

The Senate Judiciary Committee offered the following substitute to SB 406:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia  
2 Annotated, relating to general authority, duties, and procedures relative to the Department  
3 of Administrative Services, so as to regulate persons engaging in investment activities in  
4 Iran; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated,  
8 relating to general authority, duties, and procedures relative to the Department of  
9 Administrative Services, is amended by adding a new Code section to read as follows:

10 "50-5-85.

11 (a) As used in this Code section, the term:

12 (1) 'Department' means the Department of Administrative Services.

13 (2) 'Energy sector of Iran' includes any activity to develop petroleum or natural gas  
14 resources or nuclear power in Iran.

15 (3) 'Financial institution' has the meaning set forth in Section 14 of the Iran Sanctions  
16 Act of 1996 (Public Law 104-172, 50 U.S.C. Section 1701 note), as in effect on January  
17 1, 2012.

18 (4) 'Iran' includes the government of Iran and any agency or instrumentality of the  
19 government of Iran.

20 (5) 'List' refers to the list developed under subsection (d) of this Code section.

21 (6) 'Person' includes a successor to, or an affiliate of, the person.

22 (b) For purposes of this Code section, a person engages in investment activities in Iran if  
23 either of the following is true:

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

- 26 (A) Oil or liquefied natural gas tankers; or  
27 (B) Products used to construct or maintain pipelines used to transport oil or liquefied  
28 natural gas; or  
29 (2) The person is a financial institution that extends \$20 million or more in credit to  
30 another person, for 45 days or more, if that other person:  
31 (A) Will use the credit to provide goods or services in the energy sector of Iran; and  
32 (B) Is, at the time the financial institution extends credit, a person identified on the list  
33 as a person engaging in investment activities in Iran under paragraph (1) of this  
34 subsection.
- 35 (c) A person's investment contract with any public retirement system under Title 47 shall  
36 not be used as the basis for making a determination under this Code section that the person  
37 is engaged in investment activities in Iran.
- 38 (d)(1) Not later than July 1, 2015, the department, using credible information available  
39 to the public, shall develop a list of persons the department determines to be engaged in  
40 investment activities in Iran.
- 41 (2) The department may enter into contracts for the development of the list.  
42 (3) The list must be updated not later than every 180 days.  
43 (4) The department shall publish the list on the department's Internet website.  
44 (5) The department shall make every effort to avoid erroneous inclusion of a person on  
45 the list.
- 46 (e) Before the department publishes the list under subsection (d) of this Code section, the  
47 department shall do the following:  
48 (1) Provide 90 days' advance written notice to any person of the department's intent to  
49 include that person on the list. The notice required by this paragraph must include the  
50 following information:  
51 (A) A statement that a person's inclusion on the list would make the person  
52 nonresponsible for purposes of:  
53 (i) Submitting an offer in response to a solicitation;  
54 (ii) Submitting a bid, offer, or proposal relating to a public works project; or  
55 (iii) Otherwise entering into or renewing a contract to provide supplies or services  
56 with the state or a political subdivision;  
57 (B) A statement that the person will be removed from the list if the person ceases  
58 engaging in investment activities in Iran; and  
59 (C) A statement that the person's status as nonresponsible with respect to this Code  
60 section ends when the person's name is removed from the list; and

