January 20, 2012

SENATE BILL No. 231

DIGEST OF SB 231 (Updated January 17, 2012 12:31 pm - DI 103)

Citations Affected: IC 4-13.6; IC 5-13; IC 5-16; IC 5-22; IC 5-23; IC 8-23; IC 21-37; IC 36-1.

Synopsis: Contracting with persons that invest in Iran. Provides that agencies of state government, state educational institutions, and political subdivisions may not enter into contracts with persons that engage in investment activities in Iran. Provides that a financial institution may not be designated as a public depository if the financial institution engages in investment activities in Iran. Requires the Indiana department of administration, using credible information available to the public, to establish a list of persons who engage in investment activities in Iran. Provides for the inclusion of persons on the list and the removal of persons from the list.

Effective: July 1, 2012.

Wyss, Young R Michael, Broden,
Delph, Merritt, Becker, Lanane,
Rogers

January 4, 2012, read first time and referred to Committee on Homeland Security, Transportation and Veterans Affairs.
January 19, 2012, reported favorably — Do Pass.

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January 20, 2012

Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

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SENATE BILL No. 231

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-13.6-6-5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 5. (a) IC 5-22-16.5 (Disqualification of Contractors Dealing with the Government of Iran) applies to the awarding of contracts, including contracts for professional services, under this article.**

(b) For purposes of applying IC 5-22-16.5 to contracts awarded under this article, the following apply:

(1) A reference to an "offer" in IC 5-22-16.5 refers to:

(A) a bid for a contract; or

(B) a proposal to provide professional services;

under this article.

(2) A person may not be awarded a contract under this article if the person would be disqualified from being awarded a contract under IC 5-22-16.5.

(3) The procedures, rights, and application of penalties described in IC 5-22-16.5 shall be applied in the context of this

article so that the public policy of IC 5-22-16.5 and this article are both implemented.

SECTION 2. IC 5-13-8-14 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 14. A financial institution may not be designated as a depository under this chapter if the financial institution would be disqualified from being awarded a contract under IC 5-22-16.5.**

SECTION 3. IC 5-16-1-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 9. (a) IC 5-22-16.5 (Disqualification of Contractors Dealing with the Government of Iran) applies to the awarding of contracts, including contracts for professional services, under this article.**

(b) For purposes of applying IC 5-22-16.5 to contracts awarded under this article, the following apply:

(1) A reference to an "offer" in IC 5-22-16.5 refers to:

(A) a bid for a public works contract; or

(B) a proposal to provide professional services;

under this article.

(2) A person may not be awarded a contract under this article if the person would be disqualified from being awarded a contract under IC 5-22-16.5.

(3) The procedures, rights, and application of penalties described in IC 5-22-16.5 shall be applied in the context of this article so that the public policy of IC 5-22-16.5 and this article are both implemented.

SECTION 4. IC 5-22-16.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Chapter 16.5. Disqualification of Contractors Dealing with the Government of Iran

Sec. 1. This chapter does not apply if federal law ceases to authorize the states to adopt and enforce provisions relating to public contracting such as those in this chapter.

Sec. 2. As used in this chapter, "department" refers to the Indiana department of administration created by IC 4-13-1-2.

Sec. 3. As used in this chapter, "energy sector of Iran" includes any activity to develop petroleum or natural gas resources or nuclear power in Iran.

Sec. 4. As used in this chapter, "financial institution" has the meaning set forth in Section 14 of the Iran Sanctions Act of 1996 (Public Law 104-172, 50 U.S.C. 1701 note), as in effect on January

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1, 2012.

Sec. 5. As used in this chapter, "Iran" includes the government of Iran and any agency or instrumentality of the government of Iran.

Sec. 6. As used in this chapter, "list" refers to the list developed under section 9 of this chapter.

Sec. 7. For purposes of this chapter, "person" includes a successor to, or an affiliate of, the person.

Sec. 8. (a) For purposes of this chapter, a person engages in investment activities in Iran if either of the following is true:

(1) The person provides goods or services of twenty million dollars ($20,000,000) or more in value in the energy sector of Iran, including providing any of the following for the energy sector of Iran:

(A) Oil or liquified natural gas tankers.

(B) Products used to construct or maintain pipelines used to transport oil or liquified natural gas.

