

HOUSE BILL 682

P2

9lr0406

By: **Delegate Rosenberg**

Introduced and read first time: February 7, 2019

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Prohibited Russian Entities**

3 FOR the purpose of specifying that certain persons identified on a certain list at a certain
4 time are ineligible for certain procurement activities with certain public bodies;
5 requiring the Board of Public Works, on or before a certain date, to use certain
6 information to create a list of persons that are prohibited Russian entities; requiring
7 the Board to update the list at certain times; requiring the Board, within a certain
8 number of days before adding a person to the list, to provide the person with certain
9 notice; prohibiting the Board from adding a person to the list under certain
10 circumstances; requiring the Board to provide a person with an opportunity to certify
11 that the person is not a prohibited Russian entity; requiring a public body, on or after
12 a certain date, to require a person that submits a bid or proposal or enters into a
13 contract with the public body to make a certain certification or provide certain
14 information; requiring the public body to submit certain information submitted by
15 certain persons to the Board; requiring a public body to institute certain actions
16 based on a determination of a false certification; requiring a public body to report
17 certain information to the Board and the Attorney General under certain
18 circumstances; authorizing the Attorney General to bring a certain action within a
19 certain time after a certification is made; specifying certain penalties for submitting
20 a false certification, including civil penalties, the termination of certain contracts,
21 and the ineligibility of certain persons to bid on certain contracts under certain
22 circumstances; providing that this Act does not create a private right of action;
23 establishing that this Act preempts certain local laws and regulations; making the
24 provisions of this Act severable; defining certain terms; and generally relating to
25 prohibited Russian entities and State procurement law.

26 BY repealing and reenacting, without amendments,
27 Article – State Finance and Procurement
28 Section 11–101(a), (d), and (k)
29 Annotated Code of Maryland
30 (2015 Replacement Volume and 2018 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – State Finance and Procurement
3 Section 17–801 through 17–806 to be under the new subtitle “Subtitle 8. Prohibited
4 Russian Entities”
5 Annotated Code of Maryland
6 (2015 Replacement Volume and 2018 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
8 That the Laws of Maryland read as follows:

9 **Article – State Finance and Procurement**

10 11–101.

11 (a) In this Division II the following words have the meanings indicated unless:

12 (1) the context clearly requires a different meaning; or

13 (2) a different definition is provided for a particular title or provision.

14 (d) “Board” means the Board of Public Works.

15 (k) “Person” means an individual, receiver, trustee, guardian, personal
16 representative, fiduciary, or representative of any kind and any partnership, firm,
17 association, corporation, or other entity.

18 **SUBTITLE 8. PROHIBITED RUSSIAN ENTITIES.**

19 **17–801.**

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

22 **(B) “PERSON” INCLUDES:**

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

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

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

4 **(C) (1) “PROHIBITED RUSSIAN ENTITY” MEANS A PERSON SANCTIONED**
5 **BY THE:**

6 **(I) FEDERAL COUNTERING AMERICA’S ADVERSARIES**
7 **THROUGH SANCTIONS ACT, TITLE II – SANCTIONS WITH RESPECT TO THE RUSSIAN**
8 **FEDERATION AND COMBATING TERRORISM AND ILLICIT FINANCING, 22 U.S.C.**
9 **9502;**

10 **(II) FEDERAL UKRAINE FREEDOM SUPPORT ACT OF 2014, 22**
11 **U.S.C. 8921; AND**

12 **(III) FEDERAL RUSSIA AND MOLDOVA JACKSON–VANIK REPEAL**
13 **AND SERGEI MAGNITSKY RULE OF LAW ACCOUNTABILITY ACT OF 2012, 146 STAT.**
14 **1496.**

15 **(2) “PROHIBITED RUSSIAN ENTITY” INCLUDES THE GOVERNMENT OF**
16 **THE RUSSIAN FEDERATION OR AN AGENCY OR INSTRUMENTALITY OF THE RUSSIAN**
17 **FEDERATION.**

18 **(D) “PUBLIC BODY” MEANS:**

19 **(1) THE STATE;**

20 **(2) A COUNTY, A MUNICIPAL CORPORATION, OR ANY OTHER**
21 **POLITICAL SUBDIVISION;**

22 **(3) A PUBLIC INSTRUMENTALITY; OR**

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

24 **17–802.**

25 **A PERSON THAT, AT THE TIME OF BID OR PROPOSAL FOR A NEW CONTRACT OR**
26 **RENEWAL OF AN EXISTING CONTRACT, IS IDENTIFIED ON A LIST CREATED BY THE**
27 **BOARD UNDER § 17–803 OF THIS SUBTITLE AS A PROHIBITED RUSSIAN ENTITY IS**
28 **INELIGIBLE TO BID ON, SUBMIT A PROPOSAL FOR, OR ENTER INTO OR RENEW A**
29 **CONTRACT WITH A PUBLIC BODY FOR GOODS OR SERVICES.**

30 **17–803.**

1 (A) (1) ON OR BEFORE DECEMBER 31, 2019, THE BOARD SHALL USE
2 CREDIBLE INFORMATION AVAILABLE TO THE PUBLIC TO CREATE A LIST OF PERSONS
3 THAT THE BOARD DETERMINES TO BE PROHIBITED RUSSIAN ENTITIES.