- 61 (2) Provide a person that is to be placed on the list an opportunity to demonstrate in  
62 writing to the department that the person is not engaged in investment activities in Iran.
- 63 (f) If a person demonstrates to the department that the person is not engaged in investment  
64 activities in Iran, the department shall not include the person on the list.
- 65 (g) Except as provided in subsection (i) of this Code section, a person that is placed on the  
66 list is considered nonresponsible for purposes of:
- 67 (1) Submitting an offer in response to a solicitation;  
68 (2) Submitting a bid, offer, or proposal relating to a public works project; or  
69 (3) Otherwise entering into or renewing a contract to provide supplies or services with  
70 the state or a political subdivision.
- 71 (h) Except as provided in subsection (i) of this Code section, a person's status as  
72 nonresponsible under this Code section shall end when the person's name is removed from  
73 the list.
- 74 (i) Subsection (g) of this Code section shall not apply to the award of a particular contract  
75 to a person if:
- 76 (1) The purchasing agency awarding the contract finds in writing that all of the following  
77 are true:
- 78 (A) The person's investment activities in Iran were made before July 1, 2015;  
79 (B) The person's investment activities in Iran have not been expanded or renewed after  
80 July 1, 2015;  
81 (C) The purchasing agency determines that it is in the best interest of the purchasing  
82 agency's governmental body to enter into the contract with the person; and  
83 (D) The person has adopted and publicized and is implementing a formal plan to:  
84 (i) Cease investment activities in Iran; and  
85 (ii) Refrain from engaging in any new investments in Iran; or
- 86 (2) Either of the following applies:
- 87 (A) If the governmental body awarding the contract is a political subdivision, the  
88 executive of the political subdivision makes a written finding that the governmental  
89 body would be unable to obtain the supplies or services for which the solicitation is  
90 made unless a contract is awarded to the person; or  
91 (B) If the governmental body is a state agency, the Governor makes a finding that the  
92 state would be unable to obtain the supplies or services for which the solicitation is  
93 made unless a contract is awarded to the person.
- 94 (j) A finding made under subsection (i) of this Code section shall be in writing and shall  
95 be placed in the contract file.

96 (k)(1) This subsection shall not apply if a finding made under subsection (i) of this Code  
 97 section is placed in the contract file.

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

101 (3) The certification required by this subsection shall be placed in the contract file.

102 (l)(1) If a purchasing agency, using credible information available to the public,  
 103 determines that a certification given by a person to the purchasing agency's governmental  
 104 body under paragraph (2) of subsection (k) of this Code section is false, the purchasing  
 105 agency shall:

106 (A) Notify the person in writing of the purchasing agency's determination that the  
 107 certification is false; and

108 (B) Give the person 90 days within which to respond to the written notice.

109 (2) If the person fails to demonstrate to the purchasing agency that the person has ceased  
 110 the person's investment activities in Iran within 90 days after the notice is given to the  
 111 person under paragraph (1) of this subsection, the following apply:

112 (A) The purchasing agency shall report to the Attorney General the following:

113 (i) The name of the person that the purchasing agency has determined to have  
 114 submitted a false certification; and

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

116 The Attorney General shall determine whether to bring a civil action under this Code  
 117 section against the person;

118 (B) If the purchasing agency is a political subdivision, the political subdivision may  
 119 bring a civil action under this subsection against the person if the Attorney General  
 120 declines to bring a civil action against the person under this Code section;

121 (C) If it is determined in a civil action under this subsection that the person submitted  
 122 a false certification, the following apply:

123 (i) The court may impose on the person a civil penalty of \$250,000.00;

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

126 (I) Costs incurred by the governmental body in the investigations that led to the  
 127 purchasing agency's finding that the person filed a false certification; and

128 (II) Reasonable attorney's fees and other litigation costs incurred by the  
 129 governmental body;

130 (iii) The purchasing agency may terminate the contract with the governmental body  
 131 with respect to which the false certification was made; and

132 (iv) The purchasing agency may consider the person nonresponsible for purposes of  
133 the awarding of any contracts by the governmental body for not more than three years  
134 after the date of the purchasing agency's determination under paragraph (1) of this  
135 subsection.

136 (3) A civil action brought under this subsection must be filed not later than three years  
137 after the purchasing agency makes the determination under paragraph (1) of this  
138 subsection.

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

141 (A) Bring a civil action under this subsection;

142 (B) File a bid protest; or

143 (C) Bring any other kind of action based on the purchasing agency's determination of  
144 a false certification under paragraph (1) of this subsection.

145 (5) This subsection does not create a private right of action for the imposition of the  
146 penalties provided for in this Code section."

147 **SECTION 2.**

148 All laws and parts of laws in conflict with this Act are repealed.