

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 201 Session of  
2013

INTRODUCED BY DUNBAR, BLOOM, PICKETT, SAYLOR, TOEPEL, TRUITT,  
METCALFE, D. COSTA, QUINN, KAUFFMAN, SIMMONS, MOUL, SWANGER,  
REESE, R. MILLER, GINGRICH, V. BROWN, MATZIE, LAWRENCE,  
MILNE, GRELL, STERN, BENNINGHOFF, GROVE, GILLEN, EVANKOVICH,  
DENLINGER AND ENGLISH, JANUARY 22, 2013

SENATOR SMUCKER, STATE GOVERNMENT, IN SENATE, AS AMENDED,  
MAY 6, 2014

## AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated  
2 Statutes, in source selection and contract formation, further  
3 providing for competitive sealed proposals; providing for  
4 investment activities in Iran; and imposing civil penalties.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Section 513(e) of Title 62 of the Pennsylvania  
8 Consolidated Statutes is amended to read:

9 § 513. Competitive sealed proposals.

10 \* \* \*

11 (e) Evaluation.--The relative importance of the evaluation  
12 factors shall be fixed prior to opening the proposals. A  
13 Commonwealth agency [is required to] shall invite its  
14 comptroller to participate in the evaluation as a nonvoting  
15 member of any evaluation committee. No individual who has been  
16 employed by an offeror within the preceding two years may

1 participate in the evaluation of proposals.

2 \* \* \*

3 Section 2. The heading of Chapter 35 of Title 62 is amended  
4 to read:

5 CHAPTER 35

6 [(RESERVED)]

7 IRAN FREE PROCUREMENT

8 Section 3. Title 62 is amended by adding sections to read:  
9 § 3501. Definitions.

10 "Department." The Department of General Services of the  
11 Commonwealth.

12 "ENERGY-RELATED ACTIVITIES." THE TERM INCLUDES ALL OF THE <--  
13 FOLLOWING:

14 (1) DEVELOPMENT OF PETROLEUM, NATURAL GAS OR NUCLEAR  
15 ENERGY RESOURCES. THIS PARAGRAPH DOES NOT INCLUDE THE MERE  
16 SALE OF GASOLINE AND RELATED CONSUMER PRODUCTS.

17 (2) OWNING RIGHTS TO OIL OR NATURAL GAS BLOCKS OR  
18 NUCLEAR FACILITIES.

19 (3) EXPORTING, EXTRACTING, PRODUCING, REFINING,  
20 PROCESSING, EXPLORING FOR, TRANSPORTING, SELLING OR TRADING  
21 OIL OR NATURAL GAS OR DEVELOPING NUCLEAR ENERGY.

22 (4) CONSTRUCTING, MAINTAINING OR OPERATING ANY PIPELINE,  
23 REFINERY, LIQUEFACTION FACILITY, NUCLEAR REACTOR OR OTHER  
24 OIL, NATURAL GAS OR NUCLEAR ENERGY INFRASTRUCTURE.

25 "Financial institution." The term as defined in section 14  
26 of the Iran Sanctions Act of 1996 (Public Law 104-172, 50 U.S.C.  
27 § 1701).

28 "Iran." The government of Iran or an agency or  
29 instrumentality of Iran.

30 "Person." An individual, organization, a financial

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

9 § 3502. Engaging in investment activities.

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

12 (1) Providing goods or services worth at least  
13 \$20,000,000, including oil tankers or transporters and  
14 liquefied natural gas tankers or transporters, to the ~~energy~~ <--  
15 ~~sector~~ ENERGY-RELATED ACTIVITIES of Iran, or products used to <--  
16 construct or maintain pipelines used to transport oil or  
17 liquefied natural gas for the energy sector of Iran.

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

20 (i) The person uses the credit to provide goods or  
21 services to the energy sector in Iran.

22 (ii) The person is, AT THE TIME THE FINANCIAL <--  
23 INSTITUTION OR PERSON EXTENDS CREDIT, identified on a  
24 list created under section 3503 (relating to list of  
25 persons engaged in investment activities).

26 § 3503. List of persons engaged in investment activities.

27 (a) List.--The department shall develop a list of persons  
28 whom the department determines are engaged in investment  
29 activities in Iran as described in section 3502 (relating to  
30 engaging in investment activities). The department shall make

1 its determination based on publicly available, credible  
2 information. The department shall update the list every 180  
3 days. Ninety days prior TO adding a person to the list, the <--  
4 department shall do all of the following:

5 (1) Provide notice to the person of the department's  
6 intention to add the person to the list. The notice shall  
7 inform the person that inclusion on the list makes the person  
8 ineligible to enter into a contract with a Commonwealth  
9 entity for goods or services worth at least \$1,000,000. The  
10 notice shall specify that if the person ceases to engage in  
11 investment activities in Iran, the person may regain  
12 eligibility upon removal from the list.

13 (2) Provide the person an opportunity to comment in  
14 writing to the department. The person shall maintain  
15 eligibility if the person demonstrates no engagement in  
16 investment activities in Iran.

17 (b) Ineligibility of persons on list.--A person identified  
18 on a list under subsection (a) shall be ineligible to enter into  
19 a contract with a Commonwealth entity TO PROVIDE for goods or <--  
20 services worth at least \$1,000,000.

21 (c) Fee LIST.--The department may assess a fee to obtain a <--  
22 copy of the list SHALL POST THE LIST ON ITS PUBLICLY ACCESSIBLE <--  
23 INTERNET WEBSITE. Upon request, the department shall provide the  
24 list free of charge to the General Assembly or a public entity.