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

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

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

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

12 (4) THE NOTICE REQUIRED UNDER PARAGRAPH (3) OF THIS
13 SUBSECTION SHALL SPECIFY THAT IF THE PERSON CEASES TO BE A PROHIBITED
14 RUSSIAN ENTITY, THE PERSON MAY BECOME ELIGIBLE FOR A FUTURE CONTRACT
15 OR CONTRACT RENEWAL WITH A PUBLIC BODY FOR GOODS OR SERVICES ON
16 REMOVAL FROM THE LIST.

17 (B) (1) THE BOARD SHALL PROVIDE A PERSON WITH AN OPPORTUNITY
18 TO CERTIFY IN WRITING TO THE BOARD THAT THE PERSON IS NOT A PROHIBITED
19 RUSSIAN ENTITY.

20 (2) IF THE PERSON DEMONSTRATES TO THE BOARD THAT THE
21 PERSON IS NOT A PROHIBITED RUSSIAN ENTITY, THE BOARD MAY NOT INCLUDE
22 THAT PERSON ON THE LIST.

23 (C) THE BOARD SHALL REMOVE A PERSON FROM THE LIST IF THE PERSON
24 DEMONSTRATES TO THE BOARD THAT THE PERSON IS NO LONGER A PROHIBITED
25 RUSSIAN ENTITY.

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

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

29 17-804.

30 (A) ON OR AFTER JANUARY 1, 2020, A PUBLIC BODY SHALL REQUIRE A

1 PERSON THAT SUBMITS A BID OR PROPOSAL TO THE PUBLIC BODY FOR A CONTRACT
2 FOR GOODS OR SERVICES, OR OTHERWISE PROPOSES TO ENTER INTO OR RENEW A
3 CONTRACT FOR GOODS OR SERVICES WITH A PUBLIC BODY, TO:

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

6 (I) IS NOT IDENTIFIED ON THE LIST CREATED BY THE BOARD
7 AS A PROHIBITED RUSSIAN ENTITY; AND

8 (II) IS NOT ENGAGING IN ACTIVITIES THAT WOULD QUALIFY IT
9 AS A PROHIBITED RUSSIAN ENTITY; OR

10 (2) IF THE PERSON IS UNABLE TO MAKE THE CERTIFICATION UNDER
11 ITEM (1) OF THIS SUBSECTION, PROVIDE THE PUBLIC BODY, UNDER PENALTY OF
12 PERJURY, A DETAILED DESCRIPTION AS TO WHY THE PERSON IS NOT A PROHIBITED
13 RUSSIAN ENTITY.

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

17 17-805.

18 (A) (1) IF A PUBLIC BODY, USING CREDIBLE INFORMATION AVAILABLE TO
19 THE PUBLIC, DETERMINES THAT A PERSON HAS SUBMITTED A FALSE
20 CERTIFICATION UNDER § 17-804(A)(1) OF THIS SUBTITLE, THE PUBLIC BODY SHALL
21 PROVIDE WRITTEN NOTICE TO THE PERSON AND AN OPPORTUNITY FOR THE PERSON
22 TO DEMONSTRATE IN WRITING THAT THE PERSON IS NOT A PROHIBITED RUSSIAN
23 ENTITY.

24 (2) IF THE PERSON FAILS TO DEMONSTRATE TO THE PUBLIC BODY
25 WITHIN 90 DAYS AFTER THE PUBLIC BODY PROVIDES NOTICE UNDER PARAGRAPH
26 (1) OF THIS SUBSECTION THAT THE PERSON IS NOT A PROHIBITED RUSSIAN ENTITY,
27 THE PUBLIC BODY SHALL REPORT TO THE BOARD AND THE ATTORNEY GENERAL:

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

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

32 (B) (1) THE ATTORNEY GENERAL MAY INSTITUTE AN ACTION AGAINST A

1 PERSON DETERMINED TO HAVE SUBMITTED A FALSE CERTIFICATION UNDER §
2 17-804(A)(1) OF THIS SUBTITLE.

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

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

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

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

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

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

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

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

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

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

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

28 17-806.

29 THIS SUBTITLE PREEMPTS ANY LAW, ORDINANCE, RULE, OR REGULATION OF
30 ANY LOCAL GOVERNING BODY INVOLVING PROCUREMENT CONTRACTS FOR GOODS

1 **OR SERVICES WITH A PERSON WHO IS A PROHIBITED RUSSIAN ENTITY.**

2 SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
3 the application thereof to any person or circumstance is held invalid for any reason in a
4 court of competent jurisdiction, the invalidity does not affect other provisions or any other
5 application of this Act that can be given effect without the invalid provision or application,
6 and for this purpose the provisions of this Act are declared severable.

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
8 1, 2019.