

HOUSE BILL 440

P2

2lr0131
CF SB 235

By: **The Speaker (By Request – Administration) and Delegates Reznik, Hammen, Jones, Mizeur, and Rosenberg**

Introduced and read first time: February 1, 2012

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Investment Activities in Iran**

3 FOR the purpose of requiring the Board of Public Works, on or before a certain date, to
4 use certain information to create a list of persons that engage in investment
5 activities in Iran; requiring the Board to update the list at certain times;
6 requiring the Board, within a certain number of days before adding a person to
7 the list, to provide the person with certain notice; prohibiting the Board from
8 adding a person to the list under certain circumstances; requiring a unit to
9 require a certain person to certify that the person is not included on a certain
10 list; requiring a person that is unable to certify that the person does not engage
11 in certain investment activities in Iran to provide a certain description of its
12 investment activities; requiring certain certifications and disclosures to be
13 publicly disclosed; requiring a unit to provide a certain person that may have
14 falsely certified that the person does not engage in certain investment activities
15 with certain notice that the person may submit certain documentation to the
16 unit within a certain time frame; authorizing a unit to determine that a person
17 has submitted a false certification under certain circumstances; establishing
18 certain penalties that may be imposed on a person that submits a false
19 certification; prohibiting a unit from awarding a procurement contract to a
20 person that submits a false certification; authorizing a unit to terminate a
21 certain contract with a person that submitted a false certification; providing for
22 the debarment of a certain person under certain circumstances; providing for
23 the application of this Act; establishing that this Act preempts certain local
24 laws; defining certain terms; and generally relating to persons that engage in
25 investment activities in Iran and the State procurement law.

26 BY repealing and reenacting, without amendments,
27 Article – State Finance and Procurement
28 Section 11–101(a), (d), (k), and (x)
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2009 Replacement Volume and 2011 Supplement)

2 BY adding to

3 Article – State Finance and Procurement

4 Section 13–501 through 13–505 to be under the new subtitle “Subtitle 5.

5 Investment Activities in Iran”; and 16–203(e)

6 Annotated Code of Maryland

7 (2009 Replacement Volume and 2011 Supplement)

8 Preamble

9 WHEREAS, In imposing sanctions on Iran, the Congress and the President of
10 the United States have determined that the illicit nuclear activities of the government
11 of Iran, combined with its development of unconventional weapons and ballistic
12 missiles, and its support of international terrorism, represent a serious threat to the
13 security of the United States and its allies and around the world; and

14 WHEREAS, The International Atomic Energy Agency repeatedly has called
15 attention to Iran’s unlawful nuclear activities, and as a result, the United Nations
16 Security Council has adopted four rounds of sanctions designed to compel the
17 government of Iran to cease those activities and comply with its obligations under the
18 Treaty on the Non–Proliferation of Nuclear Weapons; and

19 WHEREAS, The human rights situation in Iran has steadily deteriorated since
20 the fraudulent elections of 2009, as evidenced by the brutal repression, torture,
21 murder, and arbitrary detention of peaceful protestors, dissidents, and minorities; and

22 WHEREAS, On July 1, 2010, the President of the United States signed into law
23 the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, which
24 authorizes states and local governments to prevent investment in companies operating
25 in Iran and includes provisions that preclude companies that do business in Iran from
26 contracting with the U.S. government; and

27 WHEREAS, There are moral and reputational reasons for state and local
28 governments not to engage in business with foreign companies that have business
29 activities benefiting foreign states, such as Iran, that pursue illegal nuclear programs,
30 support acts of terrorism, and commit violations of human rights; and

31 WHEREAS, Short–term economic profits cannot be a justification to circumvent
32 international sanctions designed to thwart Iran from developing nuclear weapons; and

33 WHEREAS, The concerns of the Maryland General Assembly regarding Iran
34 are the result of the actions of the government of Iran and should not be construed as
35 enmity toward the Iranian people; now, therefore,

36 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
37 MARYLAND, That the Laws of Maryland read as follows:

1 **Article – State Finance and Procurement**

2 11–101.

