

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1349

By: Brecheen

4  
5  
6 AS INTRODUCED

7 An Act relating to state issued sanctions; creating  
8 the State Issued Sanctions Plan of 2016; providing  
9 short title; defining terms; providing exception to  
10 act; specifying conduct of investment activity;  
11 directing certain agency to develop certain list;  
12 declaring certain persons as ineligible to contract  
13 with the state; declaring certain contracts void;  
14 authorizing certain persons to contract upon certain  
15 conditions; requiring persons contracting with  
16 agencies to declare identification on certain list;  
17 prohibiting use of certain subcontractors; providing  
18 procedure of certain violations; requiring the Office  
19 of Management and Enterprise Services to provide a  
20 report; prohibiting certain ineligible persons from  
21 contracting with political subdivisions; stating  
22 method of bidding procedures; prohibiting the  
23 Oklahoma State Pension Commission and the State  
24 Treasurer from investing certain funds; providing  
certain exceptions; clarifying when certain action  
may be taken; allowing certain indemnification;  
specifying time for application of restrictions;  
providing for codification; and providing an  
effective date.

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

22 SECTION 1. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 2101 of Title 25, unless there  
24 is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "State Issued  
2 Sanctions Plan of 2016".

3 SECTION 2. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 2102 of Title 25, unless there  
5 is created a duplication in numbering, reads as follows:

6 As used in this chapter:

7 1. "Energy sector of Iran" means activities to develop  
8 petroleum or natural gas resources or nuclear power in Iran;

9 2. "Financial institution" means the term as used in Section 14  
10 of the Iran Sanctions Act of 1996 (Public Law 104-172; 50 U.S.C.  
11 1701 note);

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

18 4. "Iran" includes the Government of Iran and any agency or  
19 instrumentality of Iran;

20 5. "Person" means any of the following:

- 21 a. a natural person, corporation, company, limited  
22 liability company, business association, partnership,  
23 society, trust, or any other nongovernmental entity,  
24 organization or group,

1           b. any governmental entity or instrumentality of a  
2           government, including a multilateral development  
3           institution, as defined in Section 1701(c)(3) of the  
4           International Financial Institutions Act (22 U.S.C.  
5           262r(c)(3)), or

6           c. any successor, subunit, parent entity, or subsidiary  
7           of or any entity under common ownership or control  
8           with, any entity described in subparagraphs a and b of  
9           this item; and

10          6. "State agency" means each board, commission, executive  
11          department or officer, institution and instrumentality of the State  
12          of Oklahoma.

13          SECTION 3.        NEW LAW        A new section of law to be codified  
14          in the Oklahoma Statutes as Section 2103 of Title 25, unless there  
15          is created a duplication in numbering, reads as follows:

16          The State Issued Sanctions Plan of 2016 does not apply to a  
17          procurement or contract valued at One Thousand Dollars (\$1,000.00)  
18          or less.

19          SECTION 4.        NEW LAW        A new section of law to be codified  
20          in the Oklahoma Statutes as Section 2104 of Title 25, unless there  
21          is created a duplication in numbering, reads as follows:

22          For purposes of the State Issued Sanctions Plan of 2016, a  
23          person engages in investment activities in Iran if:  
24

1           1. The person provides goods or services of Twenty Million  
2 Dollars (\$20,000,000.00) or more in the energy sector of Iran,  
3 including a person that provides oil or liquefied natural gas  
4 tankers, or products used to construct or maintain pipelines used to  
5 transport oil or liquefied natural gas, for the energy sector of  
6 Iran; or

7           2. The person is a financial institution that extends Twenty  
8 Million Dollars (\$20,000,000.00) or more in credit to another  
9 person, for forty-five (45) days or more, if that person will use  
10 the credit to provide goods or services in the energy sector in Iran  
11 and is identified on a list, created pursuant to Section 5 of this  
12 act, as a person engaging in investment activities in Iran as  
13 described in this section.

