

STATE OF NEW YORK

10260

IN ASSEMBLY

May 13, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Smith) --
read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, the general municipal law, the
public authorities law and the retirement and social security law, in
relation to Russia divestment

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

1 Section 1. The state finance law is amended by adding a new section
2 165-b to read as follows:

3 § 165-b. Russia divestment. 1. As used in this section, the following
4 definitions shall apply:

5 (a) "Energy sector" of Russia means activities to develop petroleum or
6 natural gas resources or nuclear power in Russia.

7 (b) "Financial institution" means:

8 (1) a banking organization as defined in subdivision eleven of section
9 two of the banking law;

10 (2) a securities firm, including a broker or dealer;

11 (3) any insurance company, including any company, agent, broker, or
12 underwriter, licensed or regulated by the department of financial
13 services pursuant to the insurance law; and/or

14 (4) any other company that provides a financial product or service as
15 defined in subdivision two of section one hundred four of the financial
16 services law.

17 (c) "Investment" means a commitment or contribution of funds or prop-
18 erty, a loan or other extension of credit; and the entry into or renewal
19 of a contract for goods or services.

20 (d) "Russia" includes the government of Russia and any agency or
21 instrumentality of Russia.

22 (e) "Person" means any of the following:

23 (1) A natural person, corporation, company, limited liability company,
24 business association, partnership, society, trust, or any other nongov-
25 ernmental entity, organization, or group.

26 (2) Any governmental entity or instrumentality of a government,
27 including a multilateral development institution, as defined in Section

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

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1 1701(c)(3) of the International Financial Institutions Act (22 U.S.C.
2 262r(c)(3)).

3 (3) Any successor, subunit, parent entity, or subsidiary of, or any
4 entity under common ownership or control with, any entity described in
5 subparagraph one or two of this paragraph.

6 2. For purposes of this section, a person engages in investment activ-
7 ities in Russia if:

8 (a) The person provides goods or services of twenty million dollars or
9 more in the energy sector of Russia, including a person that provides
10 oil or liquefied natural gas tankers, or products used to construct or
11 maintain pipelines used to transport oil or liquefied natural gas, for
12 the energy sector of Russia; or

13 (b) The person is a financial institution that extends twenty million
14 dollars or more in credit to another person, for forty-five days or
15 more, if that person will use the credit to provide goods or services in
16 the energy sector in Russia and is identified on a list created pursuant
17 to paragraph (b) of subdivision three of this section as a person engag-
18 ing in investment activities in Russia as described in paragraph (a) of
19 this subdivision.

20 3. (a) A person that is identified on a list created pursuant to para-
21 graph (b) of this subdivision as a person engaging in investment activ-
22 ities in Russia as described in subdivision two of this section, shall
23 not be deemed a responsive bidder or offerer pursuant to section one
24 hundred sixty-three of this article.

25 (b) (1) Not later than one hundred twenty days after the effective
26 date of this section, the commissioner shall develop or contract to
27 develop, using credible information available to the public, a list of
28 persons it determines engage in investment activities in Russia as
29 described in subdivision two of this section. If the commissioner has
30 contracted to develop the list, the list shall be finally developed not
31 later than one hundred twenty days after this section shall take effect.
32 Such list, when completed, shall be posted on the website of the office
33 of general services.

34 (2) The commissioner shall update the list every one hundred eighty
35 days.

36 (3) Before finalizing an initial list pursuant to subparagraph one of
37 this paragraph or an updated list pursuant to subparagraph two of this
38 paragraph, the commissioner shall do all of the following before a
39 person is included on the list:

40 (A) Provide ninety days' written notice of the commissioner's intent
41 to include the person on the list. The notice shall inform the person
42 that inclusion on the list would make the person a non-responsive bidder
43 or offerer. The notice shall specify that the person, if it ceases its
44 engagement in investment activities in Russia as described in subdivi-
45 sion two of this section, may be removed from the list.

46 (B) The commissioner shall provide a person with an opportunity to
47 comment in writing that it is not engaged in investment activities in
48 Russia. If the person demonstrates to the commissioner that the person
49 is not engaged in investment activities in Russia as described in subdivi-
50 sion two of this section, the person shall not be included on the
51 list.

