

AMENDED IN SENATE APRIL 25, 2011

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: 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

1 1998 and ended in 2003, which resulted in widespread human
2 rights violations and the intervention of multiple armed forces or
3 armed nonstate actors from other countries in the region.

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

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

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

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

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

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

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

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

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

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

37 (k) Metals derived from columbite-tantalite, cassiterite,
38 wolframite, and gold from the Democratic Republic of Congo are
39 used in diverse technological products sold worldwide, including
40 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 taken civil action~~
19 ~~by filing a complaint with a United States District Court or has~~
20 ~~taken administrative action through the administrative proceeding~~
21 ~~process, or both, against a person for violations of the reporting~~
22 ~~requirements described in Section 13(p) of the Securities and~~
23 ~~Exchange Act of 1934. *person to which all of the following apply:*~~

24 (1) *The person is required to disclose information relating to*
25 *conflict minerals originating in the Democratic Republic of the*
26 *Congo, or its adjoining countries, pursuant to Section 13 of the*
27 *Securities Exchange Act of 1934 where conflict minerals are*
28 *necessary to the functionality or production of a product*
29 *manufactured by the person.*

30 (2) *The person has filed an “unreliable determination,” as*
31 *defined by Section 13 of the Securities Exchange Act of 1934,*
32 *reported false information in their report whose requirements are*
33 *described in Section 13 of the Securities Exchange Act of 1934,*
34 *or failed to file a report as required by Section 13 of the Securities*
35 *Exchange Act of 1934.*

36 (3) *The Securities and Exchange Commission has taken civil*
37 *action by filing a complaint with a United States District Court or*
38 *has taken administrative action through the administrative*
39 *proceeding process, or both, against a person for violations of the*

1 *reporting requirements described in Section 13(p) of the Securities*
2 *Exchange Act of 1934.*

3 *(4) The person has been found to be in violation of the reporting*
4 *requirements by final judgment or settlement entered in the civil*
5 *or administrative action brought by the Securities and Exchange*
6 *Commission.*

7 *(c) A person shall cease to be regarded as a scrutinized company*
8 *pursuant to this section upon the lifting of administrative or civil*
9 *sanctions on the person as set forth by the Securities and Exchange*
10 *Commission in the terms of the settlement or judgment, or after*
11 *three years, whichever is earlier.*

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