Legislation Details (With Text)

File #:	Int 1017-2001	**Version:**	*	**Name:**	Nations harboring foreign terrorist organizations, City Funds
Type:	Introduction			**Status:**	Filed
				In control:	Committee on Governmental Operations
On agenda:	12/19/2001				
Enactment date:				**Enactment #:**	

Title: A Local Law to amend the New York city charter and the administrative code of the city of New York in relation to depositing city funds in banks and awarding city contracts to entities that do business with nations harboring foreign terrorist organizations.

Sponsors:

Indexes:

Attachments:

Date	Ver.	Action By	Action	Result
12/19/2001	*	City Council	Introduced by Council	
12/19/2001	*	City Council	Referred to Comm by Council	
12/19/2001	*	Legislative Documents Unit	Printed Item Laid on Desk	
12/31/2001	*	City Council	Filed (End of Session)	

THE COUNCIL

The City of New York

Int. No. 1017

Introduced by the Speaker (Council Member Vallone) and Council Members Michels, Nelson and Golden (by the request of the Bronx Borough President); also Council Members Henry and O'Donovan

A Local Law to amend the New York city charter and the administrative code of the city of New York in relation to depositing city funds in banks and awarding city contracts to entities that do business with nations harboring foreign terrorist organizations.

Be it enacted by the council as follows:

Section 1. **Declaration of Legislative Intent and Findings**.

The Council finds that certain nations permit foreign terrorist organizations to operate, raise funds and

powered by Legistar™

engage in businesses within their boundaries. These harboring nations are known to benefit from the income generated by these base operations carried on by terrorist organizations. The perpetuation of such organizations by these nations is morally repugnant to the citizens of the city of New York. This legislation will disallow the city to deposit any city funds in banks or award city contracts to entities that do any business with these nations that harbor terrorist organizations. In so doing, the Council intends to both hinder any profitability that results from harboring terrorism, and express the city's outrage by any facilitation of terrorist activity.

Section 2. Section 1523 of the New York city charter is amended by adding a new subdivision 4 to read as follows:

§ 1523. Deposits.

4. The commissioner of finance, in consultation with agency heads, shall by rule establish criteria by which to evaluate whether banks are using the means at their disposal to comply with the embargo on trade and financial transactions with any nation-state, the government of same, or any entity controlled by such government that either aids, abets or harbors any foreign terrorist organization pursuant to the Immigration and Naturalization Act as amended by the Anti-Terrorism and Death Penalty Act of 1996 and any other sanctions imposed by the United States government with regard to same, including but not limited to:

a. withdrawal of operations from any such nation harboring foreign terrorist organizations;

b. the denial of loans, letters of credit and other correspondent banking services to entities in any such nation harboring foreign terrorist organizations;

c. restrictions on the rescheduling of loans owed by entities in any nation harboring foreign terrorist organizations and on conversion of outstanding loans to instruments having longer maturity dates; and

d. divestiture of outstanding debt owed by entities in any nation harboring foreign terrorist organizations.

The commissioner shall, after offering banks designated pursuant to section fifteen hundred twenty-four

and the public an opportunity to be heard, classify such banks according to such criteria and publish notice of such classification in the City Record. The commissioner may at any time, upon the request of a bank or at his or her own initiative and after offering the public and the bank an opportunity to be heard, change the classification of a bank and publish notice of such change. The failure of a bank to provide information requested by the commissioner for the purposes of this subdivision shall be grounds for the commissioner to lower the classification of the bank. When choosing among banks offering comparable services at a comparable cost, city agencies shall, in a manner consistent with guidelines established by the commissioner of finance, seek to deposit or invest funds at, and obtain services from, the available banks that have received the highest classification.

§ 3. Section 1524 of the New York city charter is amended by adding a new subparagraph 4 to paragraph a of subdivision 2 to read as follows:

§ 1524. Deposit banks.