25 (d) Retirement system investments. A person who enters into <--  
26 a contract with the Public School Employees' Retirement System  
27 or the State Employees' Retirement System shall not be deemed a  
28 person who engages in investment activities in Iran on the basis  
29 of the person's investments with the retirement system.

30 (D) INVESTMENT SERVICE CONTRACTS.--SERVICE CONTRACTS ENTERED <--

1 INTO BY COMMONWEALTH ENTITIES FOR THE MANAGEMENT AND INVESTMENT  
2 OF A FUND FOR WHICH THERE IS A FIDUCIARY RESPONSIBILITY AND FOR  
3 WHICH COMPLIANCE WITH THE ACT OF JULY 2, 2010 (P.L.266, NO.44),  
4 KNOWN AS THE PROTECTING PENNSYLVANIA'S INVESTMENTS ACT, IS  
5 REQUIRED, SHALL BE EXEMPT FROM THE PROVISIONS OF THIS CHAPTER.

6 (e) Exception.--On a case-by-case basis, the department may  
7 permit a person engaging in investment activities in Iran to  
8 enter a contract with a Commonwealth entity for goods or  
9 services worth at least \$1,000,000 if ~~all~~ ANY of the following <--  
10 apply:

11 (1) The investment activities in Iran were made before  
12 and were not expanded after July 1, ~~2010~~ 2015. <--

13 (2) The person refrains from engaging in any future  
14 investment activities in Iran.

15 (3) The department determines that the Commonwealth  
16 entity has no other method of obtaining the goods or services  
17 than entering into a contract with the person.

18 § 3504. Certification.

19 (A) GENERAL RULE.--The department shall make available a <--  
20 certification form indicating that a person is not on the list  
21 under section 3503(a) (relating to list of persons engaged in  
22 investment activities) and is eligible under this chapter to  
23 contract with the Commonwealth. Prior to entering into a  
24 contract with a Commonwealth entity, a person shall provide a  
25 certification form to the Commonwealth entity, unless the person  
26 is exempt under section 3503(e).

27 (B) RIGHT TO CURE.-- <--

28 (1) IF THE DEPARTMENT DETERMINES, USING CREDIBLE  
29 INFORMATION AVAILABLE TO THE PUBLIC, THAT A PERSON HAS  
30 SUBMITTED A FALSE CERTIFICATION UNDER SUBSECTION (A), THE

1 PERSON SHALL BE PROVIDED WITH WRITTEN NOTICE AND AN  
2 OPPORTUNITY TO DEMONSTRATE TO THE DEPARTMENT THAT THE PERSON  
3 HAS CEASED ITS ENGAGEMENT IN ENERGY-RELATED ACTIVITIES IN  
4 IRAN WITHIN 90 DAYS OF THE NOTICE.

5 (2) A PERSON WHO REASONABLY DEMONSTRATES TO THE  
6 DEPARTMENT THAT THE PERSON HAS CEASED ITS ENGAGEMENT IN  
7 ENERGY-RELATED ACTIVITIES IN IRAN WITHIN 90 DAYS AFTER THE  
8 WRITTEN NOTICE SHALL NOT BE SUBJECT TO THE PENALTIES UNDER  
9 SECTION 3505 (RELATING TO PENALTIES FOR FALSE CERTIFICATION.)

10 § 3505. Penalties for false certification.

11 (a) Penalties.--~~Upon determination by~~ SUBJECT TO THE <--  
12 PROVISIONS OF SECTION 3504(B) (RELATING TO CERTIFICATION), IF  
13 the department that a person has provided a false certification  
14 form to a Commonwealth entity under section 3504 ~~(relating to~~ <--  
15 certification), the person shall be subject to the following:

16 (1) A civil penalty in the amount of \$250,000 or twice  
17 the amount of the ~~investment~~ CONTRACT, whichever is greater. <--  
18 Only one civil penalty may be imposed upon a person per  
19 investment.

20 (2) Termination of the existing contract with the  
21 Commonwealth entity for a period of three years from the date  
22 of the determination that the person submitted the false  
23 certification. Following the three-year period, the  
24 Commonwealth entity or the department may permanently  
25 terminate the contract.

26 (b) Report of false certification.--The department shall  
27 report to the Attorney General the name of the person who  
28 submitted the false certification and the pertinent information  
29 that led to the department's determination. No later than three  
30 years after the department makes a determination under

1 subsection (a), the Attorney General shall determine whether to  
2 bring a civil action against the person to collect the penalty  
3 described in subsection (a). If a court determines the person  
4 submitted a false certification, the person shall pay all  
5 reasonable costs and fees incurred in the civil action.  
6 Reasonable costs shall include the reasonable costs incurred by  
7 the Commonwealth entity in investigating the authenticity of the  
8 certification. Only one civil action against the person may be  
9 brought for a false certification on a contract.

10 (c) No private right of action.--Nothing in this section may  
11 be construed to create or authorize a private right of action.

12 § 3506. Expiration.

13 The department shall have no obligations under this chapter  
14 with respect to a company engaged in business activities in Iran  
15 upon the occurrence of any of the following:

16 (1) Iran does not appear on the List of State Sponsors  
17 of Terrorism.

18 (2) The President or Congress of the United States,  
19 through legislation or executive order, declares that  
20 mandatory divestment of the type provided for in this chapter  
21 interferes with the conduct of United States foreign policy.

22 Section 4. This act shall take effect as follows:

23 (1) The amendment of 62 Pa.C.S. Ch. 35 shall take effect  
24 ~~January 1, 2014, or immediately, whichever is later.~~ JULY 1, <--  
25 2015.

26 (2) This section shall take effect immediately.

27 (3) The remainder of this act shall take effect in 60  
28 days.