



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
SB2413

Introduced 2/3/2004, by Carol Ronen

SYNOPSIS AS INTRODUCED:

New Act

Creates the Expatriate State Contractor Act. Prohibits executive branch State agencies from entering into contracts with expatriate corporations or their subsidiaries. Defines an expatriate corporation as a company that (i) is publicly traded in the U.S., (ii) has incorporated in a foreign tax haven, (iii) is traded primarily in the U.S., (iv) has no substantial business activity in the place of incorporation, and (v) meets other specified criteria. Exempts certain companies that were expatriates before January 1, 2005 and afford specified shareholder rights. Authorizes an agency to waive the prohibition if the contract meets a compelling public interest. Requires that contracts include the vendor's declaration of compliance and makes false declaration a Class A misdemeanor. Effective January 1, 2005.

LRB093 19121 JAM 44856 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning procurement.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Expatriate State Contractor Act.

6 Section 5. Findings. The General Assembly finds and
7 declares all of the following:

8 By reincorporating in tax haven countries, a number of
9 publicly traded United States based companies are avoiding
10 their fair share of Illinois taxes and have undermined the
11 interests and rights of their shareholders.

12 An expatriate company is a United States based company that
13 has moved in name and on paper only to a tax haven country and
14 has no substantial business activities in the country of
15 reincorporation.

16 When a company expatriates, its shareholders are generally
17 left without the opportunity to pursue derivative lawsuits and
18 without the ability to enforce legal judgments against the
19 company under the United States and Illinois securities laws.
20 Therefore, matters relating to standard fiduciary duties of
21 officers and directors of the corporation may be less dutifully
22 monitored or controlled.

23 Further, the shareholders of expatriate companies stand to
24 lose their rights to submit a shareholder proposal, inspect or
25 obtain copies of the company's corporate records, or approve a
26 sale, lease, or exchange of all or substantially all of the
27 corporation's assets.

28 In some cases, an expatriate company may significantly
29 limit shareholder voting rights or dissenting shareholders'
30 appraisal rights.

31 This diminution of shareholder rights is the result of the
32 corporate practice, known as "corporate expatriation", that is

1 part of a larger pattern of deceptive corporate practices and
2 accounting manipulation that continues to undermine the faith
3 and confidence of investors in the integrity of the financial
4 markets.

5 The State of Illinois and many of its residents are
6 invested in various corporations, mutual funds, and pension
7 plans.

8 The State's investments and pension funds depend on
9 investor faith and confidence in the transparency, fairness,
10 and integrity of the markets.

11 A corporate reincorporation greatly impedes the State and
12 the State's pension funds in safeguarding shareholder rights
13 and the State's financial interests.

14 Further, substandard corporate governance models and
15 accounting practices of an expatriate corporation may impede
16 its ability to do business with the State in a manner required
17 by State law and sound public contracting practices. At the
18 same time, the State's ability to enforce its contract rights
19 or enforce judgments against the expatriate corporation may be
20 limited as the result of corporate expatriation.

21 Further, an expatriate corporation, by avoiding its fair
22 share of taxes, gains an unfair advantage over corporations
23 that do not expatriate when competing for State contracts and
24 thereby undermines the competitive State bidding process.

25 It is, therefore, in the best interests of the State to
26 restore faith in corporate practices and in the State's
27 financial system by safeguarding the rights of shareholders,
28 protecting the State's pension funds and other State
29 investments, ensuring a fair business climate, and
30 guaranteeing that similarly situated companies doing business
31 in the State pay their fair share of taxes. Furthermore, the
32 preservation of State control over matters relating to
33 procurement and expenditure of its revenues, a vital and valid
34 public purpose, is served by prohibiting the State from doing
35 business with publicly held expatriate companies.

36 Accordingly, it is the intent of the General Assembly that,

1 absent a compelling public interest, the State not enter into
2 any agreement or contract with any publicly held expatriate
3 corporation.