14           SECTION 5.       NEW LAW       A new section of law to be codified  
15 in the Oklahoma Statutes as Section 2105 of Title 25, unless there  
16 is created a duplication in numbering, reads as follows:

17           A. 1. No more than one hundred twenty (120) days after the  
18 effective date of this act, the Director of the Office of Management  
19 and Enterprise Services (OMES) shall develop or contract to develop,  
20 using credible information available to the public, a list of  
21 persons it determines currently engages in investment activities in  
22 Iran as described in this section. If the director has contracted  
23 to develop the list, the list shall be finally developed no more  
24 than one hundred twenty (120) days after the effective date of this

1 act. The list, when completed, shall be posted on the website of  
2 OMES;

3 2. The director shall update the list every one hundred eighty  
4 (180) days;

5 3. Before finalizing an initial list or an updated list, the  
6 director must do all of the following before a person is included on  
7 the list:

8 a. provide ninety (90) days' written notice of the  
9 executive director's intent to include the person on  
10 the list. The notice shall inform the person that  
11 inclusion on the list would make the person ineligible  
12 to contract with the state. The notice shall specify  
13 that the person, if it ceases its engagement in  
14 investment activities in Iran, may be removed from the  
15 list, and

16 b. the director shall provide a person with an  
17 opportunity to comment in writing that it is not  
18 engaged in investment activities in Iran. If the  
19 person demonstrates to the director that the person is  
20 not engaged in investment activities in Iran, the  
21 person shall not be included on the list; and

22 4. The director shall make every effort to avoid erroneously  
23 including a person on the list.  
24

1 B. A person that is identified on a list created pursuant to  
2 subsection A of this section as a person engaging in investment  
3 activities in Iran as described in Section 4 of this act, is  
4 ineligible to contract with the state for as long as the person  
5 appears on the list.

6 C. Any contract entered into with a person that is ineligible  
7 to contract with the state shall be void ab initio.

8 SECTION 6. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 2106 of Title 25, unless there  
10 is created a duplication in numbering, reads as follows:

11 Notwithstanding Section 5 of this act, a person engaged in  
12 investment activities in Iran as described in Section 4 of this act,  
13 may contract with the state, on a case-by-case basis, if:

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

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

1           SECTION 7.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 2107 of Title 25, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. A state agency or entity shall require a person that  
5 attempts to contract with the state, including a contract renewal or  
6 assumption, to certify, at the time the bid is submitted or the  
7 contract is entered into, renewed or assigned, that the person or  
8 the assignee is not identified on a list created pursuant to Section  
9 5 of this act. A state agency shall include certification  
10 information in the procurement record.

11           B. A person that contracts with the state, including a contract  
12 renewal or assumption, shall not utilize, on the contract with the  
13 state agency or entity, any subcontractor that is identified on a  
14 list created pursuant to Section 5 of this act.

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

3 SECTION 8. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 2108 of Title 25, unless there  
5 is created a duplication in numbering, reads as follows:

6 The Director of the Office of Management and Enterprise Services  
7 shall report to the President Pro Tempore of the Senate, the Speaker  
8 of the House of Representatives and the Governor annually by October  
9 1, on the status of the federal "Comprehensive Iran Sanctions,  
10 Accountability, and Divestment Act of 2010" (Public Law 111-195),  
11 the "State Issued Sanctions Plan of 2016", and any rules or  
12 regulations adopted thereunder.

13 SECTION 9. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 2109 of Title 25, unless there  
15 is created a duplication in numbering, reads as follows:

16 A person that is identified on a list created pursuant to  
17 Section 5 of this act, as a person engaging in investment activities  
18 in Iran as described in Section 4 of this act shall be ineligible to  
19 contract with this state or any political subdivision of this state,  
20 and any contract entered into with a political subdivision of this  
21 state shall be void ab initio.

22 SECTION 10. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 2110 of Title 25, unless there  
24 is created a duplication in numbering, reads as follows:



1           A. After the State Issued Sanctions Plan of 2016 takes effect,  
2 every bid or proposal made to a political subdivision of the state  
3 or agency or official thereof where competitive bidding is required  
4 by statute, rule, regulation or local law, for work or services  
5 performed or to be performed or goods sold or to be sold, shall  
6 contain the following statement subscribed by the bidder and  
7 affirmed by such bidder as true under the penalties of perjury: "By  
8 submission of this bid, each bidder and each person signing on  
9 behalf of any bidder certifies, and in the case of a joint bid each  
10 party thereto certifies as to its own organization, under penalty of  
11 perjury, that to the best of its knowledge and belief that each  
12 bidder is not a person currently engaged in investment activities in  
13 Iran pursuant to Section 5 of this act."