52 (4) The commissioner shall make every effort to avoid erroneously
53 including a person on the list.

54 (c) Notwithstanding paragraph (a) of this subdivision, a state agency
55 may permit a person engaged in investment activities in Russia as

1 described by subdivision two of this section to be deemed a responsive
2 bidder or offerer, on a case-by-case basis with a state agency if:

3 (1) The investment activities in Russia were made before the effective
4 date of this section, the investment activities in Russia have not been
5 expanded or renewed after the effective date of this section, and the
6 person has adopted, publicized, and is implementing a formal plan to
7 cease the investment activities in Russia and to refrain from engaging
8 in any new investments in Russia; or

9 (2) The state agency makes a determination that the commodities or
10 services are necessary for the state agency to perform its functions and
11 that, absent such an exemption, the state agency would be unable to
12 obtain the commodities or services for which the contract is offered.
13 Such determination shall be entered into the procurement record.

14 4. (a) A state agency shall require a person that submits a bid or
15 offer in response to a notice of procurement, or that proposes to renew
16 an existing procurement contract with a state agency or proposes to
17 assume the responsibility of a contractor pursuant to a procurement
18 contract with a state agency or otherwise proposes to enter into a
19 contract with a state agency with respect to a contract for commodities,
20 services, construction, or contracts entered pursuant to section seven
21 of the New York state printing and public documents law, section eight
22 of the public buildings law, or section thirty-eight of the highway law,
23 to certify, at the time the bid is submitted or the contract is renewed
24 or assigned, that the person or the assignee is not identified on a list
25 created pursuant to paragraph (b) of subdivision three of this section.
26 A state agency shall include certification information in the procure-
27 ment record.

28 (b) A person that submits a bid or offer in response to a notice of
29 procurement or that proposes to renew an existing procurement contract
30 with a state agency or proposes to assume the responsibility of a
31 contractor pursuant to a procurement contract with a state agency, or
32 otherwise proposes to enter into a contract with a state agency with
33 respect to a contract for commodities, services, construction, or
34 contracts entered pursuant to section seven of the New York state print-
35 ing and public documents law, section eight of the public buildings law,
36 or section thirty-eight of the highway law shall not utilize, on the
37 contract with the state agency, any subcontractor that is identified on
38 a list created pursuant to paragraph (b) of subdivision three of this
39 section.

40 5. Upon receiving information that a person who has made the certif-
41 ication required by subdivision four of this section is in violation
42 thereof, the state agency shall review such information and offer the
43 person an opportunity to respond. If the person fails to demonstrate
44 that is has ceased its engagement in the investment which is in
45 violation of this section within ninety days after the determination of
46 such violation, then the state agency shall take such action as may be
47 appropriate and provided for by law, rule or contract, including, but
48 not limited to, imposing sanctions, seeking compliance, recovering
49 damages or declaring the contractor in default.

50 § 2. The general municipal law is amended by adding a new section
51 103-h to read as follows:

52 § 103-h. Russian energy sector divestment. 1. As used in this section:

53 a. "Energy sector" shall have the same meaning as defined in paragraph
54 (a) of subdivision one of section one hundred sixty-five-b of the state
55 finance law.

1 b. "Financial institution" shall have the same meaning as defined in
2 paragraph (b) of subdivision one of section one hundred sixty-five-b of
3 the state finance law.

4 c. "Investment" shall have the same meaning as defined in paragraph
5 (c) of subdivision one of section one hundred sixty-five-b of the state
6 finance law.

7 d. "Russia" shall have the same meaning as defined in paragraph (d) of
8 subdivision one of section one hundred sixty-five-b of the state finance
9 law.

10 e. "Person" shall have the same meaning as defined in paragraph (e) of
11 subdivision one of section one hundred sixty-five-b of the state finance
12 law.

