

AMENDED IN SENATE MAY 31, 2011
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:

1 (a) The Democratic Republic of Congo was devastated by a
2 civil war carried out in 1996 and 1997 and a war that began in
3 1998 and ended in 2003, which resulted in widespread human
4 rights violations and the intervention of multiple armed forces or
5 armed nonstate actors from other countries in the region.

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

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

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

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

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

38 (g) In February 2008, the United Nations Group of Experts on
39 the Democratic Republic of Congo stated, “individuals and entities
40 buying mineral output from areas of the eastern part of the

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

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

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

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

39 (k) Metals derived from columbite-tantalite, cassiterite,
40 wolframite, and gold from the Democratic Republic of Congo are

1 used in diverse technological products sold worldwide, including
2 mobile telephones, laptop computers, and digital video recorders.

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

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

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

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

1 measures taken to exercise due diligence on the source and chain
2 of custody of the materials and the products manufactured.

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

5 10490. (a) A scrutinized company is ineligible to, and shall
6 not, bid on or submit a proposal for a contract with a state agency
7 for goods or services *related to products or services that are the*
8 *reason the company must comply with Section 13(p) of the*
9 *Securities Exchange Act of 1934.*

10 (b) For purposes of this section, a “scrutinized company” is a
11 person ~~to which all of the following apply: that has been found to~~
12 ~~be in violation of Section 13(p) of the Securities Exchange Act of~~
13 ~~1934 by final judgment or settlement entered in a civil or~~
14 ~~administrative action brought by the Securities and Exchange~~
15 ~~Commission and the person has not remedied or cured the violation~~
16 ~~in a manner accepted by the commission on or before final~~
17 ~~judgment or settlement.~~

18 (c) A person shall cease to be regarded as a scrutinized company
19 when the person is no longer deemed to be in violation of Section
20 13(p) of the Securities Exchange Act of 1934, or after three years
21 from the date of final judgment or settlement, whichever is earlier.

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

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

34 ~~(3) The Securities and Exchange Commission has taken civil~~
35 ~~action by filing a complaint with a United States District Court or~~
36 ~~has taken administrative action through the administrative~~
37 ~~proceeding process, or both, against a person for violations of the~~
38 ~~reporting requirements described in Section 13(p) of the Securities~~
39 ~~Exchange Act of 1934.~~

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

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

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