

SB0235/874633/1

BY: Education, Health, and Environmental Affairs Committee

AMENDMENTS TO SENATE BILL 235

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and Manno” and substitute “Manno, Rosapepe, and Benson”; in line 3, after the first “of” insert “specifying that certain persons shall be considered as engaging in investment activities in Iran under certain circumstances;”; strike beginning with “requiring” in line 8 down through “Act;” in line 23 and substitute “requiring the Board to provide a person with an opportunity to comment that the person is not engaged in investment activities in Iran; requiring a public body, on or after a certain date, to require a person that submits a bid or proposal or enters into a contract with the public body to make a certain certification or provide certain information; requiring the public body to submit certain information submitted by certain persons to the Board; requiring a public body to institute certain actions based on a determination of a false certification; requiring a public body to report certain information to the Board and the Attorney General under certain circumstances; authorizing the Attorney General to bring a certain action within a certain time after a certification is made; specifying certain penalties for submitting a false certification, including civil penalties, the termination of certain contracts, and the ineligibility of certain persons to bid on certain contracts under certain circumstances; providing that this Act does not create a private right of action;”; in line 24, after “laws” insert “and regulations; declaring the intent of the General Assembly; requiring the Department of Legislative Services to provide certain written notice concerning this Act to the Attorney General of the United States; making this Act severable; providing for the termination of this Act under certain circumstances; requiring the Board to notify the Department of Legislative Services of a certain event within a certain time period”; and in line 28, strike “(k), and (x)” and substitute “and (k)”.

(Over)

On page 2, in line 4, strike “13-501 through 13-505” and substitute “17-701 through 17-707”; in the same line, strike “5.” and substitute “7.”; and in line 5, strike “; and 16-203(e)”.

AMENDMENT NO. 2

On pages 3 through 8, strike beginning with line 11 on page 3 through line 15 on page 8, inclusive, and substitute:

“SUBTITLE 7. INVESTMENT ACTIVITIES IN IRAN.

17-701.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “ENERGY SECTOR OF IRAN” MEANS ACTIVITIES TO DEVELOP PETROLEUM OR NATURAL GAS RESOURCES OR NUCLEAR POWER IN IRAN.

(C) “FINANCIAL INSTITUTION” HAS THE MEANING STATED IN SECTION 14 OF THE IRAN SANCTIONS ACT OF 1996 (PUBLIC LAW 104-172).

(D) “IRAN” INCLUDES THE GOVERNMENT OF IRAN AND ANY AGENCY OR INSTRUMENTALITY OF IRAN.

(E) “PERSON” INCLUDES:

(1) A NATURAL PERSON, CORPORATION, COMPANY, LIMITED LIABILITY COMPANY, BUSINESS ASSOCIATION, PARTNERSHIP, SOCIETY, TRUST, OR ANY OTHER NONGOVERNMENTAL ENTITY, ORGANIZATION, OR GROUP;

(2) A GOVERNMENTAL ENTITY OR INSTRUMENTALITY OF A GOVERNMENT, INCLUDING A MULTILATERAL DEVELOPMENT INSTITUTION, AS DEFINED BY THE FEDERAL INTERNATIONAL FINANCIAL INSTITUTIONS ACT, 22 U.S.C. 262R(C)(3); OR

(3) ANY PARENT, SUCCESSOR, SUBUNIT, DIRECT OR INDIRECT SUBSIDIARY OF, OR ANY ENTITY UNDER COMMON OWNERSHIP OR CONTROL WITH, AN ENTITY DESCRIBED IN ITEM (1) OR (2) OF THIS SUBSECTION.

(F) "PUBLIC BODY" MEANS:

(1) THE STATE;

(2) A COUNTY, MUNICIPAL CORPORATION, OR OTHER POLITICAL SUBDIVISION;

(3) A PUBLIC INSTRUMENTALITY; OR

(4) ANY GOVERNMENTAL UNIT AUTHORIZED TO AWARD A CONTRACT.

17-702.

FOR PURPOSES OF THIS SUBTITLE, A PERSON ENGAGES IN INVESTMENT ACTIVITIES IN IRAN IF:

(1) THE PERSON PROVIDES GOODS OR SERVICES OF \$20,000,000 OR MORE IN THE ENERGY SECTOR OF IRAN, INCLUDING A PERSON THAT PROVIDES OIL OR LIQUEFIED NATURAL GAS TANKERS OR PRODUCTS USED TO

(Over)

CONSTRUCT OR MAINTAIN PIPELINES USED TO TRANSPORT OIL OR LIQUEFIED
NATURAL GAS FOR THE ENERGY SECTOR OF IRAN; OR

(2) THE PERSON IS A FINANCIAL INSTITUTION THAT EXTENDS
\$20,000,000 OR MORE IN CREDIT TO ANOTHER PERSON FOR 45 DAYS OR MORE
IF THE PERSON TO WHOM THE CREDIT IS EXTENDED:

(i) WILL USE THE CREDIT TO PROVIDE GOODS OR SERVICES
IN THE ENERGY SECTOR OF IRAN AS DESCRIBED IN ITEM (1) OF THIS SECTION;
AND

(ii) IS, AT THE TIME OF THE EXTENSION OF CREDIT,
IDENTIFIED ON A LIST CREATED UNDER § 17-704 OF THIS SUBTITLE AS A
PERSON ENGAGING IN INVESTMENT ACTIVITIES IN IRAN.

