

AMENDMENTS TO HOUSE BILL NO. 1692

Sponsor: REPRESENTATIVE BRADFORD

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1 Amend Bill, page 1, line 3, by inserting after "expiration"
2 ; and providing for North Korea-free procurement

3 Amend Bill, page 2, by inserting between lines 2 and 3

4 Section 2. Title 62 is amended by adding a chapter to read:

5 CHAPTER 35A

6 NORTH KOREA-FREE PROCUREMENT

7 Sec.

8 35A01. Definitions.

9 35A02. Engaging in investment activities.

10 35A03. List of persons engaged in investment activities.

11 35A04. Certification.

12 35A05. Penalties for false certification.

13 35A06. Expiration.

14 § 35A01. Definitions.

15 The following words and phrases when used in this chapter
16 shall have the meanings given to them in this section unless the
17 context clearly indicates otherwise:

18 "Department." The Department of General Services of the
19 Commonwealth.

20 "Energy-related activities." The term includes all of the
21 following:

22 (1) Development of petroleum, natural gas or nuclear
23 energy resources. This paragraph does not include the mere
24 sale of gasoline and related consumer products.

25 (2) Owning rights to oil or natural gas blocks or
26 nuclear facilities.

27 (3) Exporting, extracting, producing, refining,
28 processing, exploring for, transporting, selling or trading
29 oil or natural gas or developing nuclear energy.

30 (4) Constructing, maintaining or operating any pipeline,
31 refinery, liquefaction facility, nuclear reactor or other
32 oil, natural gas or nuclear energy infrastructure.

33 "Financial institution." A financial institution subject to
34 the provisions of the North Korea Sanctions and Policy
35 Enhancement Act of 2016 (Public Law 114-122, 22 U.S.C. § 9201 et
36 seq.).

37 "North Korea." The government of North Korea or an agency or

1 instrumentality of North Korea.

2 "Person." An individual, organization, a financial
3 institution, sole proprietorship, association, corporation,
4 partnership, joint venture, limited partnership, limited
5 liability partnership, limited liability company or other entity
6 or business association that exists for the purpose of making a
7 profit or government entity that includes a multilateral
8 development institution as defined in section 1701 of the
9 International Financial Institutions Act (Public Law 95-118, 22
10 U.S.C. § 262r).

11 § 35A02. Engaging in investment activities.

12 A person or financial institution engages in an investment
13 activity by doing any of the following:

14 (1) Providing goods or services worth at least
15 \$20,000,000, including oil tankers or transporters and
16 liquefied natural gas tankers or transporters, to the energy-
17 related activities of North Korea, or products used to
18 construct or maintain pipelines used to transport oil or
19 liquefied natural gas for the energy sector of North Korea.

20 (2) Extending at least \$20,000,000 in credit to a person
21 for 45 days or more if all of the following apply:

22 (i) The person uses the credit to provide goods or
23 services to the energy sector in North Korea.

24 (ii) The person is, at the time the financial
25 institution or person extends credit, identified on a
26 list created under section 35A03 (relating to list of
27 persons engaged in investment activities).

28 § 35A03. List of persons engaged in investment activities.

29 (a) List.--The department shall develop a list of persons
30 whom the department determines are engaged in investment
31 activities in North Korea as described in section 35A02
32 (relating to engaging in investment activities). The department
33 shall make its determination based on publicly available,
34 credible information. The department shall update the list every
35 180 days. Ninety days prior to adding a person to the list, the
36 department shall do all of the following:

37 (1) Provide notice to the person of the department's
38 intention to add the person to the list. The notice shall
39 inform the person that inclusion on the list makes the person
40 ineligible to enter into a contract with a Commonwealth
41 entity for goods or services worth at least \$1,000,000. The
42 notice shall specify that if the person ceases to engage in
43 investment activities in North Korea, the person may regain
44 eligibility upon removal from the list.

45 (2) Provide the person an opportunity to comment in
46 writing to the department. The person shall maintain
47 eligibility if the person demonstrates no engagement in
48 investment activities in North Korea.

49 (b) Ineligibility of persons on list.--A person identified
50 on a list under subsection (a) shall be ineligible to enter into
51 a contract with a Commonwealth entity to provide for goods or

1 services worth at least \$1,000,000.

