

CHAPTER 2012-196

Committee Substitute for Committee Substitute for House Bill No. 959

An act relating to state and local government relations with Cuba or Syria; amending s. 215.471, F.S.; prohibiting the State Board of Administration from being a fiduciary with respect to voting on any proxy resolution advocating expanded United States trade with Cuba or Syria; prohibiting the State Board of Administration from being a fiduciary with respect to having the right to vote in favor of any proxy resolution advocating expanded United States trade with Cuba or Syria; creating reporting requirements; amending s. 287.135, F.S.; prohibiting a state agency or local governmental entity from contracting for goods and services of more than a certain amount with a company that has business operations in Cuba or Syria; requiring a contract provision that allows for termination of the contract if the company is found to have business operations in Cuba or Syria; providing exceptions; requiring certification upon submission of a bid or proposal for a contract, or before a company enters into or renews a contract, with an agency or governmental entity that the company is not engaged in business operations in Cuba or Syria; providing procedures upon determination that a company has submitted a false certification; providing for civil action; providing penalties; providing attorney fees and costs; providing a statute of repose; prohibiting a private right of action; requiring the Department of Management Services to notify the Attorney General of the United States after the act becomes law; providing an effective date.

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

Section 1. Section 215.471, Florida Statutes, is amended to read:

215.471 Divestiture by the State Board of Administration; reporting requirements.—

(1) The State Board of Administration shall divest any investment under s. 121.151 and ss. 215.44-215.53, and is prohibited from investment in stocks, securities, or other obligations of:

(a)(1) Any institution or company domiciled in the United States, or foreign subsidiary of a company domiciled in the United States, doing business in or with Cuba, or with agencies or instrumentalities thereof in violation of federal law.

(b)(2) Any institution or company domiciled outside of the United States if the President of the United States has applied sanctions against the foreign country in which the institution or company is domiciled pursuant to s. 4 of the Cuban Democracy Act of 1992.

(2) The State Board of Administration may not be a fiduciary under this section with respect to voting on, and may not have the right to vote in favor of, any proxy resolution advocating expanded United States trade with Cuba or Syria. The board's staff shall report on its activities in its annual proxy voting report.

Section 2. Section 287.135, Florida Statutes, is amended to read:

287.135 Prohibition against contracting with scrutinized companies.—

(1) In addition to the terms defined in ss. 287.012 and 215.473, as used in this section, the term:

(a) “Awarding body” means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.

(b) “Business operations” means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

~~(c)(b)~~ “Local governmental entity” means a county, municipality, special district, or other political subdivision of the state.

(2) A company that, at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, or is engaged in business operations in Cuba or Syria, is ineligible for, and may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of \$1 million or more.

(3)(a) Any contract with an agency or local governmental entity for goods or services of \$1 million or more entered into or renewed on or after July 1, 2011, through June 30, 2012, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification as provided under subsection (5) or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

(b) Any contract with an agency or local governmental entity for goods or services of \$1 million or more entered into or renewed on or after July 1, 2012, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification as provided under subsection (5), been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized

Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria.

(4) Notwithstanding subsection (2) or subsection (3), an agency or local governmental entity, on a case-by-case basis, may permit a company on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or a company with business operations in Cuba or Syria, to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services of \$1 million or more under ~~either of the following conditions set forth in paragraph (a) or the conditions set forth in paragraph (b):~~

(a)1. With respect to a company on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, all of the following occur:

- a.1. The scrutinized business operations were made before July 1, 2011.
- b.2. The scrutinized business operations have not been expanded or renewed after July 1, 2011.
- c.3. The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.
- d.4. The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations.

2. With respect to a company engaged in business operations in Cuba or Syria, all of the following occur:

- a. The business operations were made before July 1, 2012.
- b. The business operations have not been expanded or renewed after July 1, 2012.
- c. The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.
- d. The company has adopted, has publicized, and is implementing a formal plan to cease business operations and to refrain from engaging in any new business operations.

(b) One of the following occurs:

- 1. The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
- 2. For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.

3. For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

(5) At the time a company submits a bid or proposal for a contract or before the company enters into or renews a contract with an agency or governmental entity for goods or services of \$1 million or more, the company must certify that the company is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operations in Cuba or Syria.

(a) If, after the agency or the local governmental entity determines, using credible information available to the public, that the company has submitted a false certification, the agency or local governmental entity shall provide the company with written notice of its determination. The company shall have 90 days following receipt of the notice to respond in writing and to demonstrate that the determination of false certification was made in error. If the company does not make such demonstration within 90 days after receipt of the notice, the agency or the local governmental entity shall bring a civil action against the company. If a civil action is brought and the court determines that the company submitted a false certification, the company shall pay the penalty described in subparagraph 1. and all reasonable attorney attorney's fees and costs, including any costs for investigations that led to the finding of false certification.

1. A civil penalty equal to the greater of \$2 million or twice the amount of the contract for which the false certification was submitted shall be imposed.

2. The company is ineligible to bid on any contract with an agency or local governmental entity for 3 years after the date the agency or local governmental entity determined that the company submitted a false certification.

(b) A civil action to collect the penalties described in paragraph (a) must commence within 3 years after the date the false certification is submitted.

(6) Only the agency or local governmental entity that is a party to the contract may cause a civil action to be brought under this section. This section does not create or authorize a private right of action or enforcement of the penalties provided in this section. An unsuccessful bidder, or any other person other than the agency or local governmental entity, may not protest the award of a contract or contract renewal on the basis of a false certification.

(7) This section preempts any ordinance or rule of any agency or local governmental entity involving public contracts for goods or services of \$1 million or more with a company engaged in scrutinized business operations.

(8) The department shall submit to the Attorney General of the United States a written notice:

(a) Describing this section within 30 days after July 1, 2011.

(b) Within 30 days after July 1, 2012, apprising the Attorney General of the United States of the inclusion of companies with business operations in Cuba or Syria within the provisions of this section.

(9) This section becomes inoperative on the date that federal law ceases to authorize the states to adopt and enforce the contracting prohibitions of the type provided for in this section.

Section 3. This act shall take effect July 1, 2012.

Approved by the Governor May 1, 2012.

Filed in Office Secretary of State May 1, 2012.