4 Section 10. Definitions. As used in this Act:

5 "Expatriate corporation" means a foreign incorporated
6 entity that is publicly traded in the United States to which
7 all of the following apply:

8 (1) The United States is the principal market for the
9 public trading of the foreign incorporated entity.

10 (2) The foreign incorporated entity has no substantial
11 business activities in the place of incorporation.

12 (3) Either paragraph (i) or (ii) applies:

13 (i) The foreign entity was established in
14 connection with a transaction or series of related
15 transactions pursuant to which (A) the foreign entity
16 directly or indirectly acquired substantially all of
17 the properties held by a domestic corporation or all of
18 the properties constituting a trade or business of a
19 domestic partnership or related foreign partnership
20 and (B) immediately after the acquisition, more than
21 50% of the publicly traded stock, by vote or value, of
22 the foreign entity is held by former shareholders of
23 the domestic corporation or by former partners of the
24 domestic partnership or related foreign partnership.
25 For purposes of item (B), any stock sold in a public
26 offering related to the transaction or a series of
27 transactions is disregarded.

28 (ii) The foreign entity was established in
29 connection with a transaction or series of related
30 transactions pursuant to which (A) the foreign entity
31 directly or indirectly acquired substantially all of
32 the properties held by a domestic corporation or all of
33 the properties constituting a trade or business of a
34 domestic partnership or related foreign partnership
35 and (B) the acquiring foreign entity is more than 50%

1 owned, by vote or value, by domestic shareholders or
2 partners.

3 For purposes of paragraphs (i) and (ii), indirect
4 acquisition of property includes the acquisition of a
5 stock share, or any portion thereof, of the owner of
6 that property.

7 "State agency" means every office, department, division,
8 authority, board, and commission of the executive branch of
9 State government but does not include the General Assembly, any
10 agency of the legislative branch, the courts, or any agency in
11 the judicial branch.

12 Section 15. Prohibited contracts. Except as provided in
13 Sections 20 and 25, a State agency may not enter into any
14 contract with an expatriate corporation or its subsidiaries.

15 Section 20. Exemption. Notwithstanding Section 15, a State
16 agency may contract with an expatriate corporation, or its
17 subsidiary, if it was an expatriate corporation before January
18 1, 2005, to which both of the following apply:

19 (1) The foreign entity provides, by operation of law,
20 by provisions of its governing documents, by resolution of
21 its board of directors, or in any other manner, at least
22 the following shareholders' rights:

23 (i) Shareholders of the entity have the right to
24 inspect, at a principal place of business in the United
25 States, copies of the entity's books and records,
26 including, but not limited to, shareholder names,
27 addresses, and shareholdings, in accordance with the
28 corporation law of the United States jurisdiction in
29 which the entity was previously incorporated or, if the
30 entity was not previously incorporated, in accordance
31 with Illinois law, provided that, if the corporate law
32 of the United States jurisdiction in which the entity
33 was previously incorporated or Illinois law does not
34 provide access to the shareholder names, addresses,

1 and shareholdings, these books and records are
2 available for inspection by shareholders for purposes
3 properly related to their status as shareholders of the
4 entity.

5 (ii) The entity permits its shareholders to bring
6 derivative proceedings on behalf of the entity,
7 provided that these derivative proceedings are brought
8 on a basis of and under the terms applicable under the
9 law of the United States jurisdiction in which the
10 entity was previously incorporated or, if the entity
11 was not previously incorporated, on a basis of and
12 under the terms set forth in Illinois law.

13 (iii) Entity transactions in which any director is
14 interested are approved in accordance with the
15 applicable law of the United States jurisdiction in
16 which the entity was previously incorporated or, if the
17 entity was not previously incorporated, in accordance
18 with Illinois law.

19 (iv) The entity has consented to the jurisdiction,
20 for any otherwise available cause of action by or on
21 behalf of the entity's shareholders, including any
22 pendent State causes of action, of all of the following
23 courts:

24 (A) The state courts of one or more states.

