

# STATE OF NEW YORK

8446

## IN SENATE

March 1, 2022

Introduced by Sen. REICHLIN-MELNICK -- read twice and ordered printed,  
and when printed to be committed to the Committee on Procurement and  
Contracts

AN ACT to amend the state finance law and the retirement and social  
security law, in relation to enacting the "stop Russian aggression  
act"

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "stop Russian aggression act".

3 § 2. The state finance law is amended by adding a new section 165-b to  
4 read as follows:

5 § 165-b. Purchasing restrictions; persons doing business with or in  
6 the Russian federation. 1. As used in this section, the following terms  
7 shall have the following meanings:

8 (a) "Person" means:

9 (i) A natural person, corporation, company, limited liability company,  
10 business, business association, partnership, society, trust, or any  
11 other nongovernmental entity, organization, or group.

12 (ii) Any successor, subunit, parent entity, or subsidiary of, or any  
13 entity under common ownership or control with, any entity described in  
14 subparagraph (i) of this paragraph.

15 (b) "Doing business with or in the Russian federation" means engaging  
16 in any activity or transaction for the purpose of financial or pecuniary  
17 gain or profit with the Russian federation or persons based in or with  
18 locations in the Russian federation or in territories controlled by the  
19 Russian federation.

20 2. (a) A person that is identified on a list created pursuant to para-  
21 graph (b) of this subdivision as a person that is doing business with or  
22 in the Russian federation as described in subdivision one of this  
23 section, shall not be deemed a responsive bidder or offeror pursuant to  
24 section one hundred sixty-three of this article.

25 (b) (i) Not later than one hundred twenty days after the effective  
26 date of this section, the commissioner shall develop or contract to

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

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1 develop, using credible information available to the public, including  
2 but not limited to information provided by non-profit organizations,  
3 research firms, international organizations and government entities, a  
4 list of persons it determines is doing business with or in the Russian  
5 federation as described in subdivision one of this section. If the  
6 commissioner has contracted to develop the list, the list shall be  
7 finally developed not later than one hundred twenty days after the  
8 effective date of this section. Such list, when completed, shall be  
9 posted on the website of the office of general services. A statement by  
10 a person or representative of a person with apparent authority to make  
11 such a statement, that it is doing business with or in the Russian  
12 federation, shall be considered as evidence that a company is doing  
13 business with or in the Russian federation. The commissioner may  
14 exclude from the list persons who engage in activities or transactions  
15 of nominal or negligible value.

16 (ii) The commissioner shall update the list every one hundred eighty  
17 days.

18 (iii) Before finalizing an initial list pursuant to subparagraph (i)  
19 of this paragraph or an updated list pursuant to subparagraph (ii) of  
20 this paragraph, the commissioner shall do all of the following:

21 (1) Provide ninety days' written notice of the commissioner's intent  
22 to include the person on the list. The notice shall inform the person  
23 that inclusion on the list would make the person a non-responsive bidder  
24 or offeror. The notice shall specify the business activities as  
25 described in subdivision one of this section, and provide that such  
26 person may apply to the commissioner, or to a supreme court, to be  
27 removed from such list pursuant to the requirements of this paragraph,  
28 if it ceases such activities;

29 (2) In the event a person included by the commissioner on the list to  
30 be developed and published in accordance with this paragraph, demon-  
31 strates to the commissioner or to a supreme court that such person is  
32 not engaged in such business activities as described in subdivision one  
33 of this section, or has ceased such business activities, the commission-  
34 er shall remove such person from the list developed and published in  
35 accordance with this paragraph; and

36 (3) The commissioner shall make a good faith effort to avoid including  
37 a person on the list who is not doing business with or in the Russian  
38 federation.

39 (c) Notwithstanding paragraphs (a) and (b) of this subdivision, a  
40 state agency may permit a person doing business with or in the Russian  
41 federation as described by subdivision one of this section to be deemed  
42 a responsive bidder or offeror, on a case-by-case basis with a state  
43 agency if:

44 (i) The business activities were made before the effective date of  
45 this section, such activities have not been expanded or renewed after  
46 the effective date of this section, and the person has adopted, publi-  
47 cized, and is implementing a plan to cease such activities and to  
48 refrain from engaging in any new business activities; or

49 (ii) The state agency makes a determination that the commodities or  
50 services are necessary for the state agency to perform its functions and  
51 that, absent such an exemption, the state agency would be unable to  
52 obtain the commodities or services for which the contract is offered.  
53 Such determination shall be entered into the procurement record.