(2) The person is a financial institution that extends twenty million dollars ($20,000,000) or more in credit to another person, for forty-five (45) days or more, if that other person:

(A) will use the credit to provide goods or services in the energy sector in Iran; and

(B) is a person identified on the list as a person engaging in investment activities in Iran under subdivision (1).

(b) A person's investment contract with the Indiana public retirement system may not be used as the basis for making a determination under this chapter that the person is engaged in investment activities in Iran.

Sec. 9. (a) Not later than July 1, 2012, the department, using credible information available to the public, shall develop a list of persons the department determines to be engaged in investment activities in Iran.

(b) The department may enter into contracts for the development of the list.

(c) The list must be updated not later than every one hundred eighty (180) days.

(d) The department shall publish the list on the department's Internet web site.

(e) The department shall make every effort to avoid erroneous inclusion of a person on the list.

Sec. 10. (a) Before the department publishes the list under section 9 of this chapter, the department shall do the following:

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(1) Provide ninety (90) days advance written notice to any person of the department's intent to include that person on the list. The notice required by this subdivision must include the following information:

(A) A statement that a person's inclusion on the list would make the person nonresponsible for purposes of:

(i) submitting an offer in response to a solicitation;

(ii) submitting a bid, offer, or proposal relating to a public works project; or

(iii) otherwise entering into or renewing a contract to provide supplies or services;

with the state or a political subdivision.

(B) A statement that the person will be removed from the list if the person ceases engaging in investment activities in Iran.

(C) A statement that the person's status as nonresponsible with respect to this chapter ends when the person's name is removed from the list.

(2) Provide a person that is to be placed on the list an opportunity to demonstrate in writing to the department that the person is not engaged in investment activities in Iran.

(b) If a person demonstrates to the department that the person is not engaged in investment activities in Iran, the department may not include the person on the list.

Sec. 11. (a) Except as provided in section 12 of this chapter, a person that is placed on the list is considered nonresponsible for purposes of:

(1) submitting an offer in response to a solicitation;

(2) submitting a bid, offer, or proposal relating to a public works project; or

(3) otherwise entering into or renewing a contract to provide supplies or services;

with the state or a political subdivision.

(b) Except as provided in section 12 of this chapter, a person's status as nonresponsible under this chapter ends when the person's name is removed from the list.

Sec. 12. (a) Section 11 of this chapter does not apply to the award of a particular contract to a person if either subdivision (1) or subdivision (2) applies:

(1) The purchasing agency awarding the contract finds in writing that all of the following are true:

(A) The person's investment activities in Iran were made

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before July 1, 2012.

(B) The person's investment activities in Iran have not been expanded or renewed after July 1, 2012.

(C) The purchasing agency determines that it is in the best interest of the purchasing agency's governmental body to enter into the contract with the person.

(D) The person has adopted and publicized and is implementing a formal plan to:

(i) cease investment activities in Iran; and

(ii) refrain from engaging in any new investments in Iran.

(2) Either of the following applies:

(A) If the governmental body awarding the contract is a political subdivision, the executive of the political subdivision makes a written finding that the governmental body would be unable to obtain the supplies or services for which the solicitation is made unless a contract is awarded to the person.

(B) If the governmental body is a state agency, the governor makes a finding that the state would be unable to obtain the supplies or services for which the solicitation is made unless a contract is awarded to the person.

(b) A finding made under subsection (a) must be in writing and shall be placed in the contract file.

Sec. 13. (a) This section does not apply if a finding made under section 12 of this chapter is placed in the contract file.

(b) At the time a contract is awarded or renewed, the person that is being awarded or has the contract must certify in writing to the governmental body awarding or renewing the contract that the person is not engaged in investment activities in Iran.

(c) The certification required by this section shall be placed in the contract file.

Sec. 14. (a) If a purchasing agency, using credible information available to the public, determines that a certification given by a person to the purchasing agency's governmental body under section 13(b) of this chapter is false, the purchasing agency shall:

(1) notify the person in writing of the purchasing agency's determination that the certification is false; and

(2) give the person ninety (90) days within which to respond to the written notice.

(b) If the person fails to demonstrate to the purchasing agency that the person has ceased the person's investment activities in Iran

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within ninety (90) days after the notice is given to the person under subsection (a), the following apply:

(1) The purchasing agency shall report to the attorney general the following:

(A) The name of the person that the purchasing agency has determined to have submitted a false certification.

(B) The information upon which the purchasing agency has made its determination.

The attorney general shall determine whether to bring a civil action under this section against the person.