3 (a) In this Division II the following words have the meanings indicated
4 unless:

5 (1) the context clearly requires a different meaning; or

6 (2) a different definition is provided for a particular title or provision.

7 (d) “Board” means the Board of Public Works.

8 (k) “Person” means an individual, receiver, trustee, guardian, personal
9 representative, fiduciary, or representative of any kind and any partnership, firm,
10 association, corporation, or other entity.

11 (x) (1) “Unit” means an officer or other entity that is in the Executive
12 Branch of the State government and is authorized by law to enter into a procurement
13 contract.

14 (2) “Unit” does not include:

15 (i) a bistate, multistate, bicounty, or multicounty governmental
16 agency; or

17 (ii) a special tax district, sanitary district, drainage district, soil
18 conservation district, water supply district, or other political subdivision of the State.

19 **SUBTITLE 5. INVESTMENT ACTIVITIES IN IRAN.**

20 **13–501.**

21 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
22 **INDICATED.**

23 **(B) “CONSTRUCTION SECTOR OF IRAN” MEANS ACTIVITIES TO PLAN,**
24 **DESIGN, ENGINEER, BUILD, CONSTRUCT, OR FINANCE PROJECTS AND**
25 **INVESTMENTS RELATED TO DEVELOPING THE INFRASTRUCTURE OF IRAN,**
26 **INCLUDING INFRASTRUCTURE RELATED TO THE ENERGY SECTOR OF IRAN OR**
27 **ANY ASPECT OF THE OIL, GAS, OR NUCLEAR POWER INDUSTRIES OF IRAN.**

28 **(C) “ENERGY SECTOR OF IRAN” MEANS ACTIVITIES TO DEVELOP,**
29 **INVEST IN, EXPLORE FOR, REFINE, TRANSFER, PURCHASE, OR SELL OIL,**

1 GASOLINE, OR OTHER REFINED OIL PRODUCTS OR NATURAL GAS, LIQUEFIED
2 NATURAL GAS RESOURCES, OR NUCLEAR POWER IN IRAN.

3 (D) "ENGAGE IN INVESTMENT ACTIVITIES IN IRAN" MEANS THAT A
4 PERSON:

5 (1) PROVIDES GOODS FOR OR SERVICES IN OR TO THE
6 CONSTRUCTION, ENERGY, OR FINANCIAL SECTORS OF IRAN;

7 (2) PROVIDES OIL OR LIQUEFIED NATURAL GAS TANKERS, OR
8 PRODUCTS USED TO CONSTRUCT OR MAINTAIN PIPELINES USED TO TRANSPORT
9 OIL OR LIQUEFIED NATURAL GAS, FOR THE ENERGY SECTOR OF IRAN;

10 (3) PURCHASES CRUDE OIL, REFINED PETROLEUM PRODUCTS, OR
11 NATURAL GAS FROM IRAN;

12 (4) PROVIDES GOODS OR SERVICES, OR PAYMENT FOR GOODS OR
13 SERVICES, TO A PERSON, INCLUDING A NONCOUNTRY SPECIFIC PERSON, THAT
14 IS ON THE U.S. OFFICE OF FOREIGN ASSETS CONTROL'S SPECIALLY
15 DESIGNATED NATIONALS LIST FOR IRAN;

16 (5) TRANSFERS, OR FACILITATES THE TRANSFER OF, GOODS OR
17 TECHNOLOGIES TO IRAN, INCLUDING:

18 (I) FIREARMS OR AMMUNITION AS DEFINED IN 18 U.S.C. §
19 921, ACCESSORIES FOR FIREARMS, RUBBER BULLETS, CLUBS, BATONS, POLICE
20 STICKS, MACE, STUN GRENADES, TASERS OR OTHER ELECTROSHOCK WEAPONS,
21 TEAR GAS, WATER CANNONS, MOTORCYCLES, MOTORIZED TRANSPORT FOR
22 SECURITY PERSONNEL, OR SURVEILLANCE TECHNOLOGY;

