

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 HOUSE BILL 2813

By: Moore

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5
6 AS INTRODUCED

7 An Act relating to contractors; creating the
8 Disqualification of Contractors Dealing with the
9 Government of Iran Act; providing exemption; defining
10 terms; providing for activities that qualify as
11 investment activities in Iran; authorizing Office of
12 Management and Enterprise Services to develop certain
13 list; providing requirements before publication of
14 list; considering persons nonresponsible for certain
15 purposes; providing exceptions to award of contract
16 to persons on list; providing for certification
17 requirements; providing for consequences for false
18 certification; providing for penalties; providing for
19 codification; and providing an effective date.

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25 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

26 SECTION 1. NEW LAW A new section of law to be codified
27 in the Oklahoma Statutes as Section 34.301 of Title 62, unless there
28 is created a duplication in numbering, reads as follows:

29 This act shall be known and may be cited as the
30 "Disqualification of Contractors Dealing with the Government of Iran
31 Act".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 34.302 of Title 62, unless there
3 is created a duplication in numbering, reads as follows:

4 The Disqualification of Contractors Dealing with the Government
5 of Iran Act shall not apply if federal law ceases to authorize the
6 states to adopt and enforce provisions relating to public
7 contracting such as those in this act.

8 SECTION 3. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 34.303 of Title 62, unless there
10 is created a duplication in numbering, reads as follows:

11 As used in the Disqualification of Contractors Dealing with the
12 Government of Iran Act:

13 1. "Energy sector of Iran" means any activity to develop
14 petroleum or natural gas resources or nuclear power in Iran;

15 2. "Financial institution" shall have the same meaning as
16 provided in Section 14 of the Iran Sanctions Act of 1996 (Public Law
17 104-172, 50 U.S.C., Section 1701 note), as in effect on January 1,
18 2014;

19 3. "Iran" means the government of Iran and any agency or
20 instrumentality of the government of Iran;

21 4. "List" means the list developed under Section 5 of this act;

22 5. "Office" means the Office of Management and Enterprise
23 Services; and

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1 6. "Person" means a successor to, or an affiliate of, the
2 person.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 34.304 of Title 62, unless there
5 is created a duplication in numbering, reads as follows:

6 A. For purposes of the Disqualification of Contractors Dealing
7 with the Government of Iran Act, a person engages in investment
8 activities in Iran if either of the following is true:

9 1. The person provides goods or services of Twenty Million
10 Dollars (\$20,000,000.00) or more in value in the energy sector of
11 Iran, including providing any of the following for the energy sector
12 of Iran:

- 13 a. oil or liquefied natural gas tankers, and
- 14 b. products used to construct or maintain pipelines used
15 to transport oil or liquefied natural gas; and

16 2. The person is a financial institution that extends Twenty
17 Million Dollars (\$20,000,000.00) or more in credit to another
18 person, for forty-five (45) days or more, if that other person:

- 19 a. will use the credit to provide goods or services in
20 the energy sector in Iran, and
- 21 b. is, at the time the financial institution extends
22 credit, a person identified on the list as a person
23 engaging in investment activities in Iran under
24 paragraph 1 of this section.

1 B. A person's investment contract with a state-sponsored public
2 pension system of the State of Oklahoma shall not be used as the
3 basis for making a determination under this act that the person is
4 engaged in investment activities in Iran.

5 SECTION 5. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 34.305 of Title 62, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Not later than January 1, 2015, the Office of Management and
9 Enterprise Services, using credible information available to the
10 public, shall develop a list of persons the Office determines to be
11 engaged in investment activities in Iran.

12 B. The Office may enter into contracts for the development of
13 the list.

14 C. The list shall be updated not later than every one hundred
15 eighty (180) days.

16 D. The Office shall publish the list on the Office's website.

17 E. The Office shall make every effort to avoid erroneous
18 inclusion of a person on the list.

19 SECTION 6. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 34.306 of Title 62, unless there
21 is created a duplication in numbering, reads as follows:

22 A. Before the Office of Management and Enterprise Services
23 publishes the list pursuant to Section 5 of this act, the Office
24 shall provide to the person to be placed on the list:

1 1. Ninety (90) days' advance written notice to any person of
2 the Office's intent to include that person on the list. The notice
3 required shall include the following information:

4 a. a statement that a person's inclusion on the list
5 would make the person nonresponsible for purposes of:

6 (1) submitting an offer in response to a
7 solicitation,

8 (2) submitting a bid, offer or proposal relating to a
9 public works project, or

10 (3) otherwise entering into or renewing a contract to
11 provide supplies or services with the state or a
12 political subdivision,

13 b. a statement that the person will be removed from the
14 list if the person ceases engaging in investment
15 activities in Iran, and

16 c. a statement that the person's status as nonresponsible
17 with respect to this act ends when the person's name
18 is removed from the list; and

19 2. An opportunity to demonstrate in writing to the Office that
20 the person is not engaged in investment activities in Iran.

21 B. If a person demonstrates to the Office that the person is
22 not engaged in investment activities in Iran, the Office shall not
23 include the person on the list.

