

S T A T E O F N E W Y O R K

8668--A

2011-2012 Regular Sessions

I N A S S E M B L Y

October 27, 2011

Introduced by M. of A. SILVER, FARRELL, CANESTRARI, LAVINE, WEINSTEIN, ENGLEBRIGHT, GLICK, MORELLE, P. RIVERA, CAHILL -- Multi-Sponsored by -- M. of A. ABINANTI, BENEDETTO, BRAUNSTEIN, BRINDISI, COLTON, COOK, CRESPO, CYMBROWITZ, DINOWITZ, ESPINAL, GABRYSZAK, GOLDFEDER, GOTTFRIED, HOOPER, JACOBS, JAFFEE, LANCMAN, LATIMER, LIFTON, LINARES, LUPARDO, MAGEE, MAISEL, MARKEY, McENENY, NOLAN, ORTIZ, PAULIN, PEOPLES-STOKES, REILLY, ROBERTS, RYAN, SCARBOROUGH, SCHIMEL, SIMANOWITZ, SIMOTAS, SPANO, SWEENEY, THIELE, TITONE, WEISENBERG, ZEBROWSKI -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state finance law and the general municipal law, in relation to enacting the Iran divestment act of 2012

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. This act shall be known and may be cited as the "Iran
- 2 Divestment Act of 2012".
- 3 S 2. The legislature hereby finds and declares all of the following:
- 4 (a) Congress and the President have determined that the illicit nucle-
- 5 ar activities of the Government of Iran, combined with its development
- 6 of unconventional weapons and ballistic missiles, and its support of
- 7 international terrorism, represent a serious threat to the security of
- 8 the United States, Israel, and other United States allies in Europe, the
- 9 Middle East, and around the world.
- 10 (b) The International Atomic Energy Agency has repeatedly called
- 11 attention to Iran's unlawful nuclear activities, and, as a result, the
- 12 United Nations Security Council has adopted a range of sanctions
- 13 designed to encourage the government of Iran to cease those activities
- 14 and comply with its obligations under the Treaty on the Non-Prolifera-
- 15 tion of Nuclear Weapons (commonly known as the "Nuclear Non-Prolifera-
- 16 tion Treaty").

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

LBD13338-12-1

A. 8668--A

2

- 1 (c) On July 1, 2010, President Barack Obama signed into law H.R.
- 2 2194, the "Comprehensive Iran Sanctions, Accountability, and Divestment
- 3 Act of 2010" (Public Law 111-195), which expressly authorizes states and
- 4 local governments to prevent investment in, including prohibiting entry
- 5 into or renewing contracts with, companies operating in Iran's energy
- 6 sector with investments that have the result of directly or indirectly
- 7 supporting the efforts of the government of Iran to achieve nuclear
- 8 weapons capability.
- 9 (d) The serious and urgent nature of the threat from Iran demands that
- 10 states, local governments, and private institutions work together with
- 11 the federal government and American allies to do everything possible
- 12 diplomatically, politically, and economically to prevent Iran from

13 acquiring a nuclear weapons capability.
 14 (e) Respect for human rights in Iran has steadily deteriorated as
 15 demonstrated by transparently fraudulent elections and the brutal
 16 repression and murder, arbitrary arrests, and show trials of peaceful
 17 dissidents.

18 (f) The concerns of the state of New York regarding Iran are strictly
 19 the result of the actions of the government of Iran and should not be
 20 construed as enmity towards the Iranian people.

21 (g) In order to effectively address the need for the governments of
 22 this state to respond to the policies of Iran in a uniform fashion,
 23 prohibiting contracts with persons engaged in investment activities in
 24 the energy sector of Iran must be accomplished on a statewide basis.

25 (h) It is the intent of the legislature to fully implement the author-
 26 ity granted under Section 202 of the Comprehensive Iran Sanctions,
 27 Accountability, and Divestment Act of 2010 (Public Law 111-195).

28 S 3. The state finance law is amended by adding a new section 165-a to
 29 read as follows:

30 S 165-A. IRAN DIVESTMENT. 1. AS USED IN THIS SECTION, THE FOLLOWING
 31 DEFINITIONS SHALL APPLY:

32 (A) "ENERGY SECTOR" OF IRAN MEANS ACTIVITIES TO DEVELOP PETROLEUM OR
 33 NATURAL GAS RESOURCES OR NUCLEAR POWER IN IRAN.