23 (II) SENSITIVE TECHNOLOGY AS DEFINED IN THE FEDERAL
24 COMPREHENSIVE IRAN SANCTIONS, ACCOUNTABILITY, AND DIVESTMENT ACT
25 OF 2010; AND

26 (III) OTHER GOODS OR TECHNOLOGIES THAT THE BOARD
27 DETERMINES HAVE OR MAY BE USED BY THE GOVERNMENT OF IRAN TO COMMIT
28 HUMAN RIGHTS ABUSES AGAINST THE PEOPLE OF IRAN WHETHER OR NOT THE
29 GOODS OR TECHNOLOGIES ARE SOLD DIRECTLY TO THE GOVERNMENT OF IRAN
30 OR OTHERWISE; OR

31 (6) (I) EXTENDS CREDIT TO A PERSON OR ENTITY THAT
32 ENGAGES IN THE ACTIVITIES DESCRIBED IN ITEMS (1) THROUGH (5) OF THIS
33 SUBSECTION; AND

1 **(II) IS IDENTIFIED ON A LIST CREATED IN ACCORDANCE**
2 **WITH § 13-502 OF THIS SUBTITLE AS A PERSON OR AN ENTITY ENGAGING IN AN**
3 **ACTIVITY DESCRIBED IN ITEMS (1) THROUGH (5) OF THIS SUBSECTION.**

4 **(E) “FINANCIAL SECTOR OF IRAN” MEANS THE CENTRAL BANK OF**
5 **IRAN OR ANOTHER FINANCIAL INSTITUTION OF IRAN DESIGNATED BY THE**
6 **SECRETARY OF THE TREASURY FOR THE IMPOSITION OF SANCTIONS IN**
7 **ACCORDANCE WITH THE FEDERAL INTERNATIONAL EMERGENCY ECONOMIC**
8 **POWERS ACT.**

9 **(F) (1) “IRAN” MEANS THE TERRITORY OF IRAN AND ANY OTHER**
10 **TERRITORY OR MARINE AREA OVER WHICH THE GOVERNMENT OF IRAN CLAIMS**
11 **SOVEREIGNTY, SOVEREIGN RIGHTS, OR JURISDICTION, PROVIDED THAT THE**
12 **GOVERNMENT OF IRAN EXERCISES PARTIAL OR TOTAL DE FACTO CONTROL**
13 **OVER THE AREA OR DERIVES A BENEFIT FROM ECONOMIC ACTIVITY IN THE**
14 **AREA IN ACCORDANCE WITH INTERNATIONAL ARRANGEMENTS.**

15 **(2) “IRAN” INCLUDES THE EXCLUSIVE ECONOMIC ZONE AND**
16 **CONTINENTAL SHELF.**

17 **(G) “PERSON” INCLUDES:**

18 **(1) A NATURAL PERSON, CORPORATION, COMPANY, LIMITED**
19 **PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, LIMITED LIABILITY**
20 **COMPANY, BUSINESS ASSOCIATION, SOLE PROPRIETORSHIP, JOINT VENTURE,**
21 **PARTNERSHIP, SOCIETY, TRUST, OR ANY OTHER NONGOVERNMENTAL ENTITY,**
22 **ORGANIZATION, OR GROUP;**

23 **(2) A GOVERNMENTAL ENTITY OR INSTRUMENTALITY OF A**
24 **GOVERNMENT, INCLUDING A MULTILATERAL DEVELOPMENT INSTITUTION, AS**
25 **DEFINED BY THE FEDERAL INTERNATIONAL FINANCIAL INSTITUTIONS ACT;**

