CHAPTER 57

Iran Divestment Act

Editor's Note

2014 Act No. 267, Section 4, provides as follows:

"SECTION 4. This act takes effect ninety days after approval by the Governor. However, immediately upon approval by the Governor, any rule or regulation that must be amended or repealed to implement this act is authorized."

ARTICLE 1

General Provisions

**SECTION 11‑57‑10.** Short title.

 This chapter may be cited as the "Iran Divestment Act of 2014".

HISTORY: 2014 Act No. 267 (H.3021), Section 1, eff September 7, 2014.

**SECTION 11‑57‑20.** Findings.

 The General Assembly finds that:

 (1) Congress and the President have determined that the illicit nuclear activities of the Government of Iran, combined with its development of unconventional weapons and ballistic missiles, and its support of international terrorism, represent a serious threat to the security of the United States, Israel, and other United States allies in Europe, the Middle East, and around the world.

 (2) The International Atomic Energy Agency has repeatedly called attention to Iran's unlawful nuclear activities, and, as a result, the United Nations Security Council has adopted a range of sanctions designed to encourage the Government of Iran to cease those activities and comply with its obligations under the Treaty on the Non‑Proliferation of Nuclear Weapons.

 (3) On July 1, 2010, President Barack Obama signed into law H.R. 2194, the "Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010" (Public Law 111‑195), which expressly authorizes states and local governments to prevent investment in, including prohibiting entry into or renewing contracts with, companies operating in Iran's energy sector with investments that have the result of directly or indirectly supporting the efforts of the Government of Iran to achieve nuclear weapons capability.

 (4) The serious and urgent nature of the threat from Iran demands that states, local governments, and private institutions work together with the federal government and American allies to do everything possible diplomatically, politically, and economically to prevent Iran from acquiring a nuclear weapons capability.

 (5) Respect for human rights in Iran has steadily deteriorated as demonstrated by transparently fraudulent elections and the brutal repression and murder, arbitrary arrests, and show trials of peaceful dissidents.

 (6) The concerns of the State of South Carolina regarding Iran are strictly the result of the actions of the Government of Iran and should not be construed as enmity towards the Iranian people.

 (7) In order to effectively address the need for this State to respond to the policies of Iran in a uniform fashion, prohibiting contracts with persons engaged in investment activities in the energy sector of Iran must be accomplished on a statewide basis.

 (8) 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).

HISTORY: 2014 Act No. 267 (H.3021), Section 1, eff September 7, 2014.

**SECTION 11‑57‑30.** Definitions.

 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 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. It 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));

 (c) any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in subitems (a) and (b) of this item.

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

HISTORY: 2014 Act No. 267 (H.3021), Section 1, eff September 7, 2014.

**SECTION 11‑57‑40.** Chapter inapplicable to certain procurements or contracts.

 This chapter does not apply to a procurement or contract valued at ten thousand dollars or less.

HISTORY: 2014 Act No. 267 (H.3021), Section 1, eff September 7, 2014; 2015 Act No. 63 (H.3583), Section 3, eff June 4, 2015.

Editor's Note

2015 Act No. 63, Section 5, provides as follows:

"SECTION 5. This act takes effect upon approval by the Governor and does not apply to contracts entered into before the effective date of this act."

Effect of Amendment

2015 Act No. 63, Section 3, substituted "ten thousand" for "one thousand".

**SECTION 11‑57‑50.** Failure to comply with chapter not grounds for protest.

 Failure to comply with a provision of this chapter is not grounds for a protest filed pursuant to Section 11‑35‑4210 or any other preaward protest process appearing in a procurement ordinance adopted by a political subdivision pursuant to Section 11‑35‑50 or Section 11‑35‑70, or similar law.

HISTORY: 2015 Act No. 63 (H.3583), Section 2.C, eff June 4, 2015.

Editor's Note

2015 Act No. 63, Section 5, provides as follows:

"SECTION 5. This act takes effect upon approval by the Governor and does not apply to contracts entered into before the effective date of this act."

ARTICLE 3

State Divestment

**SECTION 11‑57‑300.** Investment activities in Iran.

 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 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 or more in credit to another person, for forty‑five 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 Section 11‑57‑310, as a person engaging in investment activities in Iran as described in this section.

