

AMENDED IN ASSEMBLY AUGUST 31, 2011

AMENDED IN ASSEMBLY JULY 13, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE APRIL 7, 2011

**SENATE BILL**

**No. 861**

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**Introduced by Senator Corbett**  
**(Coauthor: Senator Anderson)**  
(Coauthor: Assembly Member V. Manuel Pérez)

February 18, 2011

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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 *not* become operative until the later of January 1, 2012, or the date the United States Securities and Exchange Commission issues the final rules and regulations on the implementation of Section

1502 of Public Law 111-203, and 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  
6 rights violations and the intervention of multiple armed forces or  
7 armed nonstate actors from other countries in the region.

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

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

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

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

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

8 (g) In February 2008, the United Nations Group of Experts on  
9 the Democratic Republic of Congo stated, “individuals and entities  
10 buying mineral output from areas of the eastern part of the  
11 Democratic Republic of Congo with a strong rebel presence are  
12 violating the sanctions regime when they do not exercise due  
13 diligence to ensure their mineral purchases do not provide  
14 assistance to illegal armed groups” and defined due diligence as  
15 including the following: determining the precise identity of the  
16 deposits from which the minerals they intend to purchase have  
17 been mined; establishing whether or not these deposits are  
18 controlled or taxed by illegal armed groups; and refusing to buy  
19 minerals known to originate, or suspected to originate, from  
20 deposits controlled or taxed by illegal armed groups.

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

30 (i) United Nations Security Council Resolution 1857,  
31 unanimously adopted on December 22, 2008, broadens existing  
32 sanctions relating to the Democratic Republic of Congo to include  
33 “individuals or entities supporting the illegal armed groups ...  
34 through illicit trade of natural resources”; and encourages member  
35 countries to ensure that companies handling minerals from the  
36 Democratic Republic of Congo exercise due diligence on their  
37 suppliers.

38 (j) Continued weak governance in the Democratic Republic of  
39 Congo has allowed the illicit trade in the minerals  
40 columbite-tantalite, cassiterite, wolframite, and gold to flourish,

1 which empowers illegal armed groups, undermines local  
2 development, and results in a loss or misuse of tax revenue for the  
3 Government of the Democratic Republic of Congo. The  
4 development of stronger governance and economic institutions  
5 that support legitimate cross-border trade in such minerals would  
6 help prevent the exploitation of such minerals by illegal armed  
7 groups and enable the hundreds of thousands of people who depend  
8 on such minerals for their livelihoods to benefit from such minerals.

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

13 (l) In February 2009, the Electronic Industry Citizenship  
14 Coalition and the Global e-Sustainability Initiative released a  
15 statement asserting that use by the information communications  
16 technology industry of mined commodities that support conflict  
17 in such countries as the Democratic Republic of Congo is  
18 unacceptable and electronics companies can and should uphold  
19 responsible practices in their operations and work with suppliers  
20 to meet social and environmental standards with respect to the raw  
21 materials used in the manufacture of their products.

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

39 (n) It is the sense of the Legislature that the exploitation and  
40 trade of conflict minerals originating in the Democratic Republic

1 of Congo is helping to finance conflict characterized by extreme  
2 levels of violence in the eastern Democratic Republic of Congo,  
3 particularly sexual- and gender-based violence, and contributing  
4 to an emergency humanitarian situation.

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

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

14 10490. (a) A scrutinized company is ineligible to, and shall  
15 not, bid on or submit a proposal for a contract with a state agency  
16 for goods or services related to products or services that are the  
17 reason the company must comply with Section 13(p) of the  
18 Securities Exchange Act of 1934.

19 (b) For purposes of this section, a “scrutinized company” is a  
20 person that has been found to be in violation of Section 13(p) of  
21 the Securities Exchange Act of 1934 by final judgment or  
22 settlement entered in a civil or administrative action brought by  
23 the Securities and Exchange Commission and the person has not  
24 remedied or cured the violation in a manner accepted by the  
25 commission on or before final judgment or settlement.

26 (c) A person shall cease to be regarded as a scrutinized company  
27 when the person is no longer deemed to be in violation of Section  
28 13(p) of the Securities Exchange Act of 1934, or upon filing by  
29 such person of an amended or corrective filing under Section 13(p)  
30 of the Securities Exchange Act of 1934, which filing corrects the  
31 violations described in subdivision (b), or after three years from  
32 the date of final judgment or settlement, whichever is earlier.

33 (d) The Department of General Services shall establish in the  
34 State Administrative Manual or the State Contracting Manual  
35 policies and procedures for all state agencies, departments, boards,  
36 and commissions to implement the contract prohibition of this  
37 section.

38 (e) For purposes of this section, “goods or services” includes  
39 goods and services subject to this chapter (commencing with  
40 Section 10290), information technology goods and services subject

1 to Chapter 3 (commencing with Section 12100), and  
2 telecommunication goods and services subject to Chapter 3.5  
3 (commencing with Section 12120).

4 ~~SEC. 3. Section 2 of this bill shall become inoperative upon~~

5 *SEC. 3. (a) Section 2 of this bill shall not become operative*  
6 *until the later of January 1, 2012, or the date the United States*  
7 *Securities and Exchange Commission issues the final rules and*  
8 *regulations on the implementation of Section 1502 of Public Law*  
9 *111-203.*

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