[Similar Matter Filed During Past Session — See House No. 3521 of 1988.]

SENATE . . . . . No. 1369

By Mr. Barrett, a petition (accompanied by bill, Senate, No. 1369) of Michael J. Barrett, John W. Olver, Richard A. Kraus, Nicholas J. Costello and other members of the General Court for legislation to regulate state contracts with companies doing business with or in the Republic of South Africa or Namibia. State Administration.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Nine.

AN ACT REGULATING STATE CONTRACTS WITH COMPANIES DOING BUSINESS WITH OR IN THE REPUBLIC OF SOUTH AFRICA OR NAMIBIA.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of chapter 7 of the General Laws as
2 appearing in the 1986 Official Edition is hereby amended by
3 inserting at the end thereof the following: —
4 The "government of South Africa" means any public or
5 quasipublic entity operating within the Republic of South Africa,
6 including, but not limited to, municipal, provincial, national or
7 other governmental bodies, including all departments and
8 agencies of such bodies, public utilities, public facilities, or any
9 national corporation in which the Republic of South Africa has
10 a financial interest or operational responsibilities, and including
11 Bantustans or so-called "independent" homelands;
12 The "government of Namibia" (also known as "South-West
13 Africa") means any public or quasi-public entity operating within
14 Namibia, including, but not limited to, municipal, provincial,
15 national or other governmental bodies, public utilities, public
16 facilities, or any national corporation in which the public sector
17 of Namibia has a financial interest or operational responsibilities;
18 "comparable low bid or offer" means a bid or offer which is
19 no more than 10% greater than the lowest bid or offer submitted
20 to the state agency;

21 "secretary" means the secretary of administration and finance
22 of the commonwealth;
23 "state agency" means all awarding authorities of the
24 commonwealth, including, but not limited to, all executive
25 agencies, departments, commissions, and public institutions of
26 higher education, and the senate and house of representatives;
27 "state authority" shall include the: bay state skills corporation,
28 centers of excellence, community economic development
29 assistance corporation, community development finance
30 corporation, government land bank, Massachusetts bay
31 transportation authority, Massachusetts business development
32 corporation, Massachusetts capital resource company, Massa-
33 chusetts convention center authority, Massachusetts corporations
34 for educational telecommunications, Massachusetts educational
35 loan authority, Massachusetts health and educational facilities
36 authority, Massachusetts higher education assistance corpora-
37 tion, Massachusetts housing finance agency, Massachusetts horse
38 racing authority, Massachusetts industrial finance agency,
39 Massachusetts legal assistance corporation, Massachusetts
40 municipal wholesale electric company, Massachusetts port
41 authority, Massachusetts product development corporation,
42 Massachusetts technology development corporation, Massachu-
43 setts technology park corporation, Massachusetts turnpike
44 authority, Massachusetts water resources authority, Nantucket
45 land bank, New England loan marketing corporation, pension
46 reserves investment management board, state college building
47 authority, southeastern Massachusetts university building
48 authority, thrift institutions fund for economic development,
49 university of Lowell building authority, university of Massachu-
50 setts building authority, victim and witness board, and Wood's
51 Hole, Martha's Vineyard, and Nantucket steamship authority.
52 "doing business with South Africa or Namibia" means:
53 (a) having any operations, licenses, franchises, majority-owned
54 subsidiaries, or contracts of assured supply in South Africa or
55 Namibia;
56 (b) providing financial services to the government of South
57 Africa or the government of Namibia, including providing direct

58 loans, underwriting government securities, providing any
59 consulting advice or assistance, providing brokerage services,
60 acting as a trustee or escrow agent, or otherwise acting as an agent
61 pursuant to a contractual agreement;
62 (c) promoting the importation or sale of gold or gold products
63 from South Africa or Namibia;
64 (d) providing any goods or services, other than those goods or
65 services necessary or the provision of international telecommu-
66 nications services, to the government of South Africa or the
67 government of Namibia.
68 A company with operations in South Africa or Namibia for the
69 sole purpose of reporting news shall not be considered to be doing
70 business in those countries;
71 "person" means any individual and partnership, firm,
72 association, corporation, or other entity;
73 "essential" means necessary in order that an agency may
74 perform its mission, there being no substitute, to avoid irreparable
75 harm to agency programs.

