

By Senator Negrón

32-00025-16

201686__

1 A bill to be entitled
2 An act relating to state contracts; creating s.
3 215.4725, F.S.; prohibiting a public entity from
4 entering into specified contracts; providing an
5 exception; defining terms; providing applicability;
6 amending s. 215.473, F.S.; prohibiting a company from
7 contracting with the state if the company appears on
8 the Scrutinized Companies with Activities in the Iran
9 Petroleum Energy Sector List; requiring a public fund
10 to send a written notice to a specified company in
11 certain circumstances; granting the company an
12 opportunity to comment in writing; providing for the
13 removal of the company from the list in certain
14 circumstances; providing an exception; requiring the
15 determination to be entered into the procurement
16 record; requiring a company that attempts to contract
17 with the state to certify that the company or the
18 assignee is not on the list; requiring the state
19 agency to include certification information in the
20 procurement record; providing an exception; defining
21 terms; prohibiting a company that contracts with the
22 state from entering into a subcontract with any
23 company on the list; requiring the state agency or
24 public entity to review specified information and
25 offer the company an opportunity to respond;
26 authorizing the state agency or entity to take
27 appropriate actions as provided by law; requiring
28 specified bid proposals to contain a specified
29 statement signed under oath or affirmation by the

32-00025-16

201686__

30 bidder under the penalty of perjury; providing
31 applicability; authorizing the bidder to
32 electronically submit the statement of noninvestment
33 in the Iranian energy sector; requiring the bidder to
34 provide a signed statement with specified information
35 if the bidder cannot meet the certification
36 requirements; authorizing a political subdivision to
37 award a bid to a bidder who cannot meet the
38 certification requirements in certain circumstances;
39 providing an effective date.

40
41 Be It Enacted by the Legislature of the State of Florida:

42
43 Section 1. Section 215.4725, Florida Statutes, is created
44 to read:

45 215.4725 Public entity contracts.-

46 (1) All contracts between a public entity and a business
47 for supplies, services, information technology, or construction
48 must include a representation by the business that it is not
49 engaged in and will not engage in the boycott of any person or
50 entity that is based in, or doing business with, a jurisdiction
51 with which the state enjoys open trade. For purposes of this
52 subsection, the term:

53 (a) "Boycott" means to blacklist, divest from, or otherwise
54 refuse to engage with a person or entity on the basis of the
55 race, color, religion, gender, or national origin of the person
56 or entity. The term does not include:

57 1. A decision by a business that is based on economic
58 reasons or the specific conduct of the person or entity;

32-00025-16

201686__

59 2. A boycott against a public entity of a foreign state if
60 the boycott is applied in a nondiscriminatory manner; and

61 3. Conduct required for compliance with applicable law in
62 the business's home jurisdiction.

63 (b) "Jurisdiction with which the state can enjoy open
64 trade" means members of the World Trade Organization and those
65 jurisdictions with whom the United States has free trade or
66 other agreements aimed at ensuring open and nondiscriminatory
67 trade relations.

68 (c) "Public entity" means the state, any of its departments
69 or agencies, or any political subdivision of the state.

70 (2) This section does not apply to contracts in which a
71 business agrees to provide the goods or services at a cost at
72 least 20 percent less than the next lowest bidder, or to
73 contracts with a total potential value of less than \$10,000.

74 Section 2. Present subsections (4) and (5) of section
75 215.473, Florida Statutes, are redesignated as subsections (5)
76 and (6), respectively, and a new subsection (4) is added to that
77 section, to read:

78 215.473 Divestiture by the State Board of Administration;
79 Sudan; Iran.—

80 (4) STATE CONTRACTS.—

81 (a) If a company appears on the Scrutinized Companies with
82 Activities in the Iran Petroleum Energy Sector List due to
83 engaging in investment activities in Iran as described in
84 subparagraph (1)(u)4., the company may not contract with the
85 state beginning 90 days after receiving notification of such
86 status unless the company meets an exception provided in
87 subparagraph 1. or subparagraph 2. A public fund shall send a

32-00025-16

201686__

88 written notice to the company specifying that it may be removed
89 from the list if it ceases its engagement in investment
90 activities in Iran. The company shall be granted an opportunity
91 to comment in writing that it is not engaged in such activities.
92 If the company demonstrates to the public fund that it is not
93 engaged in investment activities in Iran, the company shall be
94 removed from the list. A company engaged in investment
95 activities in Iran may contract with the state only if:

96 1. The investment activities in Iran were made before
97 January 1, 2016, the investment activities in Iran have not been
98 expanded or renewed after the effective date of this act, and
99 the company has adopted, publicized, and is implementing a
100 formal plan to cease the investment activities in Iran and to
101 refrain from engaging in any new investments in Iran; or

102 2. The state agency makes a determination that the
103 commodities or services are necessary to perform its functions
104 and that, absent such an exemption, the state agency would be
105 unable to obtain the commodities or services for which the
106 contract is offered. The determination shall be entered into the
107 procurement record.

108 (b) A company that seeks a contract with the state,
109 including a contract renewal or assumption, must certify, when
110 the bid is submitted or the contract is entered into, renewed,
111 or assigned, that the company or the assignee does not appear on
112 the Scrutinized Companies with Activities in the Iran Petroleum
113 Energy Sector List. The state agency shall include certification
114 information in the procurement record. Certification is not
115 required for contracts between public procurement units or
116 contracts between public procurement units and external

32-00025-16

201686__

117 procurement activities. For the purposes of this paragraph, the
118 term:

119 1. "External procurement activity" means the procurement
120 activity of a buying organization located outside this state
121 which would qualify as a public procurement unit or the
122 procurement activity of the United States Government.

123 2. "Local public procurement unit" means any political
124 subdivision or unit that expends public funds for the
125 procurement of supplies, services, or construction.

126 3. "Public procurement unit" means a local public
127 procurement unit or a state public procurement unit.

128 4. "State public procurement unit" means the offices of the
129 chief procurement officers and any other purchasing agency of
130 the state.

131 (c) A company that contracts with the state may not enter
132 into a subcontract under the contract with the state with any
133 company on the Scrutinized Companies with Activities in the Iran
134 Petroleum Energy Sector List.

135 (d) Upon receiving information that a company that made the
136 certification required by paragraph (b) is engaged in activity
137 contrary to the certification, the state agency or entity shall
138 review such information and offer the company an opportunity to
139 respond. If, within 90 days after it is determined that the
140 company is engaged in such activity, the company fails to
141 demonstrate that it has ceased the activity, the state agency or
142 entity may take such action as appropriate and provided for by
143 law, rule, or contract, including, but not limited to, imposing
144 sanctions, seeking compliance, recovering damages, or declaring
145 the contractor in default.

32-00025-16

201686__

146 (e) If competitive bidding is required by statute, rule,
147 regulation, or local law for work or services performed or to be
148 performed or goods sold or to be sold, any bid or proposal
149 submitted to a political subdivision of the state or an official
150 thereof shall contain the following statement signed under oath
151 or affirmation by the bidder under penalty of perjury:

152
153 By submission of this bid, each bidder and each person signing
154 on behalf of such bidder and, in the case of a joint bid, each
155 party thereto, certifies as to its own organization, under
156 penalty of perjury, that to the best of its knowledge and belief
157 such bidder does not appear on the Scrutinized Companies with
158 Activities in the Iran Petroleum Energy Sector List.

159
160 This paragraph does not apply to, and certification is not
161 required for, contracts between public procurement units or
162 contracts of public procurement units for external procurement
163 activities, as those terms are defined in paragraph (b).

164 (f) A bidder may submit the statement of noninvestment in
165 the Iranian energy sector electronically.

166 (g) If a bidder cannot make the certification required in
167 paragraph (e), it shall provide with the bid a signed statement
168 that cites the reasons for failing to do so. A political
169 subdivision may award a bid to a bidder who cannot make the
170 certification if:

171 1. The investment activities in Iran were made before
172 January 1, 2016, the investment activities in Iran have not been
173 expanded or renewed after the effective date of this act, and
174 the company has adopted, publicized, and is implementing a

32-00025-16

201686__

175 formal plan to cease the investment activities in Iran and to
176 refrain from engaging in any new investments in Iran; or
177 2. The political subdivision makes a determination that the
178 goods or services that are the subject of the contract are
179 necessary for the political subdivision to perform its functions
180 and that, absent such an exception, the political subdivision
181 would be unable to obtain them. The determination shall be made
182 in writing and is a public document.

183 Section 3. This act shall take effect July 1, 2016.