2. a. Except as provided in paragraph b of this subdivision, no bank or trust company shall be designated pursuant to this section unless:

(4) it does not provide the following services, either directly or through a subsidiary or agent, to the nations harboring foreign terrorist organizations: (a) advertising or otherwise promoting the sale, outside of nations harboring foreign terrorist organizations, coins minted in nations harboring foreign terrorist organizations, (b) underwriting securities of nations harboring foreign terrorist organizations, or (c) making loans to the governments of nations harboring foreign terrorist organizations. No bank shall be denied designation pursuant to this paragraph because of any action taken prior to its effective date.

§ 4. Chapter 1 of title 6 of the administrative code of the city of New York is amended by adding a new section 6-115.2 to read as follows:

§ 6-115.2. Contract provisions relating to entities doing business with any nation harboring foreign terrorist organizations.

powered by Legistar™

a. For the purposes of this section, the following definitions shall apply:

(1) "foreign terrorist organization" shall mean any entity designated as such under the federal Immigration and Naturalization Act as amended by the Antiterrorism and Death Penalty Act of 1996;

(2) "harboring nation" shall mean a nation-state, its government, or any entity controlled by such government or nation-state that aids, abets or harbors a foreign terrorist organization;

(3) "entity" shall mean a sole proprietorship, partnership, association, joint venture, company, corporation or any other form of doing buisiness;

(4) "parent company" shall mean an entity that directly controls the contractor;

(5) "subsidiary" shall mean an entity that is controlled directly or indirectly through one or more intermediaries by a contractor or the contractor's parent company;

(6) "affiliates" of a contractor means the parent company of the contractor, and any subsidiaries of the parent company and contractor;

(7) "control" shall mean holding five percent or more of the outstanding voting securities of a corporation, or having an interest of five percent or more in any other entity;

(8) "entity of any harboring nation" shall include an entity organized within a harboring nation, or a branch or office in a harboring nation of an entity that is domiciled or organized outside such nation;

(9) "investment" shall mean the beneficial ownership or control or controlling interest in an entity of any harboring nation, but shall not include the purchase of securities of an entity of a harboring nation for a customer's account;

(10) "non-equity agreement" shall mean a license, franchise, distribution or other written agreement pursuant to which an entity: (i) provides management, maintenance, or training services directly to an entity of any harboring nation; or (ii) supplies goods directly to an entity of a harboring nation for either distribution or use as component parts in the manufacture of other goods. In addition, a non-equity agreement shall mean an original equipment manufacturer agreement, as defined by the commissioner of the department of citywide

administrative services, for equipment sold by a manufacturer of computers, copiers, or telecommunication equipment, which provides for or authorizes the sale of such equipment alone or part of a finished product, to an entity of any harboring nation. The commissioner of the department of citywide administrative services shall consider whether to designate other equipment to be subject to this provision regarding original equipment manufacturer agreements, and by rule to so designate any such equipment as he or she determines appropriate based upon considerations, including, but not limited to those set forth under paragraph 7 of subdivision b of this section.

b. With respect to contracts described in subdivisions f and g of this section, and in accordance with such provisions, no city agency shall contract for the supply of goods, services or construction with any person who does not agree to stipulate to the following as material conditions of the contract if there is another person who will contract to supply goods, services or construction of comparable quality at a comparable price:

(1) that the contractor and its affiliates shall not during the term of such contract sell or agree to sell goods or services to nations harboring foreign terrorist organizations, the governments of such nations, or to any entity owned or controlled by the governments of such nations;

(2) in the case of a contract to supply goods, that none of the goods to be supplied to the city originated in any nation harboring foreign terrorist organizations;

(3) the contractor and its affiliates do not do business in any nation harboring foreign terrorist organizations or the contractor and its affiliates are actively engaged in the withdrawal of their operations from any such nation and will have completed such withdrawal in six months, provided, however, that any such company that has withdrawn or is so engaged in withdrawing its operations and maintains a presence in such nation after the six month period solely for the purpose of liquidating its business shall not be ineligible for that reason for the certification provided for in this paragraph;

(4) the contractor shall not make new investments in any nation harboring foreign terrorist

powered by Legistar™

organizations;

