notice, the agency or the
172 local governmental entity shall bring a civil action against the
173 company. If a civil action is brought and the court determines
174 that the company submitted a false certification, the company

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175 shall pay the penalty described in subparagraph 1. and all
176 reasonable attorney ~~attorney's~~ fees and costs, including any
177 costs for investigations that led to the finding of false
178 certification.

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

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

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

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

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

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

203 (a) Describing this section within 30 days after July 1,

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204 2011.

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

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

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