

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 in specified circumstances; requiring a  
13 company to provide a specified certification before  
14 submitting a bid or proposal for or entering into or  
15 renewing such contracts; providing for preemption of  
16 agency or local governmental entity ordinances and  
17 rules involving such contracts; conforming provisions  
18 to changes made by the act; providing an effective  
19 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  
24 to 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  
30 | contracts, an agency or the department, and for purposes of  
31 | local contracts, the governing body of the local governmental  
32 | entity.

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

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

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

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

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

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

59           1. Is on the Scrutinized Companies with Activities in  
60 Sudan List or the Scrutinized Companies with Activities in the  
61 Iran Petroleum Energy Sector List, created pursuant to s.  
62 215.473; or

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

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

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

74           2.~~(b)~~ July 1, 2012, through September 30, 2016, must  
75 contain a provision that allows for the termination of such

76 contract at the option of the awarding body if the company is  
 77 found to have submitted a false certification as provided under  
 78 subsection (5), been placed on the Scrutinized Companies with  
 79 Activities in Sudan List or the Scrutinized Companies with  
 80 Activities in the Iran Petroleum Energy Sector List, or been  
 81 engaged in business operations in Cuba or Syria.

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

85 a.1. Is found to have submitted a false certification as  
 86 provided under subsection (5);

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

89 c.3. Has been placed on the Scrutinized Companies with  
 90 Activities in Sudan List or the Scrutinized Companies with  
 91 Activities in the Iran Petroleum Energy Sector List; or

92 d.4. Has been engaged in business operations in Cuba or  
 93 Syria.

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

101 Cuba or Syria.

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

109 (4) Notwithstanding subsection (2) or subsection (3), an  
110 agency or local governmental entity, on a case-by-case basis,  
111 may permit a company on ~~the Scrutinized Companies that Boycott~~  
112 ~~Israel List,~~ the Scrutinized Companies with Activities in Sudan  
113 List or the Scrutinized Companies with Activities in the Iran  
114 Petroleum Energy Sector List, or a company engaged in ~~with~~  
115 business operations in Cuba or Syria, to be eligible for, bid  
116 on, submit a proposal for, or enter into or renew a contract for  
117 goods or services of \$1 million or more, or may permit a company  
118 on the Scrutinized Companies that Boycott Israel List to be  
119 eligible for, bid on, submit a proposal for, or enter into or  
120 renew a contract for goods or services of any amount, under the  
121 conditions set forth in paragraph (a) or the conditions set  
122 forth in paragraph (b):

123 (a)1. With respect to a company on the Scrutinized  
124 Companies with Activities in Sudan List or the Scrutinized  
125 Companies with Activities in the Iran Petroleum Energy Sector

126 List, all of the following occur:

127       a. The scrutinized business operations were made before  
128 July 1, 2011.

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

131       c. The agency or local governmental entity determines that  
132 it is in the best interest of the state or local community to  
133 contract with the company.

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

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

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

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

143       c. The agency or local governmental entity determines that  
144 it is in the best interest of the state or local community to  
145 contract with the company.

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

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

151 a. The boycott of Israel was initiated before October 1,  
152 2016.

153 b. The company certifies in writing that it has ceased its  
154 boycott of Israel.

155 c. The agency or local governmental entity determines that  
156 it is in the best interest of the state or local community to  
157 contract with the company.

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

162 (b) One of the following occurs:

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

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

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

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

189 (a) If, after the agency or the local governmental entity  
190 determines, using credible information available to the public,  
191 that the company has submitted a false certification, the agency  
192 or local governmental entity shall provide the company with  
193 written notice of its determination. The company shall have 90  
194 days following receipt of the notice to respond in writing and  
195 to demonstrate that the determination of false certification was  
196 made in error. If the company does not make such demonstration  
197 within 90 days after receipt of the notice, the agency or the  
198 local governmental entity shall bring a civil action against the  
199 company. If a civil action is brought and the court determines  
200 that the company submitted a false certification, the company

201 shall pay the penalty described in subparagraph 1. and all  
 202 reasonable attorney fees and costs, including any costs for  
 203 investigations that led to the finding of false certification.

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

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

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

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

222 (7) This section preempts any ordinance or rule of any  
 223 agency or local governmental entity involving public contracts  
 224 for goods or services of:

225 (a) One million dollars ~~of \$1 million~~ or more with a

226 | company engaged in scrutinized business operations.

227 |       (b) Any amount with a company that has been placed on the  
228 | Scrutinized Companies that Boycott Israel List or is engaged in  
229 | a boycott of Israel.

230 |       (8) The contracting prohibitions in this section  
231 | applicable to companies on the Scrutinized Companies with  
232 | Activities in Sudan List or the Scrutinized Companies with  
233 | Activities in the Iran Petroleum Energy Sector List or to  
234 | companies engaged in business operations in Cuba or Syria become  
235 | inoperative on the date that federal law ceases to authorize the  
236 | states to adopt and enforce such contracting prohibitions.

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