(5) the contractor shall not enter into any new agreement with an entity of any nation harboring foreign terrorist organizations allowing the use of its company trademark, copyright or patent;

(6) In the case of a contractor that acquires an entity which is doing business in any nation harboring foreign terrorist organizations, the contractor shall initiate withdrawal of its acquisition's operations from such nation;

(7) In the case of a contract to supply motor vehicles, heavy equipment, electronic data processing equipment and software, copying machines or petroleum products, the contractor shall, in addition to providing the certification described in this section with respect to itself and its affiliates, provide certification to the contracting agency from the manufacturer or refiner and its affiliates are in compliance with the terms set forth in this subdivision and subdivision d of this section. For purposes of this paragraph, the commissioner of the department of citywide administrative services shall consider whether to designate other goods supplied to the city to be subject to the provisions of this paragraph, and by rule so designate any such goods as he or she determine appropriate based upon considerations including, but not limited to: (a) information that one or more manufacturers of such goods or the affiliates of such manufacturers have not withdrawn operations from any nation harboring foreign terrorist organizations; (b) the effects upon the city's procurement process; (c) the opportunities of small, minority and women owned businesses to compete for such contracts; and (d) the recommendations of other agency heads.

c. For the purposes of subdivision b, an entity shall be considered to have withdrawn its operations from any harboring nation if:

(1) it does not maintain any office, plant or employee in any harboring nation other than for the following purposes: (a) the activities of religious, educational or charitable organizations; (b) activities

intended to promote the exchange of information, including, but not limited to, the publication or sale of newspapers, magazines, books, films, television programming, photographs, microfilm, microfiche and similar materials; (c) the gathering or dissemination of information by news media organizations; and (d) the providing of telecommunications and mail services not involving the sale or leasing of equipment;

(2) it has no investments in any harboring nation; and

(3) it does not provide goods or services to any entity from any harboring nations pursuant to a non-equity agreement.

d. The provisions of paragraphs four, five and six of subdivision b of this section and the provisions of subdivision c of this section concerning investments, agreements relating to trademarks, copyrights and patents, and non-equity agreements shall not apply to the ownership of agreements with entities engaged in activities described in clauses a, b, c and d of paragraph 1 of subdivision c.

e. Notwithstanding the provisions of this section, a city agency may purchase medical supplies intended to preserve or prolong life or to cure, prevent, or ameliorate diseases including, but not limited to, hospital, nutritional, diagnostic, pharmaceutical and non-prescription products specifically manufactured to satisfy identified health care needs, or for which there is no medical substitute. The determination of whether no medical substitute exists shall be made by the city agency requiring the supply, pursuant to general standards of good medical and professional practice. The city agency shall give notice to the city chief procurement officer in writing, certifying compliance with this exemption, said notice and certification being sufficient to allow the purchase of medical supplies under this exemption. To the extent that a person doing business in any harboring nation is providing only medical supplies, as described hereinabove, to persons in such nation, then the supply of goods or equipment to the city by said person shall also be exempt from the requirements of this section. This exemption from the requirements of this section shall not apply in any case in which the nature of

any person's business dealings in any harboring nation include both medical and non-medical supplies.

f. In the case of contracts for goods, services or construction involving an expenditure of an amount greater than the amounts established pursuant to subdivisions b and c of section three hundred fourteen of the charter, the contracting agency shall not award to a proposed contractor who has not agreed to stipulate to the conditions set forth in subdivision b of this section unless the head of the agency seeking to use the goods, services or construction determines that these items supplied by such person are necessary for the agency to perform its functions and there is no other responsible contractor who will supply goods, services or construction of comparable quality at a comparable price. Such determination shall be made in writing and shall be forwarded to the procurement policy board and the agency designated by the mayor pursuant to subdivision j of this section, and published in the City Record.

g. No city agency shall enter into a contract for an amount in excess of the amounts established pursuant to subdivisions b and c of section three hundred fourteen of the charter with any proposed contractor who does not agree to stipulate as a material condition of the contract that such entity and its affiliates have not within the twelve months prior to the award of such contract violated, and shall not during the period of such contract violate the provisions of section one hundred thirty-eight of the United States Customs and Trade act of 1990 or any other sanctions imposed by the United States government with regard to any harboring nation.