26 **(3) A FINANCIAL INSTITUTION AS DEFINED BY THE FEDERAL IRAN**
27 **SANCTIONS ACT OF 1996; OR**

28 **(4) ANY PARENT, SUCCESSOR, SUBUNIT, DIRECT OR INDIRECT**
29 **SUBSIDIARY, OR ANY ENTITY UNDER COMMON OWNERSHIP OR CONTROL WITH**
30 **AN ENTITY DESCRIBED IN ITEMS (1) THROUGH (3) OF THIS SUBSECTION.**

31 **(H) “UNIT” INCLUDES:**

32 **(1) A BISTATE OR MULTISTATE AGENCY;**

1 **(2) A COUNTY, MUNICIPAL CORPORATION, OR OTHER POLITICAL**
2 **SUBDIVISION OF THE STATE OR AN AGENCY OR OTHER INSTRUMENTALITY OF**
3 **THE POLITICAL SUBDIVISION; AND**

4 **(3) A BICOUNTY OR MULTICOUNTY AGENCY.**

5 **13-502.**

6 **(A) ON OR BEFORE JANUARY 1, 2013, THE BOARD SHALL USE**
7 **CREDIBLE INFORMATION AVAILABLE TO THE PUBLIC TO CREATE A LIST OF**
8 **PERSONS THAT ENGAGE IN INVESTMENT ACTIVITIES IN IRAN.**

9 **(B) THE BOARD SHALL UPDATE THE LIST EVERY 90 DAYS.**

10 **(C) THIRTY DAYS BEFORE ADDING A PERSON TO THE LIST, THE BOARD**
11 **SHALL PROVIDE THE PERSON WITH WRITTEN NOTICE THAT:**

12 **(1) THE BOARD INTENDS TO ADD THE PERSON TO THE LIST;**

13 **(2) INCLUSION OF THE PERSON ON THE LIST MAKES THE PERSON**
14 **INELIGIBLE TO BID ON, SUBMIT A PROPOSAL FOR, OR ENTER INTO OR RENEW A**
15 **CONTRACT FOR GOODS OR SERVICES WITH THE STATE; AND**

16 **(3) WITHIN THE 30-DAY PERIOD, THE PERSON MAY SUBMIT**
17 **WRITTEN DOCUMENTATION TO THE BOARD DEMONSTRATING THAT THE**
18 **PERSON IS NOT ENGAGED IN INVESTMENT ACTIVITIES IN IRAN.**

19 **(D) IF THE PERSON DEMONSTRATES TO THE BOARD THAT THE PERSON**
20 **IS NOT ENGAGED IN INVESTMENT ACTIVITIES IN IRAN, THE BOARD MAY NOT**
21 **ADD THE PERSON TO THE LIST.**

22 **(E) THE BOARD SHALL MAKE EVERY EFFORT TO AVOID ERRONEOUSLY**
23 **INCLUDING A PERSON ON THE LIST.**

24 **13-503.**

25 **(A) A UNIT SHALL REQUIRE A PERSON THAT SUBMITS A BID OR**
26 **PROPOSAL OR OTHERWISE PROPOSES TO ENTER INTO OR RENEW A CONTRACT**
27 **TO CERTIFY THAT THE PERSON IS NOT INCLUDED ON A LIST CREATED IN**
28 **ACCORDANCE WITH § 13-502 OF THIS SUBTITLE OR ANOTHER SIMILAR LIST**
29 **CREATED BY THE FEDERAL GOVERNMENT.**

1 **(B) THE CERTIFICATION REQUIRED UNDER SUBSECTION (A) OF THIS**
2 **SECTION SHALL:**

3 **(1) BE MADE AT THE TIME A BID OR PROPOSAL IS SUBMITTED OR**
4 **A CONTRACT IS RENEWED; AND**

5 **(2) BE EXECUTED ON BEHALF OF THE APPLICABLE PERSON OR BY**
6 **AN AUTHORIZED OFFICER OR REPRESENTATIVE OF THE PERSON.**

