

# STATE OF NEW YORK

6525

2023-2024 Regular Sessions

## IN ASSEMBLY

April 13, 2023

Introduced by 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 and the public authorities law, in relation to Russia divestment

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

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

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

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

(b) "Financial institution" means:

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

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

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

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

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

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

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

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

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

LBD01062-02-3

1 (2) Any governmental entity or instrumentality of a government,  
2 including a multilateral development institution, as defined in Section  
3 1701(c)(3) of the International Financial Institutions Act (22 U.S.C.  
4 262r(c)(3)).

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

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

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

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

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

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

36 (2) The commissioner shall update the list every one hundred eighty  
37 days.

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

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

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

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

1 (c) Notwithstanding paragraph (a) of this subdivision, a state agency  
2 may permit a person engaged in investment activities in Russia 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 Russia were made before the effective  
6 date of this section, the investment activities in Russia 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 Russia and to refrain from engaging  
10 in any new investments in Russia; 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 section seven  
23 of the New York state printing and public documents law, section eight  
24 of the public buildings law, or section thirty-eight of the highway law,  
25 to certify, at the time the bid is submitted or the contract is renewed  
26 or assigned, that the person or the assignee is not identified on a list  
27 created pursuant to paragraph (b) of subdivision three of this section.  
28 A state agency shall include certification information in the procure-  
29 ment 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 section seven of the New York state print-  
37 ing and public documents law, section eight of the public buildings law,  
38 or section thirty-eight of the highway law shall not utilize, on the  
39 contract with the state agency, any subcontractor that is identified on  
40 a list created pursuant to paragraph (b) of subdivision three of this  
41 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 section within ninety days after the determination of  
48 such violation, then the state agency shall take such action as may be  
49 appropriate and provided for by law, rule or contract, including, but  
50 not limited to, imposing sanctions, seeking compliance, recovering  
51 damages or declaring the contractor in default.

52 § 2. The general municipal law is amended by adding a new section  
53 103-h to read as follows:

54 § 103-h. Russian energy sector divestment. 1. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 bidder who cannot make the certification pursuant to paragraph a of this  
2 subdivision on a case-by-case basis 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 political subdivision makes a determination that the goods or  
10 services are necessary for the political subdivision to perform its  
11 functions and that, absent such an exemption, the political subdivision  
12 would be unable to obtain the goods or services for which the contract  
13 is offered. Such determination shall be made in writing and shall be a  
14 public document.

15 § 3. The public authorities law is amended by adding a new section  
16 2879-d to read as follows:

17 § 2879-d. Russian energy sector divestment. 1. As used in this  
18 section:

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

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

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

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

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

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

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

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

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

53 4. Notwithstanding any other provision of this chapter or any other  
54 law to the contrary, every contract entered into with a state or local  
55 public authority or an interstate or international authority for work or  
56 services performed or to be performed or goods sold or to be sold, shall

1 contain the following statement subscribed by and affirmed by the person  
2 entering into the contract as true under the penalties of perjury:

3 a. "By signing this contract, each person and each person signing on  
4 behalf of any other party certifies, and in the case of a joint bid or  
5 partnership each party thereto certifies as to its own organization,  
6 under penalty of perjury, that to the best of its knowledge and belief  
7 that each person is not on the list created pursuant to paragraph (b) of  
8 subdivision 3 of section 165-b of the state finance law."

9 b. Notwithstanding paragraph a of this subdivision, the statement of  
10 non-investment in the Russian energy sector may be submitted electron-  
11 ically.

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

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

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

32 § 4. This act shall take effect immediately.