



State of Tennessee

PUBLIC CHAPTER NO. 817

SENATE BILL NO. 377

By Ketron, Bowling, Kelsey

Substituted for: House Bill No. 261

By Matheny, McCormick, Casada, Zachary, Butt, Kevin Brooks, Moody, Weaver, Williams, Holt, Halford, Sparks, Durham

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 56; Title 12; Title 41, Chapter 22 and Title 49, Chapter 3, relative to procurement.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, is amended by adding the following as a new chapter thereto:

12-12-101.

This chapter shall be known and may be cited as the "Iran Divestment Act."

12-12-102.

It is the intent of the general assembly to fully implement the authority granted under Section 202 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111-195).

12-12-103.

As used in this chapter:

(1) "Energy sector of Iran" means activities to develop petroleum or natural gas resources or nuclear power in Iran;

(2) "Financial institution" means the term as used in Section 14 of the Iran and Libya Sanctions Act of 1996 (Public Law 104 - 172; 50 U.S.C. § 1701 note);

(3) "Investment" means a commitment or contribution of funds or property, whatever the source, a loan or other extension of credit, and the entry into or renewal of a contract for goods or services. "Investment" does not include indirect beneficial ownership through index funds, commingled funds, limited partnerships, derivative instruments, or the like;

(4) "Iran" includes the government of Iran and any agency or instrumentality of Iran;

(5) "Person" means any of the following:

(A) A natural person, corporation, company, limited liability company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group;

(B) Any governmental entity or instrumentality of a government, including a multilateral development institution, as defined in Section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. § 262r(c)(3)); or

(C) Any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in subdivisions (5)(A) and (B); and

(6) "State agency" means each state board, commission, department, executive department or office, institution, and instrumentality.

12-12-104.

This chapter shall not apply to a procurement or contract valued at one thousand dollars (\$1,000) or less.

12-12-105.

For purposes of this chapter, a person engages in investment activities in Iran if:

(1) The person provides goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

(2) The person is a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another person, for forty-five (45) days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list, created pursuant to § 12-12-106, as a person engaging in investment activities in Iran as described in this section.

12-12-106.

(a)(1) No more than one hundred twenty (120) days after the effective date of this act, the state chief procurement officer shall publish, using credible information freely available to the public, a list of persons it determines engage in investment activities in Iran, as described in § 12-12-105. The list, when completed, shall be posted on the state's web site.

(2) The chief procurement officer shall update the list every one hundred eighty (180) days, using credible, freely available, public information regarding the persons or entities described in subdivision (a)(1).

(3) Before finalizing an initial list or an updated list, as reasonably practicable, the chief procurement officer shall do all of the following before a person is included on the list:

(A) Provide ninety (90) days' written notice of the chief procurement officer's intent to include the person on the list, if the state is reasonably able to provide the written notice by electronic communication or through the U.S. postal service. The notice shall inform the person that inclusion on the list would make the person ineligible to contract with the state. The notice shall specify that the person, if it ceases its engagement in investment activities in Iran, may be removed from the list.

(B) The chief procurement officer shall provide a person with an informal opportunity to comment in writing that it is not engaged in investment activities in Iran. If the person demonstrates to the chief procurement officer that the person is not engaged in investment activities in Iran, the person shall not be included on the list. Nothing in this section requires a contested case hearing as set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. A person contesting being placed on the list described in subsection (a) shall exhaust all administrative remedies provided in this section prior to the initiation of any judicial review of being placed on such list.

(4) The chief procurement officer shall make every effort to avoid erroneously including a person on the list.

(b) A person that is identified on a list created pursuant to subsection (a) as a person engaging in investment activities in Iran as described in § 12-12-105, is ineligible to contract with the state.

(c) Any contract entered into with a person that is ineligible to contract with the state shall be terminated by the state.

12-12-107.

Notwithstanding § 12-12-106, a person engaged in investment activities in Iran as described in § 12-12-105, may contract with the state, on a case-by-case basis, if:

(1) The investment activities in Iran were made before the effective date of this act, the investment activities in Iran have not been expanded or renewed after the effective date of this act, and the person has adopted, publicized, and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran; or

(2) The state agency makes a determination that the commodities or services are necessary to perform its functions and that, absent such an exemption, the state agency would be unable to obtain the commodities or services for which the contract is offered. Such determination shall be entered into the procurement record.

12-12-108.

(a) A state agency or entity shall require a person that attempts to contract with the state, including a contract renewal or assumption, to certify, at the time the bid is submitted or the contract is entered into, renewed, or assigned, that the person or the assignee is not identified on a list created pursuant to § 12-12-106. A state agency shall include certification information in the procurement record.

(b) A person that contracts with the state, including a contract renewal or assumption, shall not utilize, on the contract with the state agency or entity, any subcontractor that is identified on a list created pursuant to § 12-12-106.

(c) Upon receiving information that a person who has made the certification required by subsection (a) is in violation thereof, the state agency or entity shall review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment, which is in violation of this chapter within ninety (90) days after the determination of such violation, then the state agency or entity shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the contractor in default.

12-12-109.

The chief procurement officer shall report to the speaker of the senate, the speaker of the house of representatives, and the governor annually by October 1, on the status of the federal Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111-195), the Iran Divestment Act of 2014, and any rules or regulations adopted thereunder.

12-12-110.

A person that is identified on a list created pursuant to § 12-12-106, as a person engaging in investment activities in Iran as described in § 12-12-105 shall be ineligible to contract with any political subdivision of this state, and any contract entered into with a political subdivision of this state shall be void ab initio.

12-12-111.

(a) On or after the effective date of this act, every bid or proposal made to a political subdivision of the state or any public department, agency, or official thereof where competitive bidding is required by statute, rule, regulation, or local ordinance or resolution, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury: "By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to § 12-12-106."

(b) Notwithstanding subsection (a), the statement of noninvestment in the energy sector of Iran may be submitted electronically.

(c) A bid shall not be considered for award nor shall any award be made where the condition set forth in subsection (a) has not been complied with; provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. A political subdivision may award a bid to a bidder who cannot make the certification pursuant to subsection (a), on a case-by-case basis, if:

(1) The investment activities in Iran were made before the effective date of this act, the investment activities in Iran have not been expanded or renewed on or after the effective date of this act, and the person has adopted, publicized, and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran; or

(2) The political subdivision makes a determination that the goods or services are necessary for the political subdivision to perform its functions and that, absent such an exemption, the political subdivision would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

12-12-112.

This chapter shall not apply to investments made by the state treasurer or board of trustees involving the Tennessee consolidated retirement system.

12-12-113.

The restrictions provided for in this chapter apply only until Congress, by legislation, declares that divestment of the type provided for in this chapter interferes with the conduct of United States foreign policy or revokes its current sanctions against Iran.

SECTION 2. The secretary of state, in consultation with the attorney general and reporter, shall submit to the Attorney General of the United States a written notice describing this act within thirty (30) days after the effective date of this act.

SECTION 3. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 4. This act shall take effect July 1, 2016, the public welfare requiring it.

SENATE BILL NO. 377

PASSED: April 6, 2016



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 21st day of April 2016



BILL HASLAM, GOVERNOR