13 2. For purposes of this section, a person engages in investment activ-
14 ities in Russia if:

15 a. The person provides goods or services of twenty million dollars or
16 more in the energy sector of Russia, including a person that provides
17 oil or liquefied natural gas tankers, or products used to construct or
18 maintain pipelines used to transport oil or liquefied natural gas, for
19 the energy sector of Russia; or

20 b. The person is a financial institution that extends twenty million
21 dollars or more in credit to another person, for forty-five days or
22 more, if that person will use the credit to provide goods or services in
23 the energy sector in Russia.

24 3. A person that is identified on a list created pursuant to paragraph
25 (b) of subdivision three of section one hundred sixty-five-b of the
26 state finance law as a person engaging in investment activities in
27 Russia as described in subdivision two of this section, shall not be
28 deemed a responsible bidder or offerer pursuant to section one hundred
29 three of this article.

30 4. Every bid or proposal hereafter made to a political subdivision of
31 the state or any public department, agency or official thereof where
32 competitive bidding is required by statute, rule, regulation or local
33 law, for work or services performed or to be performed or goods sold or
34 to be sold, shall contain the following statement subscribed by the
35 bidder and affirmed by such bidder as true under the penalties of perju-
36 ry:

37 a. "By submission of this bid, each bidder and each person signing on
38 behalf of any bidder certifies, and in the case of a joint bid each
39 party thereto certifies as to its own organization, under penalty of
40 perjury, that to the best of its knowledge and belief that each bidder
41 is not on the list created pursuant to paragraph (b) of subdivision 3 of
42 section 165-b of the state finance law."

43 b. Notwithstanding paragraph a of this subdivision, the statement of
44 non-investment in the Russian energy sector may be submitted electron-
45 ically in accordance with the provisions of subdivision one of section
46 one hundred three of this article.

47 c. A bid shall not be considered for award nor shall any award be made
48 where the condition set forth in paragraph a of this subdivision has not
49 been complied with; provided, however, that if in any case the bidder
50 cannot make the foregoing certification, the bidder shall so state and
51 shall furnish with the bid a signed statement which sets forth in detail
52 the reasons therefor. A political subdivision may award a bid to a
53 bidder who cannot make the certification pursuant to paragraph a of this
54 subdivision on a case-by-case basis if:

55 (1) The investment activities in Russia were made before the effective
56 date of this section, the investment activities in Russia have not been

1 expanded or renewed after the effective date of this section, and the
2 person has adopted, publicized, and is implementing a formal plan to
3 cease the investment activities in Russia and to refrain from engaging
4 in any new investments in Russia; or

5 (2) The political subdivision makes a determination that the goods or
6 services are necessary for the political subdivision to perform its
7 functions and that, absent such an exemption, the political subdivision
8 would be unable to obtain the goods or services for which the contract
9 is offered. Such determination shall be made in writing and shall be a
10 public document.

11 § 3. The public authorities law is amended by adding a new section
12 2879-d to read as follows:

13 § 2879-d. Russian energy sector divestment. 1. As used in this
14 section:

15 a. "Energy sector" shall have the same meaning as defined in paragraph
16 (a) of subdivision one of section one hundred sixty-five-b of the state
17 finance law.

18 b. "Financial institution" shall have the same meaning as defined in
19 paragraph (b) of subdivision one of section one hundred sixty-five-b of
20 the state finance law.

21 c. "Investment" shall have the same meaning as defined in paragraph
22 (c) of subdivision one of section one hundred sixty-five-b of the state
23 finance law.

24 d. "Russia" shall have the same meaning as defined in paragraph (d) of
25 subdivision one of section one hundred sixty-five-b of the state finance
26 law.

27 e. "Person" shall have the same meaning as defined in paragraph (e) of
28 subdivision one of section one hundred sixty-five-b of the state finance
29 law.

30 2. For purposes of this section, a person engages in investment activ-
31 ities in Russia if:

32 a. The person provides goods or services of twenty million dollars or
33 more in the energy sector of Russia, including a person that provides
34 oil or liquefied natural gas tankers, or products used to construct or
35 maintain pipelines used to transport oil or liquefied natural gas, for
36 the energy sector of Russia; or

37 b. The person is a financial institution that extends twenty million
38 dollars or more in credit to another person, for forty-five days or
39 more, if that person will use the credit to provide goods or services in
40 the energy sector in Russia.

