

By Senator Bogdanoff

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1                                   A bill to be entitled  
2           An act relating to scrutinized companies; creating s.  
3           287.135, F.S.; prohibiting a state agency or local  
4           governmental entity from contracting for goods and  
5           services of more than a certain amount with a company  
6           that is on the Scrutinized Companies with Activities  
7           in Sudan List or the Scrutinized Companies with  
8           Activities in the Iran Petroleum Energy Sector List;  
9           providing exceptions; providing for a civil action;  
10          providing penalties; providing a statute of repose;  
11          prohibiting a private right of action; requiring the  
12          Department of Management Services to notify the  
13          Attorney General after the act becomes law; providing  
14          that the act becomes inoperative if federal law ceases  
15          to authorize states to enact such contracting  
16          prohibitions; providing an effective date.

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

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20           Section 1. Section 287.135, Florida Statutes, is created to  
21 read:

22           287.135 Prohibition against contracting with scrutinized  
23 companies.—

24           (1) DEFINITIONS.—In addition to the terms defined in ss.  
25 287.012 and 215.473, as used in this section, the term:

26           (a) "Awarding body" means, for purposes of state contracts,  
27 an agency or the department, and for purposes of local  
28 contracts, the governing body of the local governmental entity.

29           (b) "Local governmental entity" means a county,

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30 municipality, special district, or other political subdivision  
31 of the state.

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

40 (3) Notwithstanding subsection (2), an agency or local  
41 governmental entity, on a case-by-case basis, may permit a  
42 company on the Scrutinized Companies with Activities in Sudan  
43 List or the Scrutinized Companies with Activities in the Iran  
44 Petroleum Energy Sector List to be eligible for, bid on, submit  
45 a proposal for, or enter into or renew a contract for goods or  
46 services of \$1 million or more under either of the following  
47 conditions:

48 (a) All of the following occur:

49 1. The scrutinized business operations were made before  
50 July 1, 2010.

51 2. The scrutinized business operations have not been  
52 expanded or renewed after July 1, 2010.

53 3. The agency or local governmental entity determines that  
54 it is in the best interest of the state or local community to  
55 contract with the company.

56 4. The company has adopted, has publicized, and is  
57 implementing a formal plan to cease scrutinized business  
58 operations and to refrain from engaging in any new scrutinized

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59 business operations.

60 (b) One of the following occurs:

61 1. The local governmental entity makes a public finding  
62 that, absent such an exemption, the local governmental entity  
63 would be unable to obtain the goods or services for which the  
64 contract is offered.

65 2. For a contract with an executive agency, the Governor  
66 makes a public finding that, absent such an exemption, the  
67 agency would be unable to obtain the goods or services for which  
68 the contract is offered.

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

74 (4) An agency or a local governmental entity shall require  
75 a company that submits a bid or proposal for, or that otherwise  
76 proposes to enter into or renew, a contract with the agency or  
77 governmental entity for goods or services of \$1 million or more  
78 to certify, at the time the bid or proposal is submitted or  
79 before the contract is executed or renewed, that the company is  
80 not a scrutinized business operation under s. 215.473.

81 (a) If, after the agency or the local governmental entity  
82 determines, using credible information available to the public,  
83 that the company has submitted a false certification and has  
84 provided the company with written notice and 90 days to respond  
85 in writing to such determination, the company fails to  
86 demonstrate that it has ceased its engagement in scrutinized  
87 business operations, the following applies:

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88       1. The awarding body shall report the company to the  
89 Attorney General, together with information demonstrating the  
90 false certification, and the Attorney General shall determine  
91 whether to bring a civil action against the company. The  
92 awarding body of a local governmental entity may also report the  
93 company to the municipal attorney, county attorney, or district  
94 attorney, together with information demonstrating the false  
95 certification, and the municipal attorney, county attorney, or  
96 district attorney may determine whether to bring a civil action  
97 against the company. If a civil action is brought and the court  
98 determines that the company submitted a false certification, the  
99 company shall pay the penalty described in subparagraph 2. and  
100 all reasonable attorney's fees and costs, including any costs  
101 for investigations that led to the finding of false  
102 certification. Only one civil action for false certification per  
103 contract may be brought against a company.

104       2. Pursuant to subparagraph 1., a civil penalty equal to  
105 the greater of \$250,000 or twice the amount of the contract for  
106 which the false certification was submitted shall be imposed.

107       3. An existing contract with the company shall be  
108 terminated at the option of the awarding body.

109       4. The company is ineligible to bid on any contract with an  
110 agency or a local governmental entity for 3 years after the date  
111 of determining that the company submitted a false certification.

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

115       (5) Only the awarding body may cause a civil action to be  
116 brought under this section. This section does not create or

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117 authorize a private right of action or enforcement of the  
118 penalties provided in this section. An unsuccessful bidder, or  
119 any other person other than the awarding body, may not protest  
120 the award of a contract or contract renewal on the basis of a  
121 false certification.

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

126 (7) The department shall submit to the Attorney General of  
127 the United States a written notice describing this section  
128 within 30 days after July 1, 2011. This section becomes  
129 inoperative on the date that federal law ceases to authorize the  
130 states to adopt and enforce the contracting prohibitions of the  
131 type provided for in this section.

132 Section 2. This act shall take effect July 1, 2011.