SB 235

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 235 (The President, *et al.*) (By Request - Administration)
Education, Health, and Environmental Affairs Health and Government Operations

Procurement - Investment Activities in Iran

This Administration bill prohibits a person who is identified as engaging in investment activities in Iran from participating in procurement with a public body in the State. It requires the Board of Public Works (BPW) to develop, by December 31, 2012, and regularly update a list of persons that engage in investment activities in Iran. Beginning January 1, 2013, a public body in the State must require persons engaging in procurement to certify that they are not engaged in investment activities in Iran. Persons who falsely certify to a public body that they are not engaged in investment activities in Iran are subject to civil action by the State within three years of the false certification. If the action is successful, the person is ineligible to bid on a public contract for three years and is subject to civil fines and other penalties.

The bill takes effect June 1, 2012, and remains in effect until (1) the President of the United States or the U.S. Congress declares that Iran is no longer seeking nuclear weapons and no longer supports international terrorism; or (2) federal law no longer authorizes states to adopt and enforce provisions of the type authorized by the bill.

Fiscal Summary

State Effect: Potential increase in State procurement costs (all funds), to the extent that persons engaged in investment activities in Iran are prohibited from bidding on or participating in State contracts and therefore diminish competition for those contracts. The overall effect on State procurement costs is expected to be minimal. General fund expenditures by BPW increase by approximately $5,000 in FY 2013 to hire a consultant to assist in the development and subsequent updating of the required list. This estimate assumes expenditures are not affected in FY 2012. Out-year expenditures reflect inflation.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	$0	$0	$0	$0	$0
GF Expenditure	5,000	5,100	5,100	5,200	5,200
Net Effect	($5,000)	($5,100)	($5,100)	($5,200)	($5,200)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential increase in local governmental procurement costs, to the extent that persons engaged in investment activities in Iran are prohibited from bidding on or participating in local contracts and therefore diminish competition for those contracts. The overall effect on local procurement costs is expected to be minimal.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: Engaging in investment activities in Iran consists of:

- providing goods or services of at least $20.0 million in the energy sector of Iran; or
- for financial institutions, extending credit of at least $20.0 million to another person for at least 45 days if the person is on the BPW list and will use the credit to provide goods or services in the energy sector of Iran.

Persons to whom the bill applies include individuals, corporations, companies, limited liability companies, business associations, partnerships, societies, trusts, or any other nongovernmental entity, organization, or group. It also includes governmental entities or instrumentalities of a government as defined in federal law, and any parent or successor of any of these entities.

BPW must use credible information available to the public to develop the list of persons engaged in investment activities in Iran by December 31, 2012; the list must be updated every 180 days. Ninety days before adding a person to the list, BPW must provide notice to the person of its intention to add the person to the list and that inclusion on the list prohibits the person from contracting with public bodies in the State. During the 90-day period, the person may provide written documentation demonstrating that the person is not engaged in investment activities in Iran. BPW must make every effort to avoid erroneously including a person on the list and must publish the list on the Internet.

Certification by a person to a State or local governmental procurement unit that the person is not on the BPW list and is not engaged in investment activities in Iran must be made at the time a bid or proposal is submitted or a contract is renewed.

Penalties for falsely certifying that a person is not engaged in investment activities in Iran include:

- a civil penalty equal to the greater of $1.0 million or twice the amount of the contract for which the false certification was made; and
- ineligibility to bid on a contract for three years.

In addition, any existing contracts may be terminated, and the person is responsible for any reasonable costs and fees incurred by the Attorney General in bringing the action and any costs incurred by the public body for the investigation that led to the finding of false certification. A procurement contract may not be awarded to a person that submits a false certification. The bill does not create a private right of action.

The bill also states the General Assembly's intent that the authority granted under Section 202 of the federal Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 be implemented. The bill preempts any law, ordinance, rule, or regulation of any local body involving procurement with persons engaged in investment activities in Iran. The Department of Legislative Services must notify the U.S. Attorney General of the bill's provisions within 30 days of its enactment. The bill's provisions are severable.

Current Law:

Iran Divestment/Sanctions: There are no provisions in State law that address the participation of persons engaged in investment activity in Iran in State or local government procurement. However, Chapter 342 of 2008 requires the Board of Trustees of the State Retirement and Pension System to notify any company whose shares are held in an actively traded separate account in its portfolio that is doing business in either Iran or Sudan that the board will divest all holdings in the company unless the company releases a plan to cease its business with Iran or Sudan within one year. Chapter 342 exempts from the divestment requirement any company that is excluded from U.S. government sanctions against Iran or Sudan and whose divestment cannot be executed for fair market value or greater. It requires the board to act in good faith and in a manner consistent with its fiduciary responsibilities in carrying out the divestment requirement.

Background: Section 202 of the federal Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 authorizes states to adopt measures to divest State or local government assets from any person who engages in investment activities in Iran, or to prohibit State and local government investment in those persons. State-adopted measures must use credible information available to the public to identify persons engaged in investment activities in Iran and provide suitable opportunity for persons to dispute that information, as specified in the Act.

As of June 2011, California and Florida were the only states that had adopted Iran sanctions allowed under Section 202; Arizona already had a similar law in place since 2008. Several other states, including Oregon and Kansas, are considering similar legislation.

Additional Information

Prior Introductions: None.

Cross File: HB 440 (The Speaker, *et al.*) (By Request - Administration) - Health and Government Operations.

Information Source(s): Kent and Worcester counties, City of Rockville, Baltimore City, Board of Public Works, Department of Budget and Management, Department of General Services, Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, University System of Maryland, National Law Review, Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2012
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: **Procurement - Investment Activities in Iran**

BILL NUMBER: SB 235

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.