

AMENDED IN SENATE APRIL 7, 2011

SENATE BILL

No. 861

Introduced by Senator Corbett

February 18, 2011

An act to add Section 10490 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 861, as amended, Corbett. Public contracts: ~~state and local~~ contract eligibility: conflict minerals in the Democratic Republic of the Congo.

Existing law authorizes contracting between state agencies and private contractors and sets forth requirements for the procurement of goods and services by state agencies and the various responsibilities of state agencies and the Department of General Services in implementing state contracting procedures and policies.

This bill would prohibit a scrutinized company, as defined, from entering into a contract with a state agency for goods or services, as provided.

This bill would become inoperative upon a specified date.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The Democratic Republic of Congo was devastated by a
- 4 civil war carried out in 1996 and 1997 and a war that began in
- 5 1998 and ended in 2003, which resulted in widespread human

1 rights violations and the intervention of multiple armed forces or
2 armed nonstate actors from other countries in the region.

3 (b) Despite the signing of a peace agreement and subsequent
4 withdrawal of foreign forces in 2003, the eastern region of the
5 Democratic Republic of Congo has continued to suffer from high
6 levels of poverty, insecurity, and a culture of impunity, in which
7 illegal armed groups and military forces continue to commit
8 widespread human rights abuses.

9 (c) According to a study by the International Rescue Committee
10 released in January 2008, conflict and the related humanitarian
11 crisis in the Democratic Republic of Congo have resulted in the
12 deaths of an estimated 5,400,000 people since 1998 and continue
13 to cause as many as 45,000 deaths each month.

14 (d) Sexual violence and rape remain pervasive tools of warfare
15 used by all parties in eastern region of the Democratic Republic
16 of Congo to terrorize and humiliate communities, resulting in
17 community breakdown which causes a decrease in the ability of
18 affected communities to resist control by illegal armed forces and
19 a loss of community access to minerals. Sexual violence and rape
20 affect hundreds of thousands of women and girls, frequently
21 resulting in traumatic fistula, other severe genital injuries, and
22 long-term psychological trauma.

23 (e) A report released by the Government Accountability Office
24 in December 2007 describes how the mismanagement and illicit
25 trade of extractive resources from the Democratic Republic of
26 Congo supports conflict between militias and armed domestic
27 factions in neighboring countries.

28 (f) In October 2002, the United Nations Group of Experts on
29 the Democratic Republic of Congo called on member states of the
30 United Nations to adopt measures, consistent with the guidelines
31 established for multinational enterprises by the Organization for
32 Economic Co-operation and Development, to ensure that
33 enterprises in their jurisdiction do not abuse principles of conduct
34 that they have adopted as a matter of law.

35 (g) In February 2008, the United Nations Group of Experts on
36 the Democratic Republic of Congo stated, “individuals and entities
37 buying mineral output from areas of the eastern part of the
38 Democratic Republic of Congo with a strong rebel presence are
39 violating the sanctions regime when they do not exercise due
40 diligence to ensure their mineral purchases do not provide

1 assistance to illegal armed groups” and defined due diligence as
2 including the following: determining the precise identity of the
3 deposits from which the minerals they intend to purchase have
4 been mined; establishing whether or not these deposits are
5 controlled or taxed by illegal armed groups; and refusing to buy
6 minerals known to originate, or suspected to originate, from
7 deposits controlled or taxed by illegal armed groups.

8 (h) In its final report, released on December 12, 2008, the United
9 Nations Group of Experts on the Democratic Republic of the Congo
10 found that official exports of columbite-tantalite, cassiterite,
11 wolframite, and gold are grossly undervalued and that various
12 illegal armed groups in the eastern region of the Democratic
13 Republic of Congo continue to profit greatly from these natural
14 resources by coercively exercising control over mining sites from
15 where they are extracted and locations along which they are
16 transported for export.

17 (i) United Nations Security Council Resolution 1857,
18 unanimously adopted on December 22, 2008, broadens existing
19 sanctions relating to the Democratic Republic of Congo to include
20 “individuals or entities supporting the illegal armed groups ...
21 through illicit trade of natural resources”; and encourages member
22 countries to ensure that companies handling minerals from the
23 Democratic Republic of Congo exercise due diligence on their
24 suppliers.