34 (B) "FINANCIAL INSTITUTION" MEANS THE TERM AS USED IN SECTION 14 OF
 35 THE IRAN SANCTIONS ACT OF 1996 (PUBLIC LAW 104-172; 50 U.S.C. 1701
 36 NOTE).

37 (C) "INVESTMENT" MEANS A COMMITMENT OR CONTRIBUTION OF FUNDS OR PROP-
 38 erty, A LOAN OR OTHER EXTENSION OF CREDIT; AND THE ENTRY INTO OR RENEWAL
 39 OF A CONTRACT FOR GOODS OR SERVICES.

40 (D) "IRAN" INCLUDES THE GOVERNMENT OF IRAN AND ANY AGENCY OR INSTRU-
 41 MENTALITY OF IRAN.

42 (E) "PERSON" MEANS ANY OF THE FOLLOWING:

43 (1) A NATURAL PERSON, CORPORATION, COMPANY, LIMITED LIABILITY COMPANY,
 44 BUSINESS ASSOCIATION, PARTNERSHIP, SOCIETY, TRUST, OR ANY OTHER NONGOV-
 45 ERNMENTAL ENTITY, ORGANIZATION, OR GROUP.

46 (2) ANY GOVERNMENTAL ENTITY OR INSTRUMENTALITY OF A GOVERNMENT,
 47 INCLUDING A MULTILATERAL DEVELOPMENT INSTITUTION, AS DEFINED IN SECTION
 48 1701(C)(3) OF THE INTERNATIONAL FINANCIAL INSTITUTIONS ACT (22 U.S.C.
 49 262R(C)(3)).

50 (3) ANY SUCCESSOR, SUBUNIT, PARENT ENTITY, OR SUBSIDIARY OF, OR ANY
 51 ENTITY UNDER COMMON OWNERSHIP OR CONTROL WITH, ANY ENTITY DESCRIBED IN
 52 SUBPARAGRAPH ONE OR TWO OF THIS PARAGRAPH.

53 2. FOR PURPOSES OF THIS SECTION, A PERSON ENGAGES IN INVESTMENT ACTIV-
 54 ITIES IN IRAN IF:

55 (A) THE PERSON PROVIDES GOODS OR SERVICES OF TWENTY MILLION DOLLARS OR
 56 MORE IN THE ENERGY SECTOR OF IRAN, INCLUDING A PERSON THAT PROVIDES OIL
 A. 8668--A

3

1 OR LIQUEFIED NATURAL GAS TANKERS, OR PRODUCTS USED TO CONSTRUCT OR MAIN-
 2 TAIN PIPELINES USED TO TRANSPORT OIL OR LIQUEFIED NATURAL GAS, FOR THE
 3 ENERGY SECTOR OF IRAN; OR

4 (B) THE PERSON IS A FINANCIAL INSTITUTION THAT EXTENDS TWENTY MILLION
 5 DOLLARS OR MORE IN CREDIT TO ANOTHER PERSON, FOR FORTY-FIVE DAYS OR
 6 MORE, IF THAT PERSON WILL USE THE CREDIT TO PROVIDE GOODS OR SERVICES IN
 7 THE ENERGY SECTOR IN IRAN AND IS IDENTIFIED ON A LIST CREATED PURSUANT
 8 TO PARAGRAPH (B) OF SUBDIVISION THREE OF THIS SECTION AS A PERSON ENGAG-
 9 ING IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN PARAGRAPH (A) OF
 10 THIS SUBDIVISION.

11 3. (A) A PERSON THAT IS IDENTIFIED ON A LIST CREATED PURSUANT TO PARA-
 12 GRAPH (B) OF THIS SUBDIVISION AS A PERSON ENGAGING IN INVESTMENT ACTIV-
 13 ITIES IN IRAN AS DESCRIBED IN SUBDIVISION TWO OF THIS SECTION, SHALL NOT
 14 BE DEEMED A RESPONSIVE BIDDER OR OFFERER PURSUANT TO SECTION ONE HUNDRED
 15 SIXTY-THREE OF THIS ARTICLE.

16 (B) (1) NOT LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE
 17 DATE OF THIS SECTION, THE COMMISSIONER SHALL DEVELOP OR CONTRACT TO
 18 DEVELOP, USING CREDIBLE INFORMATION AVAILABLE TO THE PUBLIC, A LIST OF
 19 PERSONS IT DETERMINES ENGAGE IN INVESTMENT ACTIVITIES IN IRAN AS
 20 DESCRIBED IN SUBDIVISION TWO OF THIS SECTION. IF THE COMMISSIONER HAS

21 CONTRACTED TO DEVELOP THE LIST, THE LIST SHALL BE FINALLY DEVELOPED NOT
 22 LATER THAN ONE HUNDRED TWENTY DAYS AFTER THIS SECTION SHALL TAKE EFFECT.
 23 SUCH LIST, WHEN COMPLETED, SHALL BE POSTED ON THE WEBSITE OF THE OFFICE
 24 OF GENERAL SERVICES.