41 3. Notwithstanding any other provision of this chapter or any other
42 law to the contrary, no state or local public authority or an interstate
43 or international authority, or subsidiary thereof, shall enter into any
44 contract for work or services performed or to be performed or goods sold
45 or to be sold, with a person that is identified on a list created pursu-
46 ant to paragraph (b) of subdivision three of section one hundred sixty-
47 five-b of the state finance law as a person engaging in investment
48 activities in Russia as described in subdivision two of this section.

49 4. Notwithstanding any other provision of this chapter or any other
50 law to the contrary, every contract entered into with a state or local
51 public authority or an interstate or international authority for work or
52 services performed or to be performed or goods sold or to be sold, shall
53 contain the following statement subscribed by and affirmed by the person
54 entering into the contract as true under the penalties of perjury:

55 a. "By signing this contract, each person and each person signing on
56 behalf of any other party certifies, and in the case of a joint bid or

1 partnership each party thereto certifies as to its own organization,
2 under penalty of perjury, that to the best of its knowledge and belief
3 that each person is not on the list created pursuant to paragraph (b) of
4 subdivision 3 of section 165-b of the state finance law."

5 b. Notwithstanding paragraph a of this subdivision, the statement of
6 non-investment in the Russian energy sector may be submitted electron-
7 ically.

8 c. A contract shall not be considered nor shall any contract be
9 entered into where the condition set forth in paragraph a of this subdivi-
10 vision has not been complied with; provided, however, that if in any
11 case the person cannot make the foregoing certification, the person
12 shall so state and shall furnish with the contract a signed statement
13 which sets forth in detail the reasons therefor. A public authority may
14 award or enter into a contract with a person who cannot make the certif-
15 ication pursuant to paragraph a of this subdivision on a case-by-case
16 basis if:

17 (1) The investment activities in Russia were made before the effective
18 date of this section, the investment activities in Russia have not been
19 expanded or renewed after the effective date of this section, and the
20 person has adopted, publicized, and is implementing a formal plan to
21 cease the investment activities in Russia and to refrain from engaging
22 in any new investments in Russia; or

23 (2) The public authority makes a determination that the goods or
24 services are necessary for the public authority to perform its functions
25 and that, absent such an exemption, the public authority would be unable
26 to obtain the goods or services for which the contract is offered. Such
27 determination shall be made in writing and shall be a public document.

28 § 4. The retirement and social security law is amended by adding a new
29 section 423-d to read as follows:

30 § 423-d. Investment of certain public funds in companies doing busi-
31 ness in Russia. 1. On and after the effective date of this section, no
32 moneys or assets of the common retirement fund shall be invested in the
33 stocks, securities or other obligations of any institution or company
34 doing business in or with Russia or with agencies or instrumentalities
35 thereof. Notwithstanding any provisions of law to the contrary, no
36 assets of any pension or annuity fund under the jurisdiction of the
37 comptroller, shall be invested in any bank or financial institution
38 which directly or through a subsidiary has outstanding loans to or
39 financial activities in Russia or its instrumentalities and no such
40 assets shall be invested in the stocks, securities or other obligations
41 of any company which directly or through a subsidiary is engaged in
42 business in or with Russia or its instrumentalities.

43 2. The comptroller shall take appropriate action to sell, redeem,
44 divest or withdraw any investment held in violation of the provisions of
45 this section. This section shall not be construed to require the prema-
46 ture or otherwise imprudent sale, redemption, divestment or withdrawal
47 of an investment, but such sale, redemption, divestment or withdrawal
48 shall be completed not later than three years following the effective
49 date of this section.

50 3. Within sixty days after the effective date of this section, the
51 comptroller shall file with the legislature a report of all investments
52 held as of the effective date of this section which are in violation of
53 the provisions of this section. Every year thereafter, the comptroller
54 shall report on all investments sold, redeemed, divested or withdrawn in
55 compliance with this section. Each report after the initial report
56 shall provide a description of the progress which the comptroller has

1 made since the previous report and since the effective date of this
2 section.
3 § 5. This act shall take effect immediately.