25 (j) Continued weak governance in the Democratic Republic of
26 Congo has allowed the illicit trade in the minerals
27 columbite-tantalite, cassiterite, wolframite, and gold to flourish,
28 which empowers illegal armed groups, undermines local
29 development, and results in a loss or misuse of tax revenue for the
30 Government of the Democratic Republic of Congo. The
31 development of stronger governance and economic institutions
32 that support legitimate cross-border trade in such minerals would
33 help prevent the exploitation of such minerals by illegal armed
34 groups and enable the hundreds of thousands of people who depend
35 on such minerals for their livelihoods to benefit from such minerals.

36 (k) Metals derived from columbite-tantalite, cassiterite,
37 wolframite, and gold from the Democratic Republic of Congo are
38 used in diverse technological products sold worldwide, including
39 mobile telephones, laptop computers, and digital video recorders.

1 (l) In February 2009, the Electronic Industry Citizenship
2 Coalition and the Global e-Sustainability Initiative released a
3 statement asserting that use by the information communications
4 technology industry of mined commodities that support conflict
5 in such countries as the Democratic Republic of Congo is
6 unacceptable and electronics companies can and should uphold
7 responsible practices in their operations and work with suppliers
8 to meet social and environmental standards with respect to the raw
9 materials used in the manufacture of their products.

10 (m) Notwithstanding the extensiveness of the supply chains of
11 technological products and the extensiveness of the processing
12 stages for the metals derived from columbite-tantalite, cassiterite,
13 wolframite, and gold used in such products, companies that create
14 and sell products that include such metals have the ability to
15 influence the situation in the Democratic Republic of Congo by
16 doing all of the following: exercising due diligence in ensuring
17 that their suppliers provide raw materials in a manner that does
18 not directly finance armed conflict, result in labor or human rights
19 violations, or damage the environment; verifying the country from
20 which the minerals used to derive such metals originate, the identity
21 of the exporter of the minerals, and that all appropriate tax
22 payments are made; and committing to support mineral exporters
23 from the Democratic Republic of Congo that fully disclose their
24 export payments and certify that their minerals do not directly
25 finance armed conflict, result in labor or human rights violations,
26 or damage the environment.

27 (n) It is the sense of the Legislature that the exploitation and
28 trade of conflict minerals originating in the Democratic Republic
29 of Congo is helping to finance conflict characterized by extreme
30 levels of violence in the eastern Democratic Republic of Congo,
31 particularly sexual- and gender-based violence, and contributing
32 to an emergency humanitarian situation.

33 (o) The Dodd-Frank Wall Street Reform and Consumer
34 Protection Act was signed into law by President Barack Obama
35 on July 21, 2010. This law requires those who file with the
36 Securities Exchange Commission and use minerals originating in
37 the Democratic Republic of Congo in manufacturing to disclose
38 measures taken to exercise due diligence on the source and chain
39 of custody of the materials and the products manufactured.

1 SEC. 2. Section 10490 is added to the Public Contract Code,
2 to read:

3 10490. (a) A scrutinized company is ineligible to, and shall
4 not, bid on or submit a proposal for a contract with a state agency
5 for goods or services.

6 (b) For purposes of this section, a “scrutinized company” is a
7 person that is required to disclose information relating to conflict
8 minerals originating in the Democratic Republic of the Congo, or
9 its adjoining countries, pursuant to Section 13 of the Securities
10 and Exchange Act of 1934 where conflict minerals are necessary
11 to the functionality or production of a product manufactured by
12 the person, where the person has filed an “unreliable
13 determination,” as defined by Section 13 of the Securities and
14 Exchange Act of 1934, reported false information in their report
15 whose requirements are described in Section 13 of the Securities
16 and Exchange Act of 1934, or failed to file a report as required by
17 Section 13 of the Securities and Exchange Act of 1934 and which
18 ~~the Securities and Exchange Commission has, upon the completion~~
19 ~~of the commission’s processes, determined that a person has made~~
20 ~~a report that does not satisfy the requirements of due diligence~~ *the*
21 *Securities and Exchange Commission has taken civil action by*
22 *filing a complaint with a United States District Court or has taken*
23 *administrative action through the administrative proceeding*
24 *process, or both, against a person for violations of the reporting*
25 *requirements* described in Section 13(p) of the Securities and
26 Exchange Act of 1934.

27 SEC. 3. Section 2 of this bill shall become inoperative upon
28 the disclosure requirements termination date specified pursuant to
29 Section 1502(b)(4) of Public Law 111-203.

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