h. Upon receiving information that a contractor, manufacturer or refiner who has agreed to the conditions set forth in subdivision b of this section is in violation thereof, the contracting agency shall review such information and offer the contractor and such other entity an opportunity to respond. If the contracting agency finds that a violation of such conditions has occurred, or if a final determination has been made by the commerce department or any other agency of the United States or a finding has been made by a court that any such entity has violated any provisions of section one hundred thirty eight of the United States Customs and Trade Act of 1990 or any other sanctions imposed by the United States government with regard to any

powered by Legistar™

harboring nation, the contracting agency shall take such actions as may be appropriate and provided by law, rule or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages and declaring the contractor in default. The mayor shall designate an agency to maintain records of actions taken in such cases.

i. As used in this section, the term "contract" shall not include contracts with governmental and non-profit organizations, contracts awarded pursuant to the emergency procurement procedure set forth in section three hundred fifteen of the charter, or contracts, resolutions, indentures, declarations of trust, or other instruments authorizing or relating to the authorization, issuance, award, sale or purchase of bonds, certificates of indebtedness, notes or other fiscal obligations of the city, provided that agencies, shall consider the policies of this law when selecting a consultant to provide financial or legal advice, and when selecting managing underwriters in connection with such activities.

j. The provisions of this section shall not apply to contracts for which the city receives funds administered by the United States department of transportation, except to the extent congress has directed that the department of transportation not withhold funds from states and localities that implement embargo policies of any harboring nation, or to the extent that such funds are not otherwise withheld by the department of transportation.

k. The department of citywide administrative services and any other agency or agencies designated by the mayor shall conduct a study to develop recommendations concerning the application of the policies set forth in this section to procurement of goods, services or construction for amounts less than or equal to the amounts established pursuant to subdivisions b and c of section three hundred fourteen of this charter, and shall, one year after the enactment of this local law, submit a report to the mayor and the council containing such recommendations.

l. Nothing in this section shall be construed to limit the authority of a contracting agency or any official authorized by the charter to approve the selection of a contractor from taking into account, in making a determination to select or approve the selection of a contractor, in a manner consistent with applicable law and rules, any information concerning any direct or indirect relationship an entity may have related to business activities in any harboring nation.

m. (1) The mayor shall designate an agency or agencies to collect information concerning entities doing buisness in any harboring nation and to maintain records of contractors which have or have not agreed to the conditions set forth in subdivision b of this section. In October of each year, such agency or agencies shall submit a report to the mayor and the council setting forth information concerning contractors that have and have not agreed to such terms during the previous fiscal year, and the circumstances under which any contract subject to this section was awarded to a contractor who did not agree to such terms. The agency shall also report at such time on the efforts of public and quasi-public entities operating in the city to implement the embargo policies for any harboring nation.

(2) The mayor shall designate an agency to collect information concerning whether entities withdrawing from any harboring nation have given or agreed to give advance notification to their employees in any harboring nation and representative trade unions (or other representative employee organizations if there are no appropriate unions) of the planned termination of investment not less than six months prior to such termination, and have engaged or agreed to engage in good faith negotiations with such representative unions or organizations regarding the terms of such termination , including but not limited to, pension benefits, relocation of employees, continuation of existing union recognition agreements, severance pay, acquisition of the terminated business or its assets by representative trade unions, and union-sponsored workers trusts and other representative worker organizations or employees. Such agency shall inform such entities of, and offer them an opportunity to respond to, any such information it collects. In October of each year, such agency shall submit a

report to the mayor and the council on the information collected pursuant to this paragraph.

n. If any provision of this section is held invalid, the remainder of it shall not be affected by such holding and shall continue in full force and effect.

§ 5. This local law shall take effect forty-five days after its adoption and shall apply to contracts for which a request for bids or proposals is issued on and after the effective date.

powered by Legistar™