

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 811

(Senator Rosapepe)

Education, Health, and Environmental Affairs

Health and Government Operations

Procurement - Investment Activities in Iran - Board of Public Works Authority to Adopt Regulations

This bill requires the Board of Public Works (BPW) to adopt regulations in response to changes to the federal Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) or any other federal law that imposes sanctions on investment activities in Iran. It also amends Chapter 447 of 2012 to expand its applicability to include any enacted federal law that alters CISADA or investment sanctions in Iran, and any State law that alters Chapter 447.

Fiscal Summary

State Effect: None. BPW can implement the bill's provisions with existing budgeted resources. No effect on revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Chapters 446 and 447 of 2012 (SB 235/HB 440) prohibit a person who is identified as engaging in investment activities in Iran from participating in procurement with a public body in the State. They require BPW to develop and regularly update a list of persons that engage in investment activities in Iran. As of 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.

Chapters 446 and 447 remain 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 Chapters 446 and 447.

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.

This bill requires BPW to adopt regulations that change the above dollar amounts and/or parameters in response to changes to the federal Act or other enacted federal laws that regulate investment activities in Iran.

BPW must use credible information available to the public to develop the list of persons engaged in investment activities in Iran; 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.

Chapters 446 and 447 also express the General Assembly's intent that the authority granted under Section 202 of CISADA be implemented. Chapters 446 and 447 preempt 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 had to notify the U.S. Attorney General of these provisions within 30 days of their enactment. The Acts' provisions are severable.

Background: Section 202 of CISADA 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 CISADA.

On August 10, 2012, President Obama signed the Iran Threat Reduction and Syria Human Rights Act of 2012 (H.R 1905), which broadens the scope of the Iran Sanctions Act, as amended by CISADA. Among the new Act's many provisions, foreign financial institutions become subject to CISADA sanctions if they (1) knowingly facilitate, participate, assist, or act on behalf of or as an intermediary in connection with forbidden practices; (2) provide support to any persons acting on behalf of, at the direction of, or owned or controlled by persons sanctioned by the United Nations Security Council; or (3) facilitate significant transactions or provide significant financial services for anyone whose property is blocked pursuant to U.S. sanctions against Iran. The U.S. Treasury has already imposed sanctions authorized by CISADA on two foreign banks: the Bank of Kunlun in China and the Elaf Islamic Bank in Iraq.

Additional Information

Prior Introductions: None.

Cross File: HB 877 (Delegate Morhaim, *et al.*) - Health and Government Operations.

Information Source(s): Board of Public Works, Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2013
ncs/rhh

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

