

1 A bill to be entitled
2 An act relating to state contracts; creating s.
3 215.4725, F.S.; prohibiting a public entity from
4 entering into specified contracts; providing an
5 exception; defining terms; providing applicability;
6 amending s. 215.473, F.S.; prohibiting a company from
7 contracting with the state if the company appears on
8 the Scrutinized Companies with Activities in the Iran
9 Petroleum Energy Sector List; requiring a public fund
10 to send a written notice to a specified company in
11 certain circumstances; granting the company an
12 opportunity to comment in writing; providing for the
13 removal of the company from the list in certain
14 circumstances; providing an exception; requiring the
15 determination to be entered into the procurement
16 record; requiring a company that attempts to contract
17 with the state to certify that the company or the
18 assignee is not on the list; requiring the state
19 agency to include certification information in the
20 procurement record; providing an exception; defining
21 terms; prohibiting a company that contracts with the
22 state from entering into a subcontract with any
23 company on the list; requiring the state agency or
24 public entity to review specified information and
25 offer the company an opportunity to respond;
26 authorizing the state agency or entity to take

27 appropriate actions as provided by law; requiring
 28 specified bid proposals to contain a specified
 29 statement signed under oath or affirmation by the
 30 bidder under the penalty of perjury; providing
 31 applicability; authorizing the bidder to
 32 electronically submit the statement of noninvestment
 33 in the Iranian energy sector; requiring the bidder to
 34 provide a signed statement with specified information
 35 if the bidder cannot meet the certification
 36 requirements; authorizing a political subdivision to
 37 award a bid to a bidder who cannot meet the
 38 certification requirements in certain circumstances;
 39 providing an effective date.

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

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 43 Section 1. Section 215.4725, Florida Statutes, is created
 44 to read:

45 215.4725 Public entity contracts.—

46 (1) All contracts between a public entity and a business
 47 for supplies, services, information technology, or construction
 48 must include a representation by the business that it is not
 49 engaged in and will not engage in the boycott of any person or
 50 entity that is based in, or doing business with, a jurisdiction
 51 with which the state enjoys open trade. For purposes of this
 52 subsection, the term:

53 (a) "Boycott" means to blacklist, divest from, or
54 otherwise refuse to engage with a person or entity on the basis
55 of the race, color, religion, gender, or national origin of the
56 person or entity. The term does not include:

57 1. A decision by a business that is based on economic
58 reasons or the specific conduct of the person or entity;

59 2. A boycott against a public entity of a foreign state if
60 the boycott is applied in a nondiscriminatory manner; and

61 3. Conduct required for compliance with applicable law in
62 the business's home jurisdiction.

63 (b) "Jurisdiction with which the state can enjoy open
64 trade" means members of the World Trade Organization and those
65 jurisdictions with whom the United States has free trade or
66 other agreements aimed at ensuring open and nondiscriminatory
67 trade relations.

68 (c) "Public entity" means the state, any of its
69 departments or agencies, or any political subdivision of the
70 state.

71 (2) This section does not apply to contracts in which a
72 business agrees to provide the goods or services at a cost at
73 least 20 percent less than the next lowest bidder, or to
74 contracts with a total potential value of less than \$10,000.

75 Section 2. Present subsections (4) and (5) of section
76 215.473, Florida Statutes, are redesignated as subsections (5)
77 and (6), respectively, and a new subsection (4) is added to that
78 section, to read:

79 215.473 Divestiture by the State Board of Administration;
80 Sudan; Iran.—

81 (4) STATE CONTRACTS.—

82 (a) If a company appears on the Scrutinized Companies with
83 Activities in the Iran Petroleum Energy Sector List due to
84 engaging in investment activities in Iran as described in
85 subparagraph (1)(u)4., the company may not contract with the
86 state beginning 90 days after receiving notification of such
87 status unless the company meets an exception provided in
88 subparagraph 1. or subparagraph 2. A public fund shall send a
89 written notice to the company specifying that it may be removed
90 from the list if it ceases its engagement in investment
91 activities in Iran. The company shall be granted an opportunity
92 to comment in writing that it is not engaged in such activities.
93 If the company demonstrates to the public fund that it is not
94 engaged in investment activities in Iran, the company shall be
95 removed from the list. A company engaged in investment
96 activities in Iran may contract with the state only if:

97 1. The investment activities in Iran were made before
98 January 1, 2016, the investment activities in Iran have not been
99 expanded or renewed after the effective date of this act, and
100 the company has adopted, publicized, and is implementing a
101 formal plan to cease the investment activities in Iran and to
102 refrain from engaging in any new investments in Iran; or

103 2. The state agency makes a determination that the
104 commodities or services are necessary to perform its functions

105 and that, absent such an exemption, the state agency would be
106 unable to obtain the commodities or services for which the
107 contract is offered. The determination shall be entered into the
108 procurement record.

109 (b) A company that seeks a contract with the state,
110 including a contract renewal or assumption, must certify, when
111 the bid is submitted or the contract is entered into, renewed,
112 or assigned, that the company or the assignee does not appear on
113 the Scrutinized Companies with Activities in the Iran Petroleum
114 Energy Sector List. The state agency shall include certification
115 information in the procurement record. Certification is not
116 required for contracts between public procurement units or
117 contracts between public procurement units and external
118 procurement activities. For the purposes of this paragraph, the
119 term:

120 1. "External procurement activity" means the procurement
121 activity of a buying organization located outside this state
122 which would qualify as a public procurement unit or the
123 procurement activity of the United States Government.

124 2. "Local public procurement unit" means any political
125 subdivision or unit that expends public funds for the
126 procurement of supplies, services, or construction.

127 3. "Public procurement unit" means a local public
128 procurement unit or a state public procurement unit.

129 4. "State public procurement unit" means the offices of
130 the chief procurement officers and any other purchasing agency

131 of the state.

132 (c) A company that contracts with the state may not enter
133 into a subcontract under the contract with the state with any
134 company on the Scrutinized Companies with Activities in the Iran
135 Petroleum Energy Sector List.

136 (d) Upon receiving information that a company that made
137 the certification required by paragraph (b) is engaged in
138 activity contrary to the certification, the state agency or
139 entity shall review such information and offer the company an
140 opportunity to respond. If, within 90 days after it is
141 determined that the company is engaged in such activity, the
142 company fails to demonstrate that it has ceased the activity,
143 the state agency or entity may take such action as appropriate
144 and provided for by law, rule, or contract, including, but not
145 limited to, imposing sanctions, seeking compliance, recovering
146 damages, or declaring the contractor in default.

147 (e) If competitive bidding is required by statute, rule,
148 regulation, or local law for work or services performed or to be
149 performed or goods sold or to be sold, any bid or proposal
150 submitted to a political subdivision of the state or an official
151 thereof shall contain the following statement signed under oath
152 or affirmation by the bidder under penalty of perjury:

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154 By submission of this bid, each bidder and each person signing
155 on behalf of such bidder and, in the case of a joint bid, each
156 party thereto, certifies as to its own organization, under

157 penalty of perjury, that to the best of its knowledge and belief
158 such bidder does not appear on the Scrutinized Companies with
159 Activities in the Iran Petroleum Energy Sector List.

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161 This paragraph does not apply to, and certification is not
162 required for, contracts between public procurement units or
163 contracts of public procurement units for external procurement
164 activities, as those terms are defined in paragraph (b).

165 (f) A bidder may submit the statement of noninvestment in
166 the Iranian energy sector electronically.

167 (g) If a bidder cannot make the certification required in
168 paragraph (e), it shall provide with the bid a signed statement
169 that cites the reasons for failing to do so. A political
170 subdivision may award a bid to a bidder who cannot make the
171 certification if:

172 1. The investment activities in Iran were made before
173 January 1, 2016, the investment activities in Iran have not been
174 expanded or renewed after the effective date of this act, and
175 the company has adopted, publicized, and is implementing a
176 formal plan to cease the investment activities in Iran and to
177 refrain from engaging in any new investments in Iran; or

178 2. The political subdivision makes a determination that
179 the goods or services that are the subject of the contract are
180 necessary for the political subdivision to perform its functions
181 and that, absent such an exception, the political subdivision
182 would be unable to obtain them. The determination shall be made

HB 199

2016

183 | in writing and is a public document.

184 | Section 3. This act shall take effect July 1, 2016.