

By the Committee on Community Affairs; and Senators Bogdanoff  
and Benacquisto

578-02154-11

2011444c1

1 A bill to be entitled

2 An act relating to scrutinized companies; creating s.  
3 287.135, F.S.; providing definitions; prohibiting a  
4 state agency or local governmental entity from  
5 contracting for goods and services of more than a  
6 certain amount with a company that is on the  
7 Scrutinized Companies with Activities in Sudan List or  
8 the Scrutinized Companies with Activities in the Iran  
9 Petroleum Energy Sector List; providing for a contract  
10 provision that allows for termination of the contract  
11 if the company is found to have been placed on such  
12 list; providing exceptions; providing for a civil  
13 action; providing penalties, including attorney's fees  
14 and costs; providing a statute of repose; prohibiting  
15 a private right of action; requiring the Department of  
16 Management Services to notify the Attorney General  
17 after the act becomes law; providing that the act  
18 becomes inoperative if federal law ceases to authorize  
19 states to enact such contracting prohibitions;  
20 providing an effective date.

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

23  
24 Section 1. Section 287.135, Florida Statutes, is created to  
25 read:

26 287.135 Prohibition against contracting with scrutinized  
27 companies.—

28 (1) In addition to the terms defined in ss. 287.012 and  
29 215.473, as used in this section, the term:

578-02154-11

2011444c1

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

33        (b) "Local governmental entity" means a county,  
34 municipality, special district, or other political subdivision  
35 of the state.

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

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

53        (4) Notwithstanding subsection (2) or subsection (3), an  
54 agency or local governmental entity, on a case-by-case basis,  
55 may permit a company on the Scrutinized Companies with  
56 Activities in Sudan List or the Scrutinized Companies with  
57 Activities in the Iran Petroleum Energy Sector List to be  
58 eligible for, bid on, submit a proposal for, or enter into or

578-02154-11

2011444c1

59 renew a contract for goods or services of \$1 million or more  
60 under either of the following conditions:

61 (a) All of the following occur:

62 1. The scrutinized business operations were made before  
63 July 1, 2011.

64 2. The scrutinized business operations have not been  
65 expanded or renewed after July 1, 2011.

66 3. The agency or local governmental entity determines that  
67 it is in the best interest of the state or local community to  
68 contract with the company.

69 4. The company has adopted, has publicized, and is  
70 implementing a formal plan to cease scrutinized business  
71 operations and to refrain from engaging in any new scrutinized  
72 business operations.

73 (b) One of the following occurs:

74 1. The local governmental entity makes a public finding  
75 that, absent such an exemption, the local governmental entity  
76 would be unable to obtain the goods or services for which the  
77 contract is offered.

78 2. For a contract with an executive agency, the Governor  
79 makes a public finding that, absent such an exemption, the  
80 agency would be unable to obtain the goods or services for which  
81 the contract is offered.

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

87 (5) At the time a company submits a bid or proposal for a

578-02154-11

2011444c1

88 contract or before the company enters into or renews a contract  
89 with an agency or governmental entity for goods or services of  
90 \$1 million or more, the company must certify that the company is  
91 not on the Scrutinized Companies with Activities in Sudan List  
92 or the Scrutinized Companies with Activities in the Iran  
93 Petroleum Energy Sector List.

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

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

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

116 (b) A civil action to collect the penalties described in

578-02154-11

2011444c1

117 paragraph (a) must commence within 3 years after the date the  
118 false certification is submitted.

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

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

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

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