14           B. Notwithstanding subsection A of this section, the statement  
15 of noninvestment in the Iranian energy sector may be submitted  
16 electronically.

17           C. A bid shall not be considered for award nor shall any award  
18 be made where the condition set forth in subsection A of this  
19 section has not been complied with; provided, however, that if in  
20 any case the bidder cannot make the foregoing certification, the  
21 bidder shall so state and shall furnish with the bid a signed  
22 statement which sets forth in detail the reasons therefor. A  
23 political subdivision may award a bid to a bidder who cannot make  
24

1 the certification pursuant to subsection A of this section, on a  
2 case-by-case basis, if:

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

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

15 SECTION 11. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 2111 of Title 25, unless there  
17 is created a duplication in numbering, reads as follows:

18 A. Neither the Oklahoma State Pension Commission nor the State  
19 Treasurer may invest funds with a person that is identified on a  
20 list created pursuant to Section 5 of the State Issued Sanctions  
21 Plan of 2016 as a person engaging in investment activities in Iran  
22 as described in Section 4 of this act.

23 B. Any existing investments in violation of subsection A of  
24 this section as of the effective date of this act, shall be divested

1 within one hundred twenty (120) days of the effective date of this  
2 act.

3 SECTION 12. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 2112 of Title 25, unless there  
5 is created a duplication in numbering, reads as follows:

6 Notwithstanding Section 11 of the State Issued Sanctions Plan of  
7 2016, an investment may be made by a person engaged in investment  
8 activities in Iran as described in Section 4 of this act, on a case-  
9 by-case basis, if:

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

16 2. The investor makes a determination that the investments are  
17 necessary to perform its functions.

18 SECTION 13. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 2113 of Title 25, unless there  
20 is created a duplication in numbering, reads as follows:

21 Nothing in the State Issued Sanctions Plan of 2016 requires the  
22 Oklahoma State Pension Commission or its agents or contract  
23 investment managers to take action as described in this act unless  
24 it is determined, in good faith, that the action described in this

1 act is consistent with the fiduciary responsibilities of the  
2 Commission or its agents or contract investment managers and there  
3 are appropriated funds of the State to absorb the expenses necessary  
4 to implement this act.

5 SECTION 14. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 2114 of Title 25, unless there  
7 is created a duplication in numbering, reads as follows:

8 Present, future, and former board members, officers, and  
9 employees of the Office of Management and Enterprise Services, the  
10 Oklahoma State Pension Commission and contract investment managers  
11 and agents retained by the Commission, as well as present, future,  
12 and former State Treasurers, officers, and employees of the State  
13 Treasurer, and contract investment managers, and agents retained by  
14 the State Treasurer must be indemnified from the General Fund of the  
15 state and held harmless by the state from all claims, demands,  
16 suits, actions, damages, judgments, costs, charges, and expenses,  
17 including court costs and attorney fees, and against all liability,  
18 losses, and damages of any nature whatsoever that these present,  
19 future, or former board members, officers, employees, agents or  
20 contract investment managers shall or may at any time sustain by  
21 reason of any decision to restrict, reduce or eliminate investments  
22 pursuant to this act.

1 SECTION 15. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 2115 of Title 25, unless there  
3 is created a duplication in numbering, reads as follows:

4 The restrictions provided for in the State Issued Sanctions Plan  
5 of 2016 apply only until:

6 1. The President or Congress of the United States, by means  
7 including, but not limited to, legislation, executive order or  
8 written certification, declares that divestment of the type provided  
9 for in this act interferes with the conduct of United States foreign  
10 policy; or

11 2. The United States revokes its current sanctions against  
12 Iran.

13 SECTION 16. This act shall become effective November 1, 2016.

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