2 (c) List.--The department shall post the list on its
3 publicly accessible Internet website. Upon request, the
4 department shall provide the list free of charge to the General
5 Assembly or a public entity.

6 (d) Investment service contracts.--Service contracts entered
7 into by Commonwealth entities for the management and investment
8 of a fund for which there is a fiduciary responsibility and for
9 which compliance with the act of July 2, 2010 (P.L.266, No.44),
10 known as the Protecting Pennsylvania's Investments Act, is
11 required, shall be exempt from the provisions of this chapter.

12 (e) Exception.--On a case-by-case basis, the department may
13 permit a person engaging in investment activities in North Korea
14 to enter a contract with a Commonwealth entity for goods or
15 services worth at least \$1,000,000 if any of the following
16 apply:

17 (1) The investment activities in North Korea were made
18 before and were not expanded after January 1, 2018.

19 (2) The person refrains from entering into new
20 agreements to engage in any future investment activities in
21 North Korea.

22 (3) The department determines that the Commonwealth
23 entity has no other cost-effective method of obtaining the
24 goods or services than entering into a contract with the
25 person.

26 § 35A04. Certification.

27 (a) General rule.--The department shall make available a
28 certification form indicating that a person is not on the list
29 under section 35A03(a) (relating to list of persons engaged in
30 investment activities) and is eligible under this chapter to
31 contract with the Commonwealth. Prior to entering into a
32 contract with a Commonwealth entity, a person shall provide a
33 certification form to the Commonwealth entity unless the person
34 is exempt under section 35A03(e).

35 (b) Right to cure.--

36 (1) If the department determines, using credible
37 information available to the public, that a person has
38 submitted a false certification under subsection (a), the
39 person shall be provided with written notice and an
40 opportunity to demonstrate to the department that the person
41 has ceased its engagement in energy-related activities in
42 North Korea within 90 days of the notice.

43 (2) A person who reasonably demonstrates to the
44 department that the person has ceased its engagement in
45 energy-related activities in North Korea within 90 days after
46 the written notice shall not be subject to the penalties
47 under section 35A05 (relating to penalties for false
48 certification).

49 § 35A05. Penalties for false certification.

50 (a) Penalties.--Subject to the provisions of section
51 35A04(b) (relating to certification), if the department

1 determines that a person has provided a false certification form
2 to a Commonwealth entity under section 35A04, the person shall
3 be subject to the following:

4 (1) A civil penalty in the amount of \$250,000 or twice
5 the amount of the contract, whichever is greater. Only one
6 civil penalty may be imposed upon a person per investment.

7 (2) Suspension of the existing contract with the
8 Commonwealth entity for a period of three years from the date
9 of the determination that the person submitted the false
10 certification. Following the three-year suspension period,
11 the Commonwealth entity or the department may terminate the
12 contract.

13 (b) Report of false certification.--The department shall
14 report to the Attorney General the name of the person who
15 submitted the false certification and the pertinent information
16 that led to the department's determination. No later than three
17 years after the department makes a determination under
18 subsection (a), the Attorney General shall determine whether to
19 bring a civil action against the person to collect the penalty
20 described in subsection (a). If a court determines the person
21 submitted a false certification, the person shall pay all
22 reasonable costs and fees incurred in the civil action.
23 Reasonable costs shall include the reasonable costs incurred by
24 the Commonwealth entity in investigating the authenticity of the
25 certification. Only one civil action against the person may be
26 brought for a false certification on a contract.

27 (c) No private right of action.--Nothing in this section may
28 be construed to create or authorize a private right of action.
29 § 35A06. Expiration.

30 The department shall have no obligations under this chapter
31 with respect to a person engaged in investment activities in
32 North Korea upon the repeal of section 204 of the North Korea
33 Sanctions and Policy Enhancement Act of 2016 (Public Law 114-
34 122, 22 U.S.C. § 9224).

35 Amend Bill, page 2, line 3, by striking out "2" and inserting

36 3

37 Amend Bill, page 2, line 3, by striking out "immediately."

38 and inserting

39 as follows:

40 (1) The addition of 62 Pa.C.S. Ch. 35A shall take effect
41 January 1, 2018.

42 (2) The remainder of this act shall take effect
43 immediately.