
A BILL FOR AN ACT

RELATING TO IRAN.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that:

2 (1) In imposing sanctions on Iran, the United States
3 Congress and the President determined that the illicit
4 nuclear activities of Iran, combined with its
5 development of unconventional weapons and ballistic
6 missiles, and its support of international terrorism,
7 represent a serious threat to the security of the
8 United States, Israel, and other United States allies
9 in Europe, the Middle East, and around the world;

10 (2) On September 9, 2009, it was reported that American
11 intelligence agencies concluded that Iran has created
12 enough nuclear fuel to develop a nuclear weapon, and
13 United States Ambassador to the International Atomic
14 Energy Agency Glyn Davies declared that Iran had
15 achieved "possible breakout capacity";

16 (3) On September 21, 2009, Iran sent a letter to the
17 International Atomic Energy Agency acknowledging that



1 it is considering a previously undeclared "new pilot
2 fuel enrichment plan";

3 (4) On September 25, 2009, President Barack Obama, joined
4 by Prime Minister Gordon Brown of Britain and
5 President Nicolas Sarkozy of France, stated that Iran
6 "represents a direct challenge to the basic foundation
7 of the nonproliferation regime" and "deepens a growing
8 concern that Iran is refusing to live up to those
9 international responsibilities, including specifically
10 revealing all nuclear-related activities. As the
11 international community knows, this is not the first
12 time that Iran has concealed information about its
13 nuclear program";

14 (5) The International Atomic Energy Agency has repeatedly
15 called attention to Iran's unlawful nuclear
16 activities, and as a result, the United Nations
17 Security Council has adopted a range of sanctions
18 designed to encourage Iran to cease those activities
19 and comply with its obligations under the Treaty on
20 the Non-Proliferation of Nuclear Weapons (commonly
21 known as the "Nuclear Non-Proliferation Treaty");



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

11 (7) On October 7, 2008, then-Senator Obama stated, "Iran
12 right now imports gasoline, even though it's an oil
13 producer, because its oil infrastructure has broken
14 down. If we can prevent them from importing the
15 gasoline that they need and the refined petroleum
16 products, that starts changing their cost-benefit
17 analysis. That starts putting the squeeze on them";

18 (8) The serious and urgent nature of the threat from Iran
19 demands that states, local governments, educational
20 institutions, and private institutions work together
21 with the federal government and American allies to do
22 everything possible diplomatically, politically, and



- 1 economically to prevent Iran from acquiring a nuclear
2 weapons capability;
- 3 (9) There are moral and reputational reasons for state and
4 local governments not to engage in business with
5 foreign companies that have business activities
6 benefiting foreign states, such as Iran, that commit
7 egregious violations of human rights, proliferate
8 nuclear weapons capabilities, and support terrorism;
- 9 (10) It is the responsibility of the State to decide how,
10 where, and by whom its financial resources should be
11 invested. It also is the prerogative of the State not
12 to invest in, or do business with, companies whose
13 investments with Iran place those companies at risk
14 from the impact of economic sanctions imposed upon
15 Iran for sponsoring terrorism, committing egregious
16 violations of human rights, and engaging in illicit
17 nuclear weapons development;
- 18 (11) The human rights situation in Iran steadily
19 deteriorated in 2009, as punctuated by transparently
20 fraudulent elections and the brutal repression and
21 murder, arbitrary arrests, and show trials of peaceful
22 dissidents; and



1 (12) During the post-election protests in June 2009, the
2 Iranian government imposed widespread and
3 unjustifiable restrictions on telecommunications
4 services, denying the citizens of Iran their rights
5 and liberties to free speech.

6 Hawaii currently honors contracts with foreign companies
7 that may be at financial risk due to business ties with foreign
8 states, such as Iran, that are involved in the proliferation of
9 weapons of mass destruction, commit human rights violations, and
10 support terrorism.

11 Concerns of the State of Hawaii regarding Iran are strictly
12 the result of the actions of the government of Iran. The people
13 of Hawaii have feelings of friendship for the people of Iran and
14 hold the people of Iran, their culture, and their ancient and
15 rich history in the highest esteem. The people of Hawaii regret
16 that developments in recent decades have created impediments to
17 that friendship.

18 The purpose of this Act is to effectively address the need
19 for the state and local governments of Hawaii to respond to the
20 policies of Iran in a uniform fashion by prohibiting contracts
21 with persons engaged in investment activities in the energy
22 sector of Iran in accordance with the authority granted under



1 the Comprehensive Iran Sanctions, Accountability, and Divestment
2 Act of 2010 (Public Law 111-195).

3 SECTION 2. (a) As used in this section:

4 "Awarding body" means a state or county department, board,
5 agency, authority, or officer, agent, or other authorized
6 representative of a public entity awarding a contract for goods
7 or services.

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

10 "Financial institution" means the term as used in section
11 14 of the Iran and Libya Sanctions Act of 1996 (Public Law 104-
12 172; 50 U.S.C. 1701 note).

13 "Iran" includes the government of Iran and any governmental
14 agency or instrumentality of Iran.