54 3. (a) A state agency shall require a person that submits a bid or  
55 offer in response to a notice of procurement, or that proposes to renew  
56 an existing procurement contract with a state agency or proposes to

1 assume the responsibility of a contractor pursuant to a procurement  
2 contract with a state agency or otherwise proposes to enter into a  
3 contract with a state agency with respect to a contract for commodities,  
4 services, construction, or contracts entered pursuant to section eight  
5 of the public buildings law or section thirty-eight of the highway law,  
6 to certify, at the time the bid is submitted or the contract is renewed  
7 or assigned, that the person or the assignee is not identified on a list  
8 created pursuant to paragraph (b) of subdivision two of this section. A  
9 state agency shall include certification information in the procurement  
10 record.

11 (b) A person that submits a bid or offer in response to a notice of  
12 procurement or that proposes to renew an existing procurement contract  
13 with a state agency or proposes to assume the responsibility of a  
14 contractor pursuant to a procurement contract with a state agency, or  
15 otherwise proposes to enter into a contract with a state agency with  
16 respect to a contract for commodities, services, construction, or  
17 contracts entered pursuant to section eight of the public buildings law  
18 or section thirty-eight of the highway law shall not utilize, on the  
19 contract with the state agency, any subcontractor that is identified on  
20 a list created pursuant to paragraph (b) of subdivision two of this  
21 section.

22 4. Upon receiving information that a person who has made the certif-  
23 ication required by subdivision three of this section is in violation  
24 thereof, the state agency shall review such information and offer the  
25 person an opportunity to respond. If the person fails to demonstrate  
26 that it has ceased its business activities which are in violation of  
27 this act within ninety days after the determination of such violation,  
28 then the state agency shall take such action as may be appropriate and  
29 provided for by law, rule or contract, including, but not limited to,  
30 imposing sanctions, seeking compliance, recovering damages or declaring  
31 the contractor in default.

32 5. The commissioner shall report to the governor, comptroller, the  
33 temporary president of the senate and the speaker of the assembly annu-  
34 ally on or before October first, on the status of this section and any  
35 rules or regulations adopted thereunder.

36 § 3. The retirement and social security law is amended by adding a new  
37 section 423-d to read as follows:

38 § 423-d. Russian business divestment. 1. As used in this section:

39 a. "Person" means:

40 (i) A natural person, corporation, company, limited liability company,  
41 business, business association, partnership, society, trust, or any  
42 other nongovernmental entity, organization, or group.

43 (ii) Any successor, subunit, parent entity, or subsidiary of, or any  
44 entity under common ownership or control with, any entity described in  
45 subparagraph (i) of this paragraph.

46 b. "Doing business with or in the Russian federation" means engaging  
47 in any activity or transaction for the purpose of financial or pecuniary  
48 gain or profit with the Russian federation or persons based in or with  
49 locations in the Russian federation or in territories controlled by the  
50 Russian federation.

51 c. "Direct investment" means ownership of an individual stock, securi-  
52 ty, equity, asset, or other obligation of a corporation or company.

53 d. "Exclusion list" means the list created pursuant to paragraph a of  
54 subdivision two of this section.

1 e. "Indirect investment" means a holding in an investment vehicle that  
2 directly or indirectly owns an individual stock, security, equity,  
3 asset, or other obligation of a corporation or company.

4 2. a. Within six months of the effective date of this section, the  
5 comptroller shall create an exclusion list of all persons doing business  
6 with or in the Russian federation in whose stocks, securities, equities,  
7 assets, or other obligations the common retirement fund has any moneys  
8 or assets directly invested.

9 b. Upon completion of the exclusion list, it shall be made publicly  
10 available, and a copy shall be sent to the temporary president of the  
11 senate and the speaker of the assembly.

12 c. The comptroller shall submit notification to any person that has  
13 been included in the exclusion list informing them of their inclusion,  
14 as well as the requirements of subdivisions three and five of this  
15 section.

