~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 20, 2015

**H. 3583**

Introduced by Reps. Clemmons, Simrill, McCoy, Loftis, Atwater, Kirby, Corley, Bernstein, McEachern, Weeks, Johnson, Goldfinch, Kennedy, H.A. Crawford, Rutherford, Whitmire, Douglas, Burns, Clyburn, Erickson, G.R. Smith, Yow, Spires, Chumley, Allison, Hardee, Anderson, Gagnon, Putnam, Nanney, Williams, Limehouse, Duckworth, Norrell, Anthony, Ballentine, Bannister, Bedingfield, Bingham, Clary, Delleney, Felder, Finlay, Funderburk, Gambrell, Hamilton, Hardwick, Hicks, Hiott, Hixon, Huggins, Long, Lowe, Lucas, V.S. Moss, Murphy, Norman, Pitts, Pope, Quinn, Riley, Rivers, Sandifer, G.M. Smith, Stringer, Tallon, Taylor, Thayer, Toole, Wells, Willis, Newton, Forrester, Hill and Gilliard

S. Printed 5/20/15--S.

Read the first time March 25, 2015.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (H. 3583) to amend the Code of Laws of South Carolina, 1976, by adding Article 23 to Chapter 35, Title 11 so as to prohibit the state or a political subdivision of, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by adding two appropriately numbered SECTIONS to read:

/ SECTION \_\_\_. A. Sections 11‑57‑320 and 11‑57‑330 of the 1976 Code, both as added by Act 267 of 2014, are amended to read”

“Section 11‑57‑320. 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~~, on a case‑by‑case basis,~~ if:

(1) the investment activities in Iran were made before ~~the effective date of this act~~ 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.

Section 11‑57‑330. (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 ~~that~~ who contracts with the State~~, including a contract renewal or assumption,~~ shall not ~~utilize~~ enter into a subcontract, on the contract with the state agency or entity, with any ~~subcontractor that~~ 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.”

B. Section 11‑57‑510 of the 1976 Code, as added by Act 267 of 2014, is amended to read:

“Section 11‑57‑510. (A) ~~After this act takes effect~~ 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)~~, on a case‑by‑case basis,~~ if:

(1) the investment activities in Iran were made before ~~the effective date of this act~~ 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.”

C. Article 1, Chapter 57, Title 11 of the 1976 Code is amended by adding:

“Section 11‑57‑50. 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.”

SECTION \_\_\_. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective. /

Renumber sections to conform.

Amend title to conform.

HUGH K. LEATHERMAN, SR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

The bill as amended is not expected to impact general fund, federal funds, or other fund expenditures or revenues. Additionally, we do not expect any impact on local expenditures or revenues.

**Explanation of Fiscal Impact**

**Explanation of Amendment (May 13, 2015) – By the Senate Finance Subcommittee**

**State Expenditure**

This amendment to the bill amends Sections 11-57-320, 11-57-330, and 11-57-510 relating to investment activities in Iran to state that effective January 1, 2015, these sections do not apply and such certifications are not required for contracts between public procurement units or for contracts between public procurement units and external procurement activities as defined in Section 11-35-4610.

The Budget and Control Board indicates the amendment to the bill will have no expenditure impact on the general fund, federal funds, or other funds.

The impact of the remaining sections of the bill as amended is unchanged.

**Explanation of Amendment (March 24, 2015) – By the House of Representatives**

**State Expenditure and State Revenue**

The bill as amended prohibits the state or a political subdivision of the State from entering into any agreements to obtain or provide goods or services from a business that engages in the boycott of a person or entity based on race, color, religion, or national origin. This may limit the businesses with which the State may do business. The bill as amended is not expected impact expenditures or revenues for the general fund, federal funds, or other funds.

**Local Expenditure and Local Revenue**

The bill as amended prohibits the State or a political subdivision of the State from entering into any agreements to obtain or provide goods or services from a business that engages in the boycott of a person or entity based on race, color, religion, or national origin. This may limit the businesses with which local governments may do business. The bill as amended is not expected impact local expenditures or revenues.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 23 TO CHAPTER 35, TITLE 11 SO AS TO PROHIBIT THE STATE OR A POLITICAL SUBDIVISION OF THE STATE FROM ACCEPTING A PROPOSAL FROM OR PROCURING GOODS OR SERVICES FROM A BUSINESS WHICH ENGAGES IN THE BOYCOTT OF A PERSON OR AN ENTITY BASED ON RACE, COLOR, RELIGION, OR NATIONAL ORIGIN.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Article 23

Statewide Provisions

Section 11‑35‑5300. (A) A public entity may not enter into a contract with a business to acquire or dispose of supplies, services, information technology, or construction unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in this article.

(B) For purposes of this section:

(1) ‘Boycott’ means to blacklist, divest from, or otherwise refuse to deal with a person or firm when the action is based on race, color, religion, gender, or national origin of the targeted person or entity. ‘Boycott’ does not include:

(a) a decision based on business or economic reasons, or the specific conduct of a targeted person or firm;

(b) a boycott against a public entity of a foreign state when the boycott is applied in a nondiscriminatory manner; and

(c) conduct necessary to comply with applicable law in the business’s home jurisdiction.

(2) ‘Public entity’ means the State, or any political subdivision of the State, including a school district or agency, department, institution, or other public entity of them.

(3) A ‘jurisdiction with whom South Carolina can enjoy open trade’ includes World Trade Organization members and those with which the United States has free trade or other agreements aimed at ensuring open and nondiscriminatory trade relations.

(C) This section does not apply if a business fails to meet the requirements of subsection (A) but offers to provide the goods or services for at least twenty percent less than the lowest certifying business. Also, this section does not apply to contracts with a total potential value of less than ten thousand dollars.

(D) Failure to comply with a provision of this section 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 11‑35‑70, or similar law.”

SECTION 2. Section 11‑57‑40 of the 1976 Code, as added by Act 267 of 2014, is amended to read:

“Section 11‑57‑40. This chapter does not apply to a procurement or contract valued at ~~one~~ ten thousand dollars or less.”

SECTION 3. This act takes effect upon approval by the Governor and does not apply to contracts entered into before the effective date of this act.

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