15 "Person" means any of the following:

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

20 (2) Any governmental entity or instrumentality of a
21 government, including a multilateral development
22 institution, as defined in section 1701(c)(3) of the



1 International Financial Institutions Act (22 U.S.C.
2 262r(c)(3)); or

3 (3) Any successor, subunit, parent entity, or subsidiary
4 of, or any entity under common ownership or control
5 with, any entity described in paragraph (1) or (2).

6 (b) For purposes of this chapter, a person engages in
7 investment activities in Iran if the person:

8 (1) Provides goods or services with a value of \$20,000,000
9 or more in the energy sector of Iran, including a
10 person that provides oil or liquefied natural gas
11 tankers, or products used to construct or maintain
12 pipelines used to transport oil or liquefied natural
13 gas, for the energy sector of Iran; or

14 (2) Is a financial institution that extends \$20,000,000 or
15 more in credit to another person, for forty-five days
16 or more, if that person uses the credit to provide
17 goods or services in the energy sector in Iran and is
18 identified pursuant to subsection (c) as a person
19 engaging in investment activities in Iran.

20 (c) A person that, at the time of bid or proposal for a
21 new contract or renewal of an existing contract, is identified
22 by the chief procurement officer on a list as a person engaging



1 in investment activities in Iran, shall be ineligible to, and
2 shall not, bid on, submit a proposal for, or enter into or
3 renew, a contract with a public entity for goods or services
4 with a value of \$1,000,000 or more.

5 A person that, at the time of bid or proposal for a new
6 contract or renewal of an existing contract, engages in
7 investment activities in Iran shall be ineligible to, and shall
8 not, bid on, submit a proposal for, or enter into or renew, a
9 contract with a public entity for goods or services with a value
10 of \$1,000,000 or more.

11 (d) By June 1, 2013, the chief procurement officer, using
12 credible information available to the public, shall develop a
13 list of persons that it determines engage in investment
14 activities in Iran. The chief procurement officer shall update
15 its list of identified persons every one hundred eighty days.

16 The chief procurement officer shall do all of the following
17 before a person is included on the list:

18 (1) Provide ninety days written notice of its intent to
19 include the person on the list. The notice shall
20 inform the person that inclusion on the list would
21 make the person ineligible to bid on, submit a
22 proposal for, or enter into or renew, a contract for



1 goods or services with a value of \$1,000,000 or more
2 with a public entity. The notice shall specify that
3 the person, if it ceases its engagement in investment
4 activities in Iran may become eligible for a future
5 contract, or contract renewal, for goods or services
6 with a value of \$1,000,000 or more with a public
7 entity upon removal from the list; and

- 8 (2) The chief procurement officer shall provide a person
9 with an opportunity to comment in writing that it is
10 not engaged in investment activities in Iran. If the
11 person demonstrates to the chief procurement officer
12 that the person is not engaged in investment
13 activities in Iran, the person shall not be included
14 on the list, and shall be eligible to enter into or
15 renew a contract for goods or services with a value of
16 \$1,000,000 or more with a public entity, unless the
17 person is otherwise ineligible to bid on a contract
18 under subsection (h).

19 The chief procurement officer shall make every effort to
20 avoid erroneously including a person on the list.

21 The chief procurement officer may assess a fee upon persons
22 that use the list to comply with the provisions of this Act, in



1 order to pay for the costs of creating and maintaining the list.
2 The chief procurement officer shall provide the list free of
3 charge to any public entity and to the legislature upon request.

4 A person that has a contract with the Hawaii employer-union
5 health benefits trust fund, the employees' retirement system of
6 the State of Hawaii, or both, shall not be deemed a person that
7 engages in investment activities in Iran on the basis of those
8 investments.

9 (e) Notwithstanding any provision of this Act to the
10 contrary, a public entity may permit a person engaged in
11 investment activities in Iran, on a case-by-case basis, to be
12 eligible for, or to bid on, submit a proposal for, or enter into
13 or renew, a contract for goods or services with a value of
14 \$1,000,000 or more with a public entity if:

- 15 (1) All of the following occur:
- 16 (A) The investment activities in Iran were made
17 before July 1, 2011;
 - 18 (B) The investment activities in Iran have not been
19 expanded or renewed after July 1, 2011;
 - 20 (C) The awarding body determines that it is in the
21 best interest of the state or county entity to
22 contract with the person. For purposes of state



1 contracts for goods or services with a value of
 2 \$1,000,000 or more, "awarding body" means the
 3 chief procurement officer. For purposes of
 4 county contracts for goods or services with a
 5 value of \$1,000,000 or more, "awarding body"
 6 means the procurement officer of the county
 7 entity awarding the contract; and

8 (D) The person has adopted, publicized, and is
 9 implementing a formal plan to cease the
 10 investment activities in Iran and to refrain from
 11 engaging in any new investments in Iran; or

12 (2) One of the following occurs:

13 (A) For a contract for goods or services with a value
 14 of \$1,000,000 or more with a county entity, the
 15 county entity makes a public finding that, absent
 16 an exemption, the county entity otherwise would
 17 be unable to obtain the goods or services for
 18 which the contract is offered; or

19 (B) For a contract for goods or services with a value
 20 of \$1,000,000 or more with a state agency the
 21 governor makes a public finding that absent an
 22 exemption, the state agency otherwise would be



1 unable to obtain the goods or services for which
2 the contract is offered.