7 **(C) IF A PERSON IS UNABLE TO CERTIFY THAT THE PERSON DOES NOT**
8 **ENGAGE IN INVESTMENT ACTIVITY IN IRAN, THE PERSON SHALL PROVIDE TO**
9 **THE UNIT, UNDER PENALTY OF PERJURY, A DETAILED DESCRIPTION OF THE**
10 **PERSON'S INVESTMENT ACTIVITIES IN IRAN.**

11 **(D) A CERTIFICATION OR DISCLOSURE PROVIDED TO A UNIT UNDER**
12 **THIS SECTION SHALL BE MADE PUBLIC.**

13 **13-504.**

14 **(A) IF BY USING CREDIBLE INFORMATION AVAILABLE TO THE PUBLIC, A**
15 **UNIT DETERMINES THAT A PERSON MAY HAVE FALSELY CERTIFIED THAT THE**
16 **PERSON DOES NOT ENGAGE IN INVESTMENT ACTIVITY IN IRAN, THE UNIT SHALL**
17 **PROVIDE THE PERSON WITH WRITTEN NOTICE THAT THE PERSON MAY SUBMIT**
18 **WRITTEN DOCUMENTATION WITHIN 30 DAYS TO THE UNIT DEMONSTRATING**
19 **THAT THE PERSON IS NOT ENGAGED IN OR HAS CEASED TO ENGAGE IN**
20 **INVESTMENT ACTIVITIES IN IRAN.**

21 **(B) IF A PERSON FAILS TO DEMONSTRATE TO THE UNIT THAT THE**
22 **PERSON IS NOT ENGAGED IN OR HAS CEASED TO ENGAGE IN INVESTMENT**
23 **ACTIVITIES IN IRAN, THE UNIT MAY DETERMINE THAT THE PERSON HAS**
24 **SUBMITTED A FALSE CERTIFICATION.**

25 **(C) A PERSON THAT SUBMITS A FALSE CERTIFICATION IS:**

26 **(1) LIABLE FOR A CIVIL PENALTY IN AN AMOUNT THAT IS EQUAL**
27 **TO THE GREATER OF \$1,000,000 OR TWICE THE AMOUNT OF THE CONTRACT FOR**
28 **WHICH THE FALSE CERTIFICATION WAS MADE; AND**

29 **(2) INELIGIBLE TO BID ON A CONTRACT FOR A PERIOD OF 3**
30 **YEARS AFTER THE DATE OF THE DETERMINATION THAT THE PERSON**
31 **SUBMITTED THE FALSE CERTIFICATION.**

1 **(D) (1) A UNIT MAY NOT AWARD A PROCUREMENT CONTRACT TO A**
2 **PERSON THAT SUBMITS A FALSE CERTIFICATION.**

3 **(2) A UNIT MAY TERMINATE AN EXISTING CONTRACT WITH A**
4 **PERSON THAT SUBMITTED A FALSE CERTIFICATION.**

5 **13-505.**

6 **(A) THIS SUBTITLE SHALL BE CONSTRUED LIBERALLY WITH REGARD TO**
7 **ALL PROCUREMENT CONTRACTS FOR GOODS OR SERVICES WITH A PERSON**
8 **ENGAGED IN INVESTMENT ACTIVITIES IN IRAN.**

9 **(B) THIS SUBTITLE SHALL PREEMPT ANY LOCAL LAW.**

10 **16-203.**

11 **(E) A PERSON MAY BE DEBARRED FROM ENTERING INTO A CONTRACT**
12 **WITH THE STATE IF, AT THE TIME OF BID OR PROPOSAL FOR A NEW CONTRACT**
13 **OR RENEWAL OF AN EXISTING CONTRACT, THE PERSON IS INCLUDED ON A LIST**
14 **CREATED TO IDENTIFY PERSONS THAT ENGAGE IN INVESTMENT ACTIVITIES IN**
15 **IRAN IN ACCORDANCE WITH § 13-502 OF THIS ARTICLE.**

16 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the
17 General Assembly to implement the authority granted under Section 202 of the
18 Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 June 1, 2012.