1 SECTION 2. Chapter 7 of the General Laws, as appearing in
2 the 1986 Official Edition, is hereby amended by inserting after
3 section 22B the following sections: —
4 Section 22C. (a) Except as otherwise stated in this section, a
5 state agency or state authority may not procure goods or services
6 which:
7 (1) originate in South Africa or Namibia; or
8 (2) are provided by a person not located in South Africa or
9 Namibia, but functioning as an operation, licensee, franchise, or
10 majority-owned subsidiary of a person located in South Africa
11 or Namibia, or functioning as an agent of the government of South
12 Africa or the government of Namibia; or
13 (3) are provided by any individual or any partnership, firm,
14 association, corporation, or other entity engaged in the manu-
15 facture, distribution or sale of firearms, munitions (including
16 rubber or plastic bullets), tear gas, armored vehicles or military
17 aircraft for use or deployment in any activity in Northern Ireland.
18 (b) A state agency or state authority may purchase goods or
19 services specified above in subsection (a) of this section if the

20 agency certifies in writing to the secretary or, in the case of an
21 authority, to the chief operating officer thereof that the
22 procurement is essential.
23 Section 22D. (a) The secretary shall establish and maintain a
24 prohibited purchase list. The prohibited purchase list shall contain
25 the names of all persons currently doing business with South
26 Africa or Namibia. It shall also contain the names of all persons
27 currently doing business with South Africa or Namibia. It shall
28 also contain the names of any individual of any partnership, firm,
29 association, corporation, or other entity engaged in the manu-
30 facture, distribution or sale of firearms, munitions (including
31 rubber or plastic bullets), tear gas, armored vehicles or military
32 aircraft for use or deployment in any activity in Northern Ireland.
33 (b) In establishing the prohibited purchase list, the secretary
34 shall consult the most recent annual report of the U.S. Consulate
35 General of Johannesburg, entitled "American Firms, Subsidiaries
36 and Affiliates — South Africa", United Nations Reports, and
37 other reliable sources.
38 (c) The prohibited purchase list shall be updated at least once
39 every three months.
40 (d) The secretary shall provide the list to all state agencies and
41 state authorities.
42 (e) Except as othervise stated in this section, a state agency or
43 state authority may receive but may not accept a bid or offer from
44 any person on the prohibited purchase list maintained by the
45 secretary.
46 (f) A state agency or authority may accept a bid or offer from
47 a person on the prohibited purchase list only after certifying in
48 writing to the secretary, or in the case of a state authority, to the
49 chief operating officer thereof, that:
50 1) the procurement is essential; and
51 2) compliance with subsection (a) of this section would
52 eliminate the only bid or offer, or would result in inadequate
53 competition.
54 (g) In any procurement that includes bidders or offerors who
55 are on the prohibited purchase list, the state agency or state
56 authority may award the contract to a person on the prohibited
57 purchase list only if there is no comparable low bid or offer by
58 a person who is not on the prohibited purchase list.

59 Section 22E. In any solicitation, a state agency or state authority
60 shall provide ample notice of the requirements of section 22C.
61 Section 22F. Any contract entered into in violation of
62 sections 22 through 22E inclusive of this chapter is void.
63 Section 22G. Annually on or after January first, the secretary
64 shall file a report with the clerks of the senate and house of
65 representatives detailing compliance with sections twenty-two
66 through twenty-two F.
67 Section 22H. The secretary is hereby authorized to promulgate
68 regulations to assure the timely and effective implementation of
69 this chapter.

1 SECTION 3. Any existing contractual agreement shall remain
2 in full force and effect and not subject to the provisions of this
3 act until such time as the renewal of the contractual agreement.