16 d. At the comptroller's discretion, but no later than two years after  
17 the completion of the exclusion list, and no less frequently than annu-  
18 ally thereafter, the comptroller shall update the exclusion list to  
19 remove any person that is no longer doing business with or in the  
20 Russian federation, and add any person necessary to comply with para-  
21 graph a of this subdivision, with the exception of such persons removed  
22 from the exclusion list pursuant to paragraph b of subdivision four of  
23 this section.

24 3. a. At any time following the publication of the exclusion list, any  
25 person included in the list may submit to the comptroller a request for  
26 removal on the basis of clear and convincing evidence that they are not  
27 currently doing business with or in the Russian federation as defined in  
28 subdivision one of this section or that they will no longer meet such  
29 definition by January first, two thousand thirty.

30 b. Upon satisfaction that a person has met the requirements of para-  
31 graph a of this subdivision, the comptroller shall remove that corpo-  
32 ration or company from the exclusion list, and provide a written expla-  
33 nation for such removal to the temporary president of the senate and the  
34 speaker of the assembly.

35 4. a. Within six months from the completion of the exclusion list the  
36 comptroller shall issue a determination as to whether divestment from  
37 any or all persons on the exclusion list, in whole or in part, pursuant  
38 to subdivision five of this section complies with his or her fiduciary  
39 obligations and the prudent investor rule as defined by section 11-2.3  
40 of the estates, powers and trusts law. The comptroller shall make such  
41 determination publicly available and a copy shall be sent to the tempo-  
42 rary president of the senate and the speaker of the assembly.

43 b. If the comptroller determines that divestment from any person on  
44 the exclusion list does not comply with his or her fiduciary obligations  
45 and the prudent investor rule as defined by section 11-2.3 of the  
46 estates, powers and trusts law, that person shall be removed from the  
47 exclusion list.

48 c. At any time, subject to the comptroller's discretion, but no later  
49 than two years from the effective date of this section, and every two  
50 years thereafter, any person removed from the exclusion list pursuant to  
51 paragraph b of this subdivision shall be returned to the exclusion list,  
52 subject to a new determination of prudence issued at that time pursuant  
53 to paragraph a of this subdivision.

54 5. a. Commencing one year after the effective date of this section,  
55 subject to an affirmative determination of prudence pursuant to subdivi-  
56 sion four of this section, and in accordance with sound investment

1 criteria and consistent with his or her fiduciary obligations, the comp-  
2 troller shall: (i) divest the common retirement fund of any stocks,  
3 securities, equities, assets, or other obligations of persons on the  
4 exclusion list in which any moneys or assets of the common retirement  
5 fund are directly invested; and (ii) cease new direct investments of any  
6 moneys or assets of the common retirement fund in any stocks, securi-  
7 ties, or other obligations of any person doing business with or in the  
8 Russian federation.

9 b. Divestment from persons doing business with or in the Russian  
10 federation pursuant to this subdivision shall be completed no later than  
11 two years from the effective date of this section. Divestment from  
12 persons doing business with or in the Russian federation returned to the  
13 exclusion list pursuant to paragraph c of subdivision four of this  
14 section shall be completed no later than two years from the date of  
15 return to the exclusion list.

16 6. Commencing one year after the effective date of this section, and  
17 no later than five years from the effective date of this section,  
18 subject to an affirmative determination of prudence pursuant to subdivi-  
19 sion four of this section, and in accordance with sound investment  
20 criteria and consistent with his or her fiduciary obligations, the comp-  
21 troller shall endeavor to ensure that no moneys or assets of the common  
22 retirement fund are invested in an indirect investment vehicle unless he  
23 or she is satisfied on reasonable grounds that such indirect investment  
24 vehicle is unlikely to have in excess of two percent of its assets,  
25 averaged annually, directly or indirectly invested in persons doing  
26 business with or in the Russian federation.

27 7. Commencing two years after the effective date of this section and  
28 annually thereafter the comptroller shall issue a report to the tempo-  
29 rary president of the senate and the speaker of the assembly, and shall  
30 make such report publicly available, outlining all actions taken to  
31 comply with this section.

32 § 4. This act shall take effect immediately.