25 (B) The United States federal courts in any
26 state in which the entity consents to the
27 jurisdiction of that state's courts pursuant to
28 item (A).

29 (v) The entity has appointed an agent for service
30 of process in the state or states in which the entity
31 has consented to jurisdiction, as described in
32 paragraph (iv), and the entity meets at least one of
33 the following conditions:

34 (A) The entity has unencumbered assets in the
35 United States, which may include equity or debt
36 investments in United States companies, with a

1 book value in excess of \$50,000,000, and the entity
2 delivers to the Secretary of State an opinion of an
3 attorney licensed in the United States that
4 judgments rendered against the entity may be
5 satisfied by using these assets.

6 (B) The entity posts a bond or similar security
7 in an amount of at least \$50,000,000.

8 (C) The entity has directors' and officers'
9 insurance in an amount of at least \$50,000,000.

10 (vi) The entity agrees that, in connection with any
11 lawsuit brought against it by its shareholders in any
12 court in which the entity has consented to jurisdiction
13 as described in paragraph (iv), the entity will provide
14 to the court notice of the manner in which the entity
15 complied with paragraph (v) and, if the entity complied
16 with that paragraph in the manner specified in item (A)
17 of paragraph (v), a copy of the opinion described in
18 that item.

19 (vii) Shareholder approval is required for any
20 sale of all or substantially all of the entity's assets
21 in accordance with the law of the United States
22 jurisdiction in which it was previously incorporated
23 or, if it was not previously incorporated, in
24 accordance with Illinois law.

25 (viii) The directors and officers of the entity
26 occupy a fiduciary relationship with the entity and its
27 shareholders and these directors and officers, in
28 performing their duties, act in good faith in a manner
29 that a director or officer believes to be in the best
30 interests of the entity and its shareholders, as that
31 standard of care is interpreted by the courts.

32 (ix) The entity agrees to hold no more than one of
33 every 4 annual shareholder meetings in a location
34 outside the United States and, in the event that the
35 entity holds an annual meeting outside the United
36 States, the entity agrees to provide access to that

1 meeting through a Web cast or other technology that
2 allows the entity's shareholders to do both of the
3 following:

4 (A) Listen to the meeting, watch the meeting,
5 or both.

6 (B) Send questions that will be addressed at
7 the meeting.

8 (x) The entity provides a description of the
9 shareholder rights described in paragraphs (i) to
10 (ix), inclusive, and any subsequent changes to these
11 rights, on the entity's Web site or in its 10K filings
12 with the United States Securities and Exchange
13 Commission.

14 (2) The entity uses worldwide combined reporting to
15 calculate the income on which it pays taxes to the State.

16 Section 25. Waiver. The chief executive officer of a State
17 agency or his or her designee may waive the prohibition
18 specified in Section 15 if the executive officer or his or her
19 designee has made a written finding that the contract is
20 necessary to meet a compelling public interest. For purposes of
21 this Section, a "compelling public interest" includes, but is
22 not limited to, ensuring the provision of essential services,
23 ensuring the public health and safety, or an emergency. If a
24 waiver is granted to a vendor pursuant to this Section, the
25 requirement to submit a declaration of compliance, as set forth
26 in Section 30, does not apply to that vendor.

27 Section 30. Vendor declaration; penalty. On and after
28 January 1, 2005, all State agencies shall, as a condition of a
29 contract, require any vendor that is offered a contract to do
30 business with the State to submit a declaration stating that
31 the vendor is eligible to contract with the State pursuant to
32 this Act.

33 A vendor who declares as true any material matter in a
34 declaration described in this Section that he or she knows to

1 be false is guilty of a Class A misdemeanor.

2 Section 35. Application. This Act applies to contracts
3 that are entered into on or after January 1, 2005.

4 Section 99. Effective date. This Act takes effect January
5 1, 2005.