

By Senator Brandes

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1 A bill to be entitled
2 An act relating to the prohibition against contracting
3 with scrutinized companies; amending s. 287.135, F.S.;
4 prohibiting a company that is on the Scrutinized
5 Companies that Boycott Israel List or that is engaged
6 in a boycott of Israel from bidding on, submitting a
7 proposal for, or entering into or renewing a contract
8 with an agency or local governmental entity for goods
9 or services of any amount; providing exceptions;
10 requiring such contracts entered into or renewed on or
11 after July 1, 2018, to include a provision authorizing
12 termination of the contract under specified
13 circumstances; requiring a company to provide a
14 specified certification before submitting a bid or
15 proposal for or entering into or renewing such
16 contracts; providing for preemption of agency or local
17 governmental entity ordinances and rules involving
18 such contracts; conforming provisions to changes made
19 by the act; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 287.135, Florida Statutes, is amended to
24 read:

25 287.135 Prohibition against contracting with scrutinized
26 companies.—

27 (1) In addition to the terms defined in ss. 287.012 and
28 215.473, as used in this section, the term:

29 (a) "Awarding body" means, for purposes of state contracts,

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30 an agency or the department, and for purposes of local
31 contracts, the governing body of the local governmental entity.

32 (b) "Boycott of Israel" has the same meaning as defined in
33 s. 215.4725.

34 (c) "Business operations" means, for purposes specifically
35 related to Cuba or Syria, engaging in commerce in any form in
36 Cuba or Syria, including, but not limited to, acquiring,
37 developing, maintaining, owning, selling, possessing, leasing,
38 or operating equipment, facilities, personnel, products,
39 services, personal property, real property, military equipment,
40 or any other apparatus of business or commerce.

41 (d) "Local governmental entity" means a county,
42 municipality, special district, or other political subdivision
43 of the state.

44 (2) A company is ineligible to, and may not, bid on, submit
45 a proposal for, or enter into or renew a contract with an agency
46 or local governmental entity for goods or services of ~~\$1 million~~
47 ~~or more if at the time of bidding or submitting a proposal for a~~
48 ~~new contract or renewal of an existing contract, the company:~~

49 (a) Any amount if, at the time of bidding on, submitting a
50 proposal for, or entering into or renewing such contract, the
51 company is on the Scrutinized Companies that Boycott Israel
52 List, created pursuant to s. 215.4725, or is engaged in a
53 boycott of Israel; or

54 (b) One million dollars or more if, at the time of bidding
55 on, submitting a proposal for, or entering into or renewing such
56 contract, the company:

57 1. Is on the Scrutinized Companies with Activities in Sudan
58 List or the Scrutinized Companies with Activities in the Iran

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59 Petroleum Energy Sector List, created pursuant to s. 215.473; or

60 ~~2.(e)~~ Is engaged in business operations in Cuba or Syria.

61 (3) (a) Any contract with an agency or local governmental
62 entity for goods or services of \$1 million or more entered into
63 or renewed on or after:

64 ~~1.(a)~~ July 1, 2011, through June 30, 2012, must contain a
65 provision that allows for the termination of such contract at
66 the option of the awarding body if the company is found to have
67 submitted a false certification as provided under subsection (5)
68 or been placed on the Scrutinized Companies with Activities in
69 Sudan List or the Scrutinized Companies with Activities in the
70 Iran Petroleum Energy Sector List.

71 ~~2.(b)~~ July 1, 2012, through September 30, 2016, must
72 contain a provision that allows for the termination of such
73 contract at the option of the awarding body if the company is
74 found to have submitted a false certification as provided under
75 subsection (5), been placed on the Scrutinized Companies with
76 Activities in Sudan List or the Scrutinized Companies with
77 Activities in the Iran Petroleum Energy Sector List, or been
78 engaged in business operations in Cuba or Syria.

79 ~~3.(e)~~ October 1, 2016, through June 30, 2018, must contain
80 a provision that allows for the termination of such contract at
81 the option of the awarding body if the company:

82 ~~a.1.~~ Is found to have submitted a false certification as
83 provided under subsection (5);

84 ~~b.2.~~ Has been placed on the Scrutinized Companies that
85 Boycott Israel List, or is engaged in a boycott of Israel;

86 ~~c.3.~~ Has been placed on the Scrutinized Companies with
87 Activities in Sudan List or the Scrutinized Companies with

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88 Activities in the Iran Petroleum Energy Sector List; or

89 d.4. Has been engaged in business operations in Cuba or
90 Syria.