25 (2) THE COMMISSIONER SHALL UPDATE THE LIST EVERY ONE HUNDRED EIGHTY
 26 DAYS.

27 (3) BEFORE FINALIZING AN INITIAL LIST PURSUANT TO SUBPARAGRAPH ONE OF
 28 THIS PARAGRAPH OR AN UPDATED LIST PURSUANT TO SUBPARAGRAPH TWO OF THIS
 29 PARAGRAPH, THE COMMISSIONER SHALL DO ALL OF THE FOLLOWING BEFORE A
 30 PERSON IS INCLUDED ON THE LIST:

31 (A) PROVIDE NINETY DAYS' WRITTEN NOTICE OF THE COMMISSIONER'S INTENT
 32 TO INCLUDE THE PERSON ON THE LIST. THE NOTICE SHALL INFORM THE PERSON
 33 THAT INCLUSION ON THE LIST WOULD MAKE THE PERSON A NON-RESPONSIVE BIDDER
 34 OR OFFERER. THE NOTICE SHALL SPECIFY THAT THE PERSON, IF IT CEASES ITS
 35 ENGAGEMENT IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN SUBDIVISION
 36 TWO OF THIS SECTION, MAY BE REMOVED FROM THE LIST.

37 (B) THE COMMISSIONER SHALL PROVIDE A PERSON WITH AN OPPORTUNITY TO
 38 COMMENT IN WRITING THAT IT IS NOT ENGAGED IN INVESTMENT ACTIVITIES IN
 39 IRAN. IF THE PERSON DEMONSTRATES TO THE COMMISSIONER THAT THE PERSON IS
 40 NOT ENGAGED IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN SUBDIVISION
 41 TWO OF THIS SECTION, THE PERSON SHALL NOT BE INCLUDED ON THE LIST.

42 (4) THE COMMISSIONER SHALL MAKE EVERY EFFORT TO AVOID ERRONEOUSLY
 43 INCLUDING A PERSON ON THE LIST.

44 (5) A PERSON THAT HAS A CONTRACT WITH THE NEW YORK STATE COMMON
 45 RETIREMENT FUND, THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT
 46 SYSTEM, THE NEW YORK STATE AND LOCAL POLICE AND FIRE RETIREMENT SYSTEM,
 47 OR THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM, SHALL NOT BE DEEMED A
 48 PERSON THAT ENGAGES IN INVESTMENT ACTIVITIES IN IRAN AS DESCRIBED IN
 49 SUBDIVISION TWO OF THIS SECTION ON THE BASIS OF THOSE CONTRACTS OR
 50 INVESTMENTS WITH SUCH RETIREMENT SYSTEMS, PROVIDED HOWEVER, THAT NOTHING
 51 IN THIS SUBPARAGRAPH SHALL PREVENT THE NEW YORK STATE COMMON RETIREMENT
 52 FUND, THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM, NEW
 53 YORK STATE AND LOCAL POLICE AND FIRE RETIREMENT SYSTEM OR THE NEW YORK
 54 STATE TEACHERS' RETIREMENT SYSTEM FROM PURSUING A POLICY OF DIVESTMENT
 55 IN THE IRANIAN ECONOMY.

A. 8668--A

4

1 (C) NOTWITHSTANDING PARAGRAPH (A) OF THIS SUBDIVISION, A STATE AGENCY
 2 MAY PERMIT A PERSON ENGAGED IN INVESTMENT ACTIVITIES IN IRAN AS
 3 DESCRIBED BY SUBDIVISION TWO OF THIS SECTION TO BE DEEMED A RESPONSIVE
 4 BIDDER OR OFFERER, ON A CASE-BY-CASE BASIS WITH A STATE AGENCY IF:

5 (1) THE INVESTMENT ACTIVITIES IN IRAN WERE MADE BEFORE THE EFFECTIVE
 6 DATE OF THIS SECTION, THE INVESTMENT ACTIVITIES IN IRAN HAVE NOT BEEN
 7 EXPANDED OR RENEWED AFTER THE EFFECTIVE DATE OF THIS SECTION, AND THE
 8 PERSON HAS ADOPTED, PUBLICIZED, AND IS IMPLEMENTING A FORMAL PLAN TO
 9 CEASE THE INVESTMENT ACTIVITIES IN IRAN AND TO REFRAIN FROM ENGAGING IN
 10 ANY NEW INVESTMENTS IN IRAN; OR

11 (2) THE STATE AGENCY MAKES A DETERMINATION THAT THE COMMODITIES OR
 12 SERVICES ARE NECESSARY FOR THE STATE AGENCY TO PERFORM ITS FUNCTIONS AND
 13 THAT, ABSENT SUCH AN EXEMPTION, THE STATE AGENCY WOULD BE UNABLE TO
 14 OBTAIN THE COMMODITIES OR SERVICES FOR WHICH THE CONTRACT IS OFFERED.
 15 SUCH DETERMINATION SHALL BE ENTERED INTO THE PROCUREMENT RECORD.

16 4. (A) A STATE AGENCY SHALL REQUIRE A PERSON THAT SUBMITS A BID OR
 17 OFFER IN RESPONSE TO A NOTICE OF PROCUREMENT, OR THAT PROPOSES TO RENEW
 18 AN EXISTING PROCUREMENT CONTRACT WITH A STATE AGENCY OR PROPOSES TO
 19 ASSUME THE RESPONSIBILITY OF A CONTRACTOR PURSUANT TO A PROCUREMENT
 20 CONTRACT WITH A STATE AGENCY OR OTHERWISE PROPOSES TO ENTER INTO A
 21 CONTRACT WITH A STATE AGENCY WITH RESPECT TO A CONTRACT FOR COMMODITIES,
 22 SERVICES, CONSTRUCTION, OR CONTRACTS ENTERED PURSUANT TO SECTIONS SIX
 23 AND SEVEN OF THE NEW YORK STATE PRINTING AND PUBLIC DOCUMENTS LAW,
 24 SECTION EIGHT OF THE PUBLIC BUILDINGS LAW, OR SECTION THIRTY-EIGHT OF
 25 THE HIGHWAY LAW, TO CERTIFY, AT THE TIME THE BID IS SUBMITTED OR THE
 26 CONTRACT IS RENEWED OR ASSIGNED, THAT THE PERSON OR THE ASSIGNEE IS NOT
 27 IDENTIFIED ON A LIST CREATED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION
 28 THREE OF THIS SECTION. A STATE AGENCY SHALL INCLUDE CERTIFICATION INFOR-
 29 MATION IN THE PROCUREMENT RECORD.

30 (B) A PERSON THAT SUBMITS A BID OR OFFER IN RESPONSE TO A NOTICE OF
 31 PROCUREMENT OR THAT PROPOSES TO RENEW AN EXISTING PROCUREMENT CONTRACT
 32 WITH A STATE AGENCY OR PROPOSES TO ASSUME THE RESPONSIBILITY OF A
 33 CONTRACTOR PURSUANT TO A PROCUREMENT CONTRACT WITH A STATE AGENCY, OR
 34 OTHERWISE PROPOSES TO ENTER INTO A CONTRACT WITH A STATE AGENCY WITH
 35 RESPECT TO A CONTRACT FOR COMMODITIES, SERVICES, CONSTRUCTION, OR
 36 CONTRACTS ENTERED PURSUANT TO SECTIONS SIX AND SEVEN OF THE NEW YORK
 37 STATE PRINTING AND PUBLIC DOCUMENTS LAW, SECTION EIGHT OF THE PUBLIC
 38 BUILDINGS LAW, OR SECTION THIRTY-EIGHT OF THE HIGHWAY LAW SHALL NOT
 39 UTILIZE, ON THE CONTRACT WITH THE STATE AGENCY, ANY SUBCONTRACTOR THAT
 40 IS IDENTIFIED ON A LIST CREATED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION
 41 THREE OF THIS SECTION.