HISTORY: 2014 Act No. 267 (H.3021), Section 1, eff September 7, 2014.

**SECTION 11‑57‑310.** List of persons engaged in investment activities in Iran; ineligibility to contract with State; validity of contracts.

 (A)(1) No more than one hundred twenty days after the effective date of this act, the Executive Director of the State Fiscal Accountability Authority shall develop or contract to develop, using credible information available to the public, a list of persons it determines engage in investment activities in Iran as described in Section 11‑57‑310. If the executive director has contracted to develop the list, the list shall be finally developed no more than one hundred twenty days after the effective date of this act. The list, when completed, shall be posted on the website of the State Fiscal Accountability Authority.

 (2) The executive director shall update the list every one hundred eighty days.

 (3) Before finalizing an initial list or an updated list, the executive director must do all of the following before a person is included on the list:

 (a) Provide ninety days' written notice of the executive director's intent to include the person on the list. 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 executive director shall provide a person with an opportunity to comment in writing that it is not engaged in investment activities in Iran. If the person demonstrates to the executive director that the person is not engaged in investment activities in Iran, the person shall not be included on the list.

 (4) The executive director 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 Section 11‑57‑300, 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 void ab initio.

HISTORY: 2014 Act No. 267 (H.3021), Section 1, eff September 7, 2014.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

**SECTION 11‑57‑320.** Exception to contract prohibition on case‑by‑case basis.

 Notwithstanding Section 11‑57‑310, a person engaged in investment activities in Iran as described in Section 11‑57‑300, may contract with the State if:

 (1) the investment activities in Iran were made before January 1, 2015, 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.

HISTORY: 2014 Act No. 267 (H.3021), Section 1, eff September 7, 2014; 2015 Act No. 63 (H.3583), Section 2.A, eff June 4, 2015.

Editor's Note

2015 Act No. 63, Section 5, provides as follows:

"SECTION 5. This act takes effect upon approval by the Governor and does not apply to contracts entered into before the effective date of this act."

Effect of Amendment

2015 Act No. 63, Section 2.A, in the undesignated paragraph, deleted ", on a case‑by‑case basis," following "with the State"; and in (1), substituted "January 1, 2015" for "the effective date of this act".

**SECTION 11‑57‑330.** Certification that person contracting with State is not on list created pursuant to 11‑57‑310; subcontracts; violations.

 (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 Section 11‑57‑310. A state agency shall include certification information in the procurement record. This section does not apply to and such certification is not required for contracts between public procurement units, nor contracts between public procurement units and external procurement activities, as that term is defined in Section 11‑35‑4610.

 (B) A person who contracts with the State shall not enter into a subcontract, on the contract with the state agency or entity, with any person that is identified on a list created pursuant to Section 11‑57‑310.

 (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 act within ninety 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.

HISTORY: 2014 Act No. 267 (H.3021), Section 1, eff September 7, 2014; 2015 Act No. 63 (H.3583), Section 2.A, eff June 4, 2015.

Editor's Note

2015 Act No. 63, Section 5, provides as follows:

"SECTION 5. This act takes effect upon approval by the Governor and does not apply to contracts entered into before the effective date of this act."

Effect of Amendment

2015 Act No. 63, Section 2.A, in (A), added the last sentence, relating to public procurement units; and in (B), substituted "person who contracts" for "person that contracts", "shall not enter into a subcontract" for ", including a contract renewal or assumption, shall not utilize,", and "with any person" for "any subcontractor".

**SECTION 11‑57‑340.** Report.

 The executive director shall report to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Governor annually by October first, 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.

HISTORY: 2014 Act No. 267 (H.3021), Section 1, eff September 7, 2014.

ARTICLE 5

Political Subdivision Divestment

**SECTION 11‑57‑500.** Ineligibility to contact with political subdivisions.

 A person that is identified on a list created pursuant to Section 11‑57‑310, as a person engaging in investment activities in Iran as described in Section 11‑57‑300 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.

HISTORY: 2014 Act No. 267 (H.3021), Section 1, eff September 7, 2014.

**SECTION 11‑57‑510.** Certification in bidding process that person contracting with political subdivision is not on list created pursuant to 11‑57‑310; electronic submission.

