



Phil Mullin

*Bill Analysis*  
Legislative Service Commission

## **H.B. 395**

126th General Assembly  
(As Introduced)

**Reps. Sayre, Skindell, J. McGregor, Key, Allen, Garrison, D. Stewart, Driehaus, Healy, Reidelbach, Perry, Oelslager, Miller, DeGeeter, Otterman, S. Smith, Strahorn, Yuko, Woodard, Mason, Koziura, Sykes, Barrett, Beatty, Boccieri, Book, Brown, Carano, Cassell, Chandler, DeBose, Distel, Domenick, Fende, Hartnett, Harwood, Mitchell, S. Patton, Redfern, Ujvagi, Williams, Yates**

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### **BILL SUMMARY**

- Generally prohibits the award of state contracts and tax credits, and the use of state moneys for loans, grants, or other financial assistance, to expatriate corporations.

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### **CONTENT AND OPERATION**

#### **Prohibitions against state agency dealings with an expatriate corporation**

The bill generally prohibits any department, office, institution, board, commission, authority, or other agency of the state (hereafter, state agency) from doing either of the following: (1) entering into a contract for the supply of goods or services or for a public improvement with an expatriate corporation at the time the contract is entered into or (2) awarding a state tax credit, or using public moneys of the state (as defined in the Uniform Depository Law) to make a loan or award a grant or other form of public financial assistance, to an expatriate corporation at the time the tax credit, loan, grant, or assistance is awarded or made (R.C. 121.231(A)(4), (C)(1), and (D)).<sup>1</sup> The bill further generally forbids any person with which a state agency has contracted for the supply of goods or services or for a public improvement from entering into any associated subcontract with an expatriate corporation at the time the subcontract is entered into (R.C. 121.231(C)(2)).

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<sup>1</sup> "Public moneys of the state" means all moneys coming lawfully into the possession of the Treasurer of State, including those in the state treasury and those in the Treasurer of State's possession or custody (R.C. 135.01(K)--not in, but referred to in, the bill).

The bill defines "expatriate corporation" as a publicly held corporation to which all of the following apply: it is incorporated in a "tax haven country" (see below) that is included on the most recent list of such countries that the bill requires the Secretary of State to establish, maintain, update annually, publish on the Secretary of State's web site, and make publicly accessible at no cost--this whether or not, at an earlier time, the corporation had been incorporated under the laws of a state of the United States; the principal market for the public trading of the corporation's stock is the United States; and the corporation has no substantial business activities in its place of incorporation (R.C. 121.231(A)(3) and (B)). A "tax haven country" is a country that has no corporate income tax or that has an effective tax rate of less than 10% on income not arising in or derived from that country, but does not include a country that is a signatory to a treaty or other international agreement that would negate those tax policies (R.C. 121.231(A)(5)).

**Exception to the bill's contract and subcontract prohibitions**

The bill's prohibitions do not apply to a particular proposed contract or subcontract with an expatriate corporation if a state agency finds that the contract or subcontract is necessary to meet a compelling public interest. Any such finding must be in writing and be made only by the agency's chief executive, the chief executive's designee, or an affirmative vote of the majority of the agency's governing body, as applicable (R.C. 121.231(C)(3)). The bill defines "compelling public interest" to include, but not be limited to, the public interest in ensuring the provision of essential services, ensuring the public health and safety, or responding to an emergency. An "emergency" is a sudden, unexpected occurrence that poses a clear and imminent danger and that requires immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. (R.C. 121.231(A)(1) and (2).)

**Provision of certification that a corporation is not an expatriate corporation**

The bill requires a corporation to submit to the state agency involved a written certification, signed by a corporate officer or the officer's designee, that it is not an expatriate corporation, immediately prior to (1) entering into a contract or subcontract to which the bill applies or (2) initially receiving a state tax credit or a loan, grant, or other form of public financial assistance to which the bill applies (R.C. 121.231(E)(1)). A person who knowingly makes a false statement concerning such a certification is guilty of the crime of falsification (R.C. 121.231(E)(2)).

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## HISTORY

| ACTION     | DATE     | JOURNAL ENTRY |
|------------|----------|---------------|
| Introduced | 10-20-05 | p. 1756       |

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