42 5. UPON RECEIVING INFORMATION THAT A PERSON WHO HAS MADE THE CERTIF-
 43 ICATION REQUIRED BY SUBDIVISION FOUR OF THIS SECTION IS IN VIOLATION
 44 THEREOF, THE STATE AGENCY SHALL REVIEW SUCH INFORMATION AND OFFER THE
 45 PERSON AN OPPORTUNITY TO RESPOND. IF THE PERSON FAILS TO DEMONSTRATE
 46 THAT IS HAS CEASED ITS ENGAGEMENT IN THE INVESTMENT WHICH IS IN
 47 VIOLATION OF THIS ACT WITHIN NINETY DAYS AFTER THE DETERMINATION OF SUCH
 48 VIOLATION, THEN THE STATE AGENCY SHALL TAKE SUCH ACTION AS MAY BE APPRO-
 49 PRIATE AND PROVIDED FOR BY LAW, RULE OR CONTRACT, INCLUDING, BUT NOT
 50 LIMITED TO, IMPOSING SANCTIONS, SEEKING COMPLIANCE, RECOVERING DAMAGES
 51 OR DECLARING THE CONTRACTOR IN DEFAULT.

52 6. THE COMMISSIONER SHALL REPORT TO THE GOVERNOR AND THE LEGISLATURE
 53 ANNUALLY ON OR BEFORE OCTOBER FIRST, ON THE STATUS OF THE FEDERAL
 54 "COMPREHENSIVE IRAN SANCTIONS, ACCOUNTABILITY, AND DIVESTMENT ACT OF
 55 2010" (PUBLIC LAW 111-195), "THE IRAN DIVESTMENT ACT OF 2012", AND ANY
 56 RULES OR REGULATIONS ADOPTED THEREUNDER.

A. 8668--A

5

1 S 4. The general municipal law is amended by adding a new section
 2 103-g to read as follows:

3 S 103-G. IRANIAN ENERGY SECTOR DIVESTMENT. 1. AS USED IN THIS
 4 SECTION:

5 A. "ENERGY SECTOR" SHALL HAVE THE SAME MEANING AS DEFINED IN PARAGRAPH
 6 (A) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FIVE-A OF THE STATE
 7 FINANCE LAW.

8 B. "FINANCIAL INSTITUTION" SHALL HAVE THE SAME MEANING AS DEFINED IN
 9 PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FIVE-A OF
 10 THE STATE FINANCE LAW.

11 C. "INVESTMENT" SHALL HAVE THE SAME MEANING AS DEFINED IN PARAGRAPH
 12 (C) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FIVE-A OF THE STATE
 13 FINANCE LAW.

14 D. "IRAN" SHALL HAVE THE SAME MEANING AS DEFINED IN PARAGRAPH (D) OF
 15 SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FIVE-A OF THE STATE FINANCE
 16 LAW.

17 E. "PERSON" SHALL HAVE THE SAME MEANING AS DEFINED IN PARAGRAPH (E)
 18 OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FIVE-A OF THE STATE
 19 FINANCE LAW.

20 2. FOR PURPOSES OF THIS SECTION, A PERSON ENGAGES IN INVESTMENT ACTIV-
 21 ITIES IN IRAN IF:

22 A. THE PERSON PROVIDES GOODS OR SERVICES OF TWENTY MILLION DOLLARS OR
 23 MORE IN THE ENERGY SECTOR OF IRAN, INCLUDING A PERSON THAT PROVIDES OIL
 24 OR LIQUEFIED NATURAL GAS TANKERS, OR PRODUCTS USED TO CONSTRUCT OR MAIN-
 25 TAIN PIPELINES USED TO TRANSPORT OIL OR LIQUEFIED NATURAL GAS, FOR THE
 26 ENERGY SECTOR OF IRAN; OR

27 B. THE PERSON IS A FINANCIAL INSTITUTION THAT EXTENDS TWENTY MILLION
 28 DOLLARS OR MORE IN CREDIT TO ANOTHER PERSON, FOR FORTY-FIVE DAYS OR
 29 MORE, IF THAT PERSON WILL USE THE CREDIT TO PROVIDE GOODS OR SERVICES IN
 30 THE ENERGY SECTOR IN IRAN.

31 3. A PERSON THAT IS IDENTIFIED ON A LIST CREATED PURSUANT TO PARAGRAPH
 32 (B) OF SUBDIVISION THREE OF SECTION ONE HUNDRED SIXTY-FIVE-A OF THE
 33 STATE FINANCE LAW AS A PERSON ENGAGING IN INVESTMENT ACTIVITIES IN IRAN
 34 AS DESCRIBED IN SUBDIVISION TWO OF THIS SECTION, SHALL NOT BE DEEMED A
 35 RESPONSIBLE BIDDER OR OFFERER PURSUANT TO SECTION ONE HUNDRED THREE OF
 36 THIS ARTICLE.