17-703.

A PERSON THAT, AT THE TIME OF BID OR PROPOSAL FOR A NEW
CONTRACT OR RENEWAL OF AN EXISTING CONTRACT, IS IDENTIFIED ON A LIST
CREATED BY THE BOARD UNDER § 17-704 OF THIS SUBTITLE AS A PERSON
ENGAGING IN INVESTMENT ACTIVITIES IN IRAN IS INELIGIBLE TO, AND MAY NOT
BID ON, SUBMIT A PROPOSAL FOR, OR ENTER INTO OR RENEW A CONTRACT
WITH A PUBLIC BODY FOR GOODS OR SERVICES.

17-704.

(A) (1) ON OR BEFORE DECEMBER 31, 2012, THE BOARD SHALL USE
CREDIBLE INFORMATION AVAILABLE TO THE PUBLIC TO CREATE A LIST OF

PERSONS THAT THE BOARD DETERMINES TO BE ENGAGED IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN § 17-702 OF THIS SUBTITLE.

(2) THE BOARD SHALL UPDATE THE LIST AT LEAST EVERY 180 DAYS.

(3) BEFORE THE BOARD INCLUDES A PERSON ON THE LIST, THE BOARD SHALL PROVIDE THE PERSON WITH 90 DAYS' WRITTEN NOTICE THAT:

(I) THE BOARD INTENDS TO INCLUDE THE PERSON ON THE LIST; AND

(II) INCLUSION ON THE LIST WOULD MAKE THE PERSON INELIGIBLE TO BID ON, SUBMIT A PROPOSAL FOR, OR ENTER INTO OR RENEW A CONTRACT WITH A PUBLIC BODY FOR GOODS OR SERVICES.

(4) THE NOTICE REQUIRED UNDER PARAGRAPH (3) OF THIS SUBSECTION SHALL SPECIFY THAT IF THE PERSON CEASES ENGAGEMENT IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN § 17-702 OF THIS SUBTITLE, THE PERSON MAY BECOME ELIGIBLE FOR A FUTURE CONTRACT OR CONTRACT RENEWAL WITH A PUBLIC BODY FOR GOODS OR SERVICES ON REMOVAL FROM THE LIST.

(B) (1) THE BOARD SHALL PROVIDE A PERSON WITH AN OPPORTUNITY TO COMMENT IN WRITING TO THE BOARD THAT THE PERSON IS NOT ENGAGED IN INVESTMENT ACTIVITIES IN IRAN.

(2) IF THE PERSON DEMONSTRATES TO THE BOARD THAT THE PERSON IS NOT ENGAGED IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN

§ 17-702 OF THIS SUBTITLE, THE BOARD MAY NOT INCLUDE THE PERSON ON THE LIST.

(C) THE BOARD SHALL REMOVE A PERSON FROM THE LIST IF THE PERSON DEMONSTRATES TO THE BOARD THAT THE PERSON NO LONGER IS ENGAGED IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN § 17-702 OF THIS SUBTITLE.

(D) THE BOARD SHALL MAKE EVERY REASONABLE EFFORT TO AVOID ERRONEOUSLY INCLUDING A PERSON ON THE LIST.

(E) THE BOARD SHALL PUBLISH THE LIST ON THE INTERNET.

17-705.

(A) ON OR AFTER JANUARY 1, 2013, A PUBLIC BODY SHALL REQUIRE A PERSON THAT SUBMITS A BID OR PROPOSAL TO THE PUBLIC BODY FOR A CONTRACT FOR GOODS OR SERVICES, OR OTHERWISE PROPOSES TO ENTER INTO OR RENEW A CONTRACT FOR GOODS OR SERVICES WITH THE PUBLIC BODY, TO:

(1) CERTIFY AT THE TIME THE BID IS SUBMITTED OR THE CONTRACT IS RENEWED THAT THE PERSON:

(I) IS NOT IDENTIFIED ON THE LIST CREATED BY THE BOARD AS A PERSON ENGAGING IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN § 17-702 OF THIS SUBTITLE; AND

(II) IS NOT ENGAGING IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN § 17-702 OF THIS SUBTITLE; OR

(2) IF THE PERSON IS UNABLE TO MAKE THE CERTIFICATION UNDER ITEM (1) OF THIS SUBSECTION, PROVIDE THE PUBLIC BODY, UNDER PENALTY OF PERJURY, A DETAILED DESCRIPTION OF THE PERSON'S INVESTMENT ACTIVITIES IN IRAN.

(B) A PUBLIC BODY SHALL SUBMIT ANY INFORMATION PROVIDED TO THE PUBLIC BODY UNDER SUBSECTION (A)(2) OF THIS SECTION TO THE BOARD.