3 (f) Notwithstanding any provision of this Act to the
4 contrary, a public entity shall permit a financial institution
5 to be eligible for, or to bid on, submit a proposal for, or
6 enter into or renew, a contract for goods or services with a
7 value of \$1,000,000 or more with a public entity if the person
8 using the credit to provide goods or services in the energy
9 sector of Iran is a person permitted to submit a bid or proposal
10 to the public entity pursuant to subsection (e).

11 (g) A public entity shall require a person that submits a
12 bid or proposal to, or otherwise proposes to enter into or renew
13 a contract with, a public entity with respect to a contract for
14 goods or services with a value of \$1,000,000 or more to certify,
15 at the time the bid is submitted or the contract is renewed,
16 that the person is not identified pursuant to subsection (c) as
17 a person engaging in investment activities in Iran. A state
18 agency shall submit the certification information to the chief
19 procurement officer.

20 A public entity shall not require a person that submits a
21 bid or proposal to, or otherwise proposes to enter into a
22 contract with, the public entity with respect to a contract for



1 goods or services with a value of \$1,000,000 or more to certify
2 that the person is not identified pursuant to subsection (c) as
3 a person engaging in investment activities in Iran if the person
4 has been permitted to submit a bid or proposal to the public
5 entity pursuant to subsection (d) or (f).

6 (h) If the county entity, or the chief procurement
7 officer, as applicable, determines that the person has submitted
8 a false certification under subsection (g), and the person fails
9 to demonstrate to the county entity or the chief procurement
10 officer that the person has ceased its engagement in the
11 investment activities in Iran within ninety days after the
12 determination of a false certification, the person shall be
13 subject to:

14 (1) A civil penalty in an amount that is equal to the
15 greater of \$250,000 or twice the amount of the
16 contract for which the false certification was made;
17 provided that only one civil penalty may be imposed
18 with respect to one or more certifications made to any
19 public entity that are false as a result of a
20 particular investment;



1 (2) Termination of an existing contract with the awarding
2 body at the option of the awarding body or the chief
3 procurement officer; and

4 (3) Ineligibility to bid on a contract for a period of
5 three years from the date of the determination that
6 the person submitted the false certification.

7 (i) A county entity or the chief procurement officer, as
8 applicable, shall report to the attorney general the name of any
9 person that the county entity or the chief procurement officer,
10 determines has submitted a false certification under subsection
11 (h) together with any information on false certification, and
12 the attorney general shall determine whether to bring a civil
13 action against the person to enforce the penalty described in
14 subsection (h).

15 (j) If, in a civil action, the court determines that the
16 person submitted a false certification under subsection (g), the
17 person shall pay all reasonable costs and fees incurred in the
18 action, including costs incurred by the awarding body for
19 investigations that led to the finding of the false
20 certification and all reasonable costs and fees incurred by the
21 attorney general.



1 Only one civil action against a person to collect the
2 penalty described in subsection (h) may be brought for a false
3 certification on a contract.

4 A civil action to collect the penalties described in
5 subsection (h) shall commence within three years from the date
6 the certification is made.

7 (k) An unsuccessful bidder in any procurement under
8 chapter 103D or 103F, Hawaii Revised Statutes, or any other
9 person other than the awarding body, shall have no right to
10 protest the award of a contract or contract renewal on the basis
11 of a false certification.

12 (l) This Act shall not create or authorize a private right
13 of action or enforcement of the penalties provided for in this
14 Act.

15 SECTION 3. If any provision of this Act, or the
16 application thereof to any person or circumstance is held
17 invalid, the invalidity does not affect other provisions or
18 applications of the Act, which can be given effect without the
19 invalid provision or application, and to this end the provisions
20 of this Act are severable.



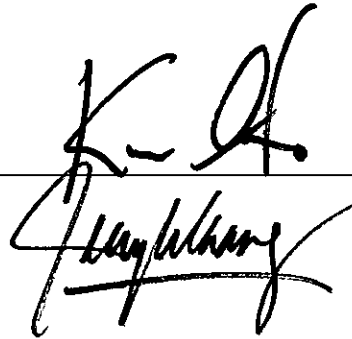
H.B. NO. 1792

1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 5. This Act shall take effect on July 1, 2012;
5 provided that this Act shall be repealed on the date that the
6 applicable federal law ceases to authorize the states to adopt
7 and enforce the contracting prohibitions of the type provided
8 for in this Act.

9

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "K. A. Gray", written over a horizontal line.

JAN 13 2012



H.B. NO. 1792

Report Title:

Iran; Procurement; Prohibition

Description:

Prohibits public agencies from procuring goods or services from entities that engage in investment activities in Iran.

Effective 7/1/12.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