1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 34.307 of Title 62, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Except as provided in Section 8 of this act, a person that
5 is placed on the list is considered nonresponsible for purposes of:

- 6 1. Submitting an offer in response to a solicitation;
- 7 2. Submitting a bid, offer or proposal relating to a public
8 works project; or

9 3. Otherwise entering into or renewing a contract to provide
10 supplies or services with the state or any political subdivision of
11 the state.

12 B. Except as provided in Section 8 of this act, a person's
13 status as nonresponsible under this act ends when the person's name
14 is removed from the list.

15 SECTION 8. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 34.308 of Title 62, unless there
17 is created a duplication in numbering, reads as follows:

18 A. Section 7 of this act shall not apply to the award of a
19 particular contract to a person if either paragraph 1 or paragraph 2
20 of this subsection applies:

21 1. The purchasing agency awarding the contract finds in writing
22 that all of the following are true:

- 23 a. the person's investment activities in Iran were made
24 before January 1, 2015,

- 1 b. the person's investment activities in Iran have not
2 been expanded or renewed after January 1, 2015,
3 c. the purchasing agency determines that it is in the
4 best interest of the purchasing agency's governmental
5 body to enter into the contract with the person, and
6 d. the person has adopted and publicized and is
7 implementing a formal plan to:
8 (1) cease investment activities in Iran, and
9 (2) refrain from engaging in any new investments in
10 Iran; and

11 2. Either of the following applies:

- 12 a. if the governmental body awarding the contract is a
13 political subdivision, the executive of the political
14 subdivision makes a written finding that the
15 governmental body would be unable to obtain the
16 supplies or services for which the solicitation is
17 made unless a contract is awarded to the person, or
18 b. if the governmental body is a state agency, the
19 Governor makes a finding that the state would be
20 unable to obtain the supplies or services for which
21 the solicitation is made unless a contract is awarded
22 to the person.

23 B. A finding made pursuant to subsection A of this section
24 shall be in writing and shall be placed in the contract file.

1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 34.309 of Title 62, unless there
3 is created a duplication in numbering, reads as follows:

4 A. This section shall not apply if a finding made under Section
5 8 of this act is placed in the contract file.

6 B. At the time a contract is awarded or renewed, the person
7 that is being awarded or has the contract shall certify in writing
8 to the governmental body awarding or renewing the contract that the
9 person is not engaged in investment activities in Iran.

10 C. The certification required by this section shall be placed
11 in the contract file.

12 SECTION 10. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 34.310 of Title 62, unless there
14 is created a duplication in numbering, reads as follows:

15 A. If a purchasing agency, using credible information available
16 to the public, determines that a certification given by a person to
17 the purchasing agency's governmental body pursuant to subsection B
18 of Section 9 of this act is false, the purchasing agency shall:

19 1. Notify the person in writing of the purchasing agency's
20 determination that the certification is false; and

21 2. Give the person ninety (90) days within which to respond to
22 the written notice.

23 B. If the person fails to demonstrate to the purchasing agency
24 that the person has ceased the person's investment activities in

1 Iran within ninety (90) days after the notice is given to the person
2 under subsection A of this section, the following apply:

3 1. The purchasing agency shall report to the Attorney General
4 the following:

- 5 a. the name of the person that the purchasing agency has
6 determined to have submitted a false certification,
7 and
- 8 b. the information upon which the purchasing agency has
9 made its determination.

10 The Attorney General shall determine whether to bring a civil action
11 under this section against the person;

12 2. If the purchasing agency is a political subdivision, the
13 purchasing agency may also provide the information described in
14 paragraph 1 of this subsection to an attorney representing the
15 political subdivision. An attorney representing the political
16 subdivision may bring a civil action under this section against the
17 person if the Attorney General declines to bring a civil action
18 against the person pursuant to this act; and

19 3. If it is determined in a civil action pursuant to this
20 section that the person submitted a false certification, the
21 following apply:

- 22 a. the court may impose on the person a civil penalty of
23 Two Hundred Fifty Thousand Dollars (\$250,000.00),

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1 b. the person shall pay all reasonable costs incurred in
2 the action, including the following:

3 (1) costs incurred by the governmental body in the
4 investigation that led to the purchasing agency's
5 finding that the person filed a false
6 certification, and

7 (2) reasonable attorney fees and other litigation
8 costs incurred by the governmental body,

9 c. the purchasing agency may terminate the contract with
10 the governmental body with respect to which the false
11 certification was made, and

12 d. the purchasing agency may consider the person
13 nonresponsible for purposes of the awarding of any
14 contracts by the governmental body for not more than
15 three (3) years after the date of the purchasing
16 agency's determination under subsection A of this
17 section.

18 C. A civil action filed pursuant to this section shall be filed
19 not later than three (3) years after the purchasing agency makes the
20 determination under subsection A of this section.

21 D. A person other than the governmental body, including an
22 unsuccessful offeror, shall not:

23 1. Bring a civil action under this section;

24 2. File a bid protest; or

1 3. Bring any other kind of action,
2 based on the purchasing agency's determination of a false
3 certification under subsection A of this section.

4 E. This section does not create a private right of action for
5 the imposition of the penalties provided for in this section.

6 SECTION 11. This act shall become effective November 1, 2014.

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