17-706.

(A) (1) IF A PUBLIC BODY, USING CREDIBLE INFORMATION AVAILABLE TO THE PUBLIC, DETERMINES THAT A PERSON HAS SUBMITTED A FALSE CERTIFICATION UNDER § 17-705(A)(1) OF THIS SUBTITLE, THE PUBLIC BODY SHALL PROVIDE WRITTEN NOTICE TO THE PERSON AND AN OPPORTUNITY FOR THE PERSON TO DEMONSTRATE IN WRITING THAT THE PERSON IS NOT ENGAGED IN INVESTMENT ACTIVITIES IN IRAN.

(2) IF THE PERSON FAILS TO DEMONSTRATE TO THE PUBLIC BODY WITHIN 90 DAYS AFTER THE PUBLIC BODY PROVIDES NOTICE UNDER PARAGRAPH (1) OF THIS SUBSECTION THAT THE PERSON IS NOT ENGAGED IN INVESTMENT ACTIVITIES IN IRAN, THE PUBLIC BODY SHALL REPORT TO THE BOARD AND THE ATTORNEY GENERAL:

(I) THE NAME OF THE PERSON DETERMINED TO HAVE SUBMITTED A FALSE CERTIFICATION; AND

(Over)

(II) THE INFORMATION ON WHICH THE PUBLIC BODY MADE ITS DECISION.

(B) (1) THE ATTORNEY GENERAL MAY INSTITUTE AN ACTION AGAINST A PERSON DETERMINED TO HAVE SUBMITTED A FALSE CERTIFICATION UNDER § 17-705(A)(1) OF THIS SUBTITLE.

(2) AN ACTION BROUGHT UNDER THIS SECTION SHALL BE BROUGHT WITHIN 3 YEARS FROM THE DATE THE CERTIFICATION IS MADE.

(C) IF, IN AN ACTION BROUGHT UNDER THIS SECTION, A COURT DETERMINES THAT A PERSON SUBMITTED A FALSE CERTIFICATION:

(1) THE PERSON SHALL PAY ALL REASONABLE COSTS AND FEES INCURRED IN THE CIVIL ACTION, INCLUDING:

(I) ANY COSTS INCURRED BY THE PUBLIC BODY FOR THE INVESTIGATION THAT LED TO THE FINDING OF THE FALSE CERTIFICATION; AND

(II) ALL REASONABLE COSTS AND FEES INCURRED BY THE ATTORNEY GENERAL IN BRINGING THE ACTION;

(2) THE COURT MAY IMPOSE A CIVIL PENALTY EQUAL TO THE GREATER OF \$1,000,000 OR TWICE THE AMOUNT OF THE CONTRACT FOR WHICH THE FALSE CERTIFICATION WAS SUBMITTED;

(3) THE PUBLIC BODY MAY TERMINATE THE CONTRACT FOR WHICH THE FALSE CERTIFICATION WAS SUBMITTED; AND

(4) THE PERSON IS INELIGIBLE TO BID ON A CONTRACT WITH A PUBLIC BODY FOR A PERIOD OF 3 YEARS FROM THE DATE OF THE COURT ORDER.

(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN UNSUCCESSFUL BIDDER OR ANY OTHER PERSON MAY NOT PROTEST THE AWARD OF A CONTRACT OR CONTRACT RENEWAL ON THE BASIS OF A FALSE CERTIFICATION.

(2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT PROHIBIT A PUBLIC BODY FROM FILING A PROTEST OBJECTING TO THE AWARD OF A CONTRACT OR CONTRACT RENEWAL ON THE BASIS OF A FALSE CERTIFICATION.

(E) THIS SUBTITLE DOES NOT CREATE OR AUTHORIZE A PRIVATE RIGHT OF ACTION.

17-707.

THIS SUBTITLE PREEMPTS ANY LAW, ORDINANCE, RULE, OR REGULATION OF ANY LOCAL GOVERNING BODY INVOLVING PROCUREMENT CONTRACTS FOR GOODS OR SERVICES WITH A PERSON ENGAGED IN INVESTMENT ACTIVITIES IN IRAN.”.

AMENDMENT NO. 3

On page 8, after line 18, insert:

“SECTION 3. AND BE IT FURTHER ENACTED, That the Department of Legislative Services shall submit to the Attorney General of the United States written notice of the requirements of this Act within 30 days after the Act takes effect.

(Over)

SECTION 4. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 5. AND BE IT FURTHER ENACTED, That:

(a) This Act shall remain in effect until:

(1) the Congress or the President of the United States affirmatively and unambiguously declares, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress that Iran is no longer seeking a nuclear weapons capability and no longer supports international terrorism; or

(2) federal law no longer authorizes the states to adopt and enforce provisions of the type authorized in this Act.

(b) The Board of Public Works shall notify the Department of Legislative Services within 5 days after the occurrence of an event described in subsection (a) of this section and, as of the date the event occurred, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.”;

and in line 19, strike “3.” and substitute “6.”.