 (A) Effective January 1, 2015, 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 law, 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 Section 11‑57‑310." This section does not apply to and such certification is not required for contracts between public procurement units, nor contracts between public procurement units and external procurement activities, as that term is defined in Section 11‑35‑4610.

 (B) Notwithstanding subsection (A), the statement of noninvestment in the Iranian energy sector 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) if:

 (1) the investment activities in Iran were made before January 1, 2015, 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 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.

HISTORY: 2014 Act No. 267 (H.3021), Section 1, eff September 7, 2014; 2015 Act No. 63 (H.3583), Section 2.B, eff June 4, 2015.

Editor's Note

2015 Act No. 63, Section 5, provides as follows:

"SECTION 5. This act takes effect upon approval by the Governor and does not apply to contracts entered into before the effective date of this act."

Effect of Amendment

2015 Act No. 63, Section 2.B, in (A), substituted "Effective January 1, 2015" for "After this act takes effect", and added the last sentence, relating to public procurement units; in (C), deleted ", on a case‑by‑case basis," following "pursuant to subsection (A)"; and in (C)(1), substituted "January 1, 2015" for "the effective date of this act".

ARTICLE 7

Prohibition on Iranian Investment

**SECTION 11‑57‑700.** Prohibition of fund investment with person identified on list created pursuant to Section 11‑57‑310; divestment.

 (A) Neither the Retirement System Investment Commission or the State Treasurer may invest funds with a person that is identified on a list created pursuant to Section 11‑57‑310 as a person engaging in investment activities in Iran as described in Section 11‑57‑300.

 (B) Any existing investments in violation of subsection (A) as of the effective date of this act, must be divested within one hundred twenty days of the effective date of this act.

HISTORY: 2014 Act No. 267 (H.3021), Section 1, eff September 7, 2014.

**SECTION 11‑57‑710.** Exception to investment prohibition on case‑by‑case basis.

 Notwithstanding Section 11‑57‑700, an investment may be made in a person engaged in investment activities in Iran as described in Section 11‑57‑300, 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 investor makes a determination that the investments are necessary to perform its functions.

HISTORY: 2014 Act No. 267 (H.3021), Section 1, eff September 7, 2014.

**SECTION 11‑57‑720.** Fiduciary responsibilities.

 Nothing in this article requires the Retirement System Investment Commission or its agents or contract investment managers to take action as described in this article unless it is determined, in good faith, that the action described in this article is consistent with the fiduciary responsibilities of the commission or its agents or contract investment managers as described in Chapter 16, Title 9, and there are appropriated funds of the State to absorb the expenses necessary to implement this article.

HISTORY: 2014 Act No. 267 (H.3021), Section 1, eff September 7, 2014.

**SECTION 11‑57‑730.** Indemnification.

 Present, future, and former authority members, officers, and employees of the State Budget and Control Board, the State Fiscal Accountability Authority, the Public Employee Benefit Authority, the Retirement System Investment Commission, and contract investment managers and agents retained by the commission, as well as present, future, and former State Treasurers, officers, and employees of the State Treasurer, and contract investment managers and agents retained by the State Treasurer must be indemnified from the General Fund of the State and held harmless by the State from all claims, demands, suits, actions, damages, judgments, costs, charges, and expenses, including court costs and attorney's fees, and against all liability, losses, and damages of any nature whatsoever that these present, future, or former authority members, officers, employees, agents or contract investment managers shall or may at any time sustain by reason of any decision to restrict, reduce, or eliminate investments pursuant to this chapter.

HISTORY: 2014 Act No. 267 (H.3021), Section 1, eff September 7, 2014.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the "Budget and Control Board", the "State Budget and Control Board" or the "board" were changed to the "State Fiscal Accountability Authority", the "authority", or the "Division of Procurement Services" of the "State Fiscal Accountability Authority", pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(B), effective July 1, 2015.

**SECTION 11‑57‑740.** Applicability of chapter.

 The restrictions provided for in this chapter apply only until:

 (1) the President or Congress of the United States, by means including, but not limited to, legislation, executive order, or written certification, declares that divestment of the type provided for in this chapter interferes with the conduct of United States foreign policy; or

 (2) the United States revokes its current sanctions against Iran.

HISTORY: 2014 Act No. 267 (H.3021), Section 1, eff September 7, 2014.