

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED (Y/N)
ADOPTED AS AMENDED (Y/N)
ADOPTED W/O OBJECTION (Y/N)
FAILED TO ADOPT (Y/N)
WITHDRAWN (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Bileca offered the following:

3
4 **Amendment (with title amendment)**

5 Remove line 39 and insert:

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

8 287.135 Prohibition against contracting with scrutinized
9 companies.—

10 (1) In addition to the terms defined in ss. 287.012 and
11 215.473, as used in this section, the term:

12 (a) "Awarding body" means, for purposes of state
13 contracts, an agency or the department, and for purposes of
14 local contracts, the governing body of the local governmental
15 entity.

16 (b) "Business operations" means, for purposes specifically
17 related to Cuba or Syria, engaging in commerce in any form in
18 Cuba or Syria, including, but not limited to, acquiring,
19 developing, maintaining, owning, selling, possessing, leasing,

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20 or operating equipment, facilities, personnel, products,
21 services, personal property, real property, military equipment,
22 or any other apparatus of business or commerce.

23 (c) ~~(b)~~ "Local governmental entity" means a county,
24 municipality, special district, or other political subdivision
25 of the state.

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

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

44 (b) 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, 2012, must contain a provision
47 that allows for the termination of such contract at the option

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48 of the awarding body if the company is found to have submitted a
49 false certification as provided under subsection (5), 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, or been engaged in business
53 operations in Cuba or Syria.

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

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

68 ~~a.1.~~ The scrutinized business operations were made before
69 July 1, 2011.

70 ~~b.2.~~ The scrutinized business operations have not been
71 expanded or renewed after July 1, 2011.

72 ~~c.3.~~ The agency or local governmental entity determines
73 that it is in the best interest of the state or local community
74 to contract with the company.

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75 d.4. The company has adopted, has publicized, and is
76 implementing a formal plan to cease scrutinized business
77 operations and to refrain from engaging in any new scrutinized
78 business operations.

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

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

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

84 c. The agency or local governmental entity determines that
85 it is in the best interest of the state or local community to
86 contract with the company.

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

90 (b) One of the following occurs:

91 1. The local governmental entity makes a public finding
92 that, absent such an exemption, the local governmental entity
93 would be unable to obtain the goods or services for which the
94 contract is offered.

95 2. For a contract with an executive agency, the Governor
96 makes a public finding that, absent such an exemption, the
97 agency would be unable to obtain the goods or services for which
98 the contract is offered.

99 3. For a contract with an office of a state constitutional
100 officer other than the Governor, the state constitutional
101 officer makes a public finding that, absent such an exemption,

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102 the office would be unable to obtain the goods or services for
103 which the contract is offered.

104 (5) At the time a company submits a bid or proposal for a
105 contract or before the company enters into or renews a contract
106 with an agency or governmental entity for goods or services of
107 \$1 million or more, the company must certify that the company is
108 not on the Scrutinized Companies with Activities in Sudan List
109 or the Scrutinized Companies with Activities in the Iran
110 Petroleum Energy Sector List, or that it does not have business
111 operations in Cuba or Syria.

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

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

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

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

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

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

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

152 (a) Describing this section within 30 days after July 1,
153 2011.

154 (b) Within 30 days after July 1, 2012, apprising the
155 Attorney General of the United States of the inclusion of

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156 companies with business operations in Cuba or Syria within the
157 provisions of this section.

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

162 Section 3. This act shall take effect July 1, 2012.
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167 **T I T L E A M E N D M E N T**

168 Remove the entire title and insert:

169 An act relating to state and local government relations with
170 Cuba or Syria; amending s. 215.471, F.S.; prohibiting the State
171 Board of Administration from being a fiduciary with respect to
172 voting on any proxy resolution advocating expanded United States
173 trade with Cuba or Syria; prohibiting the State Board of
174 Administration from being a fiduciary with respect to having the
175 right to vote in favor of any proxy resolution advocating
176 expanded United States trade with Cuba or Syria; creating
177 reporting requirements; amending s. 287.135, F.S.; prohibiting a
178 state agency or local governmental entity from contracting for
179 goods and services of more than a certain amount with a company
180 that has business operations in Cuba or Syria; requiring a
181 contract provision that allows for termination of the contract
182 if the company is found to have business operations in Cuba or
183 Syria; providing exceptions; requiring certification upon

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 959 (2012)

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184 submission of a bid or proposal for a contract, or before a
185 company enters into or renews a contract, with an agency or
186 governmental entity that the company is not engaged in business
187 operations in Cuba or Syria; providing procedures upon
188 determination that a company has submitted a false
189 certification; providing for civil action; providing penalties;
190 providing attorney fees and costs; providing a statute of
191 repose; prohibiting a private right of action; requiring the
192 Department of Management Services to notify the Attorney General
193 after the act becomes law; providing an effective date.