37 4. EVERY BID OR PROPOSAL HEREAFTER MADE TO A POLITICAL SUBDIVISION OF

38 THE STATE OR ANY PUBLIC DEPARTMENT, AGENCY OR OFFICIAL THEREOF WHERE
39 COMPETITIVE BIDDING IS REQUIRED BY STATUTE, RULE, REGULATION OR LOCAL
40 LAW, FOR WORK OR SERVICES PERFORMED OR TO BE PERFORMED OR GOODS SOLD OR
41 TO BE SOLD, SHALL CONTAIN THE FOLLOWING STATEMENT SUBSCRIBED BY THE
42 BIDDER AND AFFIRMED BY SUCH BIDDER AS TRUE UNDER THE PENALTIES OF PERJU-
43 RY:

44 A. "BY SUBMISSION OF THIS BID, EACH BIDDER AND EACH PERSON SIGNING ON
45 BEHALF OF ANY BIDDER CERTIFIES, AND IN THE CASE OF A JOINT BID EACH
46 PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF
47 PERJURY, THAT TO THE BEST OF ITS KNOWLEDGE AND BELIEF THAT EACH BIDDER
48 IS NOT ON THE LIST CREATED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION 3 OF
49 SECTION 165-A OF THE STATE FINANCE LAW."

50 B. NOTWITHSTANDING PARAGRAPH A OF THIS SUBDIVISION, THE STATEMENT OF
51 NON-INVESTMENT IN THE IRANIAN ENERGY SECTOR MAY BE SUBMITTED ELECTRON-
52 ICALLY IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION ONE OF SECTION
53 ONE HUNDRED THREE OF THIS ARTICLE.

54 C. A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE
55 WHERE THE CONDITION SET FORTH IN PARAGRAPH A OF THIS SUBDIVISION HAS NOT
56 BEEN COMPLIED WITH; PROVIDED, HOWEVER, THAT IF IN ANY CASE THE BIDDER
A. 8668--A

6

1 CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND
2 SHALL FURNISH WITH THE BID A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL
3 THE REASONS THEREFOR. A POLITICAL SUBDIVISION MAY AWARD A BID TO A
4 BIDDER WHO CANNOT MAKE THE CERTIFICATION PURSUANT TO PARAGRAPH A OF THIS
5 SUBDIVISION ON A CASE-BY-CASE BASIS IF:

6 (1) THE INVESTMENT ACTIVITIES IN IRAN WERE MADE BEFORE THE EFFECTIVE
7 DATE OF THIS SECTION, THE INVESTMENT ACTIVITIES IN IRAN HAVE NOT BEEN
8 EXPANDED OR RENEWED AFTER THE EFFECTIVE DATE OF THIS SECTION, AND THE
9 PERSON HAS ADOPTED, PUBLICIZED, AND IS IMPLEMENTING A FORMAL PLAN TO
10 CEASE THE INVESTMENT ACTIVITIES IN IRAN AND TO REFRAIN FROM ENGAGING IN
11 ANY NEW INVESTMENTS IN IRAN; OR

12 (2) THE POLITICAL SUBDIVISION MAKES A DETERMINATION THAT THE GOODS OR
13 SERVICES ARE NECESSARY FOR THE POLITICAL SUBDIVISION TO PERFORM ITS
14 FUNCTIONS AND THAT, ABSENT SUCH AN EXEMPTION, THE POLITICAL SUBDIVISION
15 WOULD BE UNABLE TO OBTAIN THE GOODS OR SERVICES FOR WHICH THE CONTRACT
16 IS OFFERED. SUCH DETERMINATION SHALL BE MADE IN WRITING AND SHALL BE A
17 PUBLIC DOCUMENT.

18 S 5. The secretary of state shall submit to the attorney general of
19 the United States a written notice describing this act within 30 days
20 after the effective date of this act.

21 S 6. Severability. If any clause, sentence, paragraph, section or part
22 of this act shall be adjudged by any court of competent jurisdiction to
23 be invalid and after exhaustion of all further judicial review, the
24 judgment shall not affect, impair or invalidate the remainder thereof,
25 but shall be confined in its operation to the clause, sentence, para-
26 graph, section or part of this act directly involved in the controversy
27 in which the judgment shall have been rendered.

28 S 7. This act shall take effect on the ninetieth day after it shall
29 have become a law; provided, however, that effective immediately, the
30 addition, amendment and/or repeal of any rule or regulation necessary
31 for the implementation of this act on its effective date are authorized
32 and directed to be made and completed on or before such effective date.