91 4. July 1, 2018, must contain a provision that allows for
92 the termination of such contract at the option of the awarding
93 body if the company is found to have submitted a false
94 certification as provided under subsection (5), been placed on
95 the Scrutinized Companies with Activities in Sudan List or the
96 Scrutinized Companies with Activities in the Iran Petroleum
97 Energy Sector List, or been engaged in business operations in
98 Cuba or Syria.

99 (b) Any contract with an agency or local governmental
100 entity for goods or services of any amount entered into or
101 renewed on or after July 1, 2018, must contain a provision that
102 allows for the termination of such contract at the option of the
103 awarding body if the company is found to have been placed on the
104 Scrutinized Companies that Boycott Israel List or is engaged in
105 a boycott of Israel.

106 (4) Notwithstanding subsection (2) or subsection (3), an
107 agency or local governmental entity, on a case-by-case basis,
108 may permit a company on ~~the Scrutinized Companies that Boycott~~
109 ~~Israel List~~, the Scrutinized Companies with Activities in Sudan
110 List or the Scrutinized Companies with Activities in the Iran
111 Petroleum Energy Sector List, or a company engaged in with
112 business operations in Cuba or Syria, to be eligible for, bid
113 on, submit a proposal for, or enter into or renew a contract for
114 goods or services of \$1 million or more, or may permit a company
115 on the Scrutinized Companies that Boycott Israel List to be
116 eligible for, bid on, submit a proposal for, or enter into or

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117 renew a contract for goods or services of any amount, under the
118 conditions set forth in paragraph (a) or the conditions set
119 forth in paragraph (b):

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

124 a. The scrutinized business operations were made before
125 July 1, 2011.

126 b. The scrutinized business operations have not been
127 expanded or renewed after July 1, 2011.

128 c. The agency or local governmental entity determines that
129 it is in the best interest of the state or local community to
130 contract with the company.

131 d. The company has adopted, has publicized, and is
132 implementing a formal plan to cease scrutinized business
133 operations and to refrain from engaging in any new scrutinized
134 business operations.

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

137 a. The business operations were made before July 1, 2012.

138 b. The business operations have not been expanded or
139 renewed after July 1, 2012.

140 c. The agency or local governmental entity determines that
141 it is in the best interest of the state or local community to
142 contract with the company.

143 d. The company has adopted, has publicized, and is
144 implementing a formal plan to cease business operations and to
145 refrain from engaging in any new business operations.

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146 3. With respect to a company on the Scrutinized Companies
147 that Boycott Israel List, all of the following occur:

148 a. The boycott of Israel was initiated before October 1,
149 2016.

150 b. The company certifies in writing that it has ceased its
151 boycott of Israel.

152 c. The agency or local governmental entity determines that
153 it is in the best interest of the state or local community to
154 contract with the company.

155 d. The company has adopted, has publicized, and is
156 implementing a formal plan to cease scrutinized business
157 operations and to refrain from engaging in any new scrutinized
158 business operations.

159 (b) One of the following occurs:

160 1. The local governmental entity makes a public finding
161 that, absent such an exemption, the local governmental entity
162 would be unable to obtain the goods or services for which the
163 contract is offered.

164 2. For a contract with an executive agency, the Governor
165 makes a public finding that, absent such an exemption, the
166 agency would be unable to obtain the goods or services for which
167 the contract is offered.

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

173 (5) At the time a company submits a bid or proposal for a
174 contract or before the company enters into or renews a contract

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175 with an agency or local governmental entity for goods or
176 services of \$1 million or more, the company must certify that
177 the company is not ~~participating in a boycott of Israel,~~ on the
178 Scrutinized Companies with Activities in Sudan List or the
179 Scrutinized Companies with Activities in the Iran Petroleum
180 Energy Sector List and,~~or~~ that it does not have business
181 operations in Cuba or Syria. At the time a company submits a bid
182 or proposal for a contract or before the company enters into or
183 renews a contract with an agency or local governmental entity
184 for goods or services of any amount, the company must certify
185 that the company is not participating in a boycott of Israel.

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

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

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

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

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

219 (7) This section preempts any ordinance or rule of any
220 agency or local governmental entity involving public contracts
221 for goods or services of:

222 (a) One million dollars ~~Of \$1 million~~ or more with a
223 company engaged in scrutinized business operations.

224 (b) Any amount with a company that has been placed on the
225 Scrutinized Companies that Boycott Israel List or is engaged in
226 a boycott of Israel.

227 (8) The contracting prohibitions in this section applicable
228 to companies on the Scrutinized Companies with Activities in
229 Sudan List or the Scrutinized Companies with Activities in the
230 Iran Petroleum Energy Sector List or to companies engaged in
231 business operations in Cuba or Syria become inoperative on the
232 date that federal law ceases to authorize the states to adopt

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233 and enforce such contracting prohibitions.

234 Section 2. This act shall take effect July 1, 2018.