(2) If the purchasing agency is a political subdivision, the purchasing agency may also provide the information described in subdivision (1) to an attorney representing the political subdivision. An attorney representing the political subdivision may bring a civil action under this section against the person if the attorney general declines to bring a civil action against the person under this chapter.

(3) If it is determined in a civil action under this section that the person submitted a false certification, the following apply:

(A) The court may impose on the person a civil penalty of two hundred fifty thousand dollars ($250,000).

(B) The person shall pay all reasonable costs incurred in the action, including the following:

(i) Costs incurred by the governmental body in the investigations that led to the purchasing agency's finding that the person filed a false certification.

(ii) Reasonable attorney's fees and other litigation costs incurred by the governmental body.

(C) The purchasing agency may terminate the contract with the governmental body with respect to which the false certification was made.

(D) The purchasing agency may consider the person nonresponsible for purposes of the awarding of any contracts by the governmental body for not more than three (3) years after the date of the purchasing agency's determination under subsection (a).

(c) A civil action brought under this section must be filed not later than three (3) years after the purchasing agency makes the determination under subsection (a).

(d) A person other than the governmental body, including an unsuccessful offeror, may not:

(1) bring a civil action under this section;

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(2) file a bid protest; or

(3) bring any other kind of action;

based on the purchasing agency's determination of a false certification under subsection (a).

(e) This section does not create a private right of action for the imposition of the penalties provided for in this section.

SECTION 5. IC 5-23-1-5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 5. (a) IC 5-22-16.5 (Disqualification of Contractors Dealing with the Government of Iran) applies to the awarding of contracts, including contracts for professional services, under this article.**

(b) A person may not be awarded a contract under this article if the person would be disqualified from being awarded a contract under IC 5-22-16.5.

SECTION 6. IC 8-23-9-59 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 59. (a) IC 5-22-16.5 (Disqualification of Contractors Dealing with the Government of Iran) applies to the awarding of contracts, including contracts for professional services, under this article.**

(b) For purposes of applying IC 5-22-16.5 to contracts awarded under this article, the following apply:

(1) A reference to an "offer" in IC 5-22-16.5 refers to:

(A) a bid for a contract; or

(B) a proposal to provide professional services;

under this article.

(2) A person may not be awarded a contract under this article if the person would be disqualified from being awarded a contract under IC 5-22-16.5.

(3) The procedures, rights, and application of penalties described in IC 5-22-16.5 shall be applied in the context of this article so that the public policy of IC 5-22-16.5 and this article are both implemented.

SECTION 7. IC 21-37-7 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Chapter 7. Disqualification of Contractors Dealing with the Government of Iran

Sec. 1. IC 5-22-16.5 (Disqualification of Contractors Dealing with the Government of Iran) applies to the awarding of contracts, including contracts for professional services, under this title.

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Sec. 2. For purposes of applying IC 5-22-16.5 to contracts awarded under this title, the following apply:

(1) A reference to an "offer" in IC 5-22-16.5 refers to:

(A) a bid for a contract; or

(B) a proposal to provide professional services;

under this title.

(2) A person may not be awarded a contract under this title if the person would be disqualified from being awarded a contract under IC 5-22-16.5.

(3) The procedures, rights, and application of penalties described in IC 5-22-16.5 shall be applied in the context of this title so that the public policy of IC 5-22-16.5 and this title are both implemented.

SECTION 8. IC 36-1-12-23 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 23. (a) IC 5-22-16.5 (Disqualification of Contractors Dealing with the Government of Iran) applies to the awarding of contracts, including contracts for professional services, under this chapter.**

(b) For purposes of applying IC 5-22-16.5 to contracts awarded under this chapter, the following apply:

(1) A reference to an "offer" in IC 5-22-16.5 refers to:

(A) a bid for a contract; or

(B) a proposal to provide professional services;

under this chapter.

(2) A person may not be awarded a contract under this chapter if the person would be disqualified from being awarded a contract under IC 5-22-16.5.

(3) The procedures, rights, and application of penalties described in IC 5-22-16.5 shall be applied in the context of this chapter so that the public policy of IC 5-22-16.5 and this chapter are both implemented.

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COMMITTEE REPORT

Madam President: The Senate Committee on Homeland Security, Transportation and Veterans Affairs, to which was referred Senate Bill No. 231, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 231 as introduced.)

WYSS, Chairperson

Committee Vote: Yeas 7, Nays 0.

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