

ASSEMBLY BILL

No. 1650

Introduced by Assembly Members Feuer and Blumenfield

January 13, 2010

An act to add Chapter 2.7 (commencing with Section 2200) to Part 1 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1650, as introduced, Feuer. Public contracts: state and local contract eligibility: energy sector investment activities in Iran.

Existing law sets forth the requirements for the solicitation and evaluation of bids and the awarding of contracts by public entities.

This bill would prohibit a scrutinized person, as defined, that is engaged in investment activities in the energy sector in Iran, from bidding on or entering into a contract with a public entity for goods or services. The bill would require a prospective bidder for those contracts, that currently or within the previous 3 years has had business activities or other operations outside of the United States, to certify that it is not a scrutinized person and would impose civil penalties, as specified, for a person that provides a false certification. This bill would require the awarding body of a public entity, if the awarding body determines that a person is a scrutinized person, to provide written notice of its intent to not enter into or renew a contract for goods or services with the person. This bill would require the awarding body to provide a person determined to be a scrutinized person an opportunity to demonstrate it is not involved in specified activities in Iran.

This bill would make legislative finding and declarations regarding a statewide concern.

This bill would become operative only if federal law authorizes states to adopt and enforce contracting prohibitions of the type provided for in this bill, and would become inoperative upon the date that federal authorization ceases.

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. Chapter 2.7 (commencing with Section 2200) is
2 added to Part 1 of Division 2 of the Public Contract Code, to read:

3

4 CHAPTER 2.7. IRAN CONTRACTING ACT OF 2010

5

6 2200. This chapter shall be known and may be cited as the Iran
7 Contracting Act of 2010.

8 2201. The Legislature hereby finds and declares all of the
9 following:

10 (a) In imposing United States sanctions on Iran, Congress and
11 the President have determined that the illicit nuclear activities of
12 the Government of Iran, combined with its development of
13 unconventional weapons and ballistic missiles, and its support of
14 international terrorism, represent a serious threat to the security
15 of the United States, Israel, and other United States allies in Europe,
16 the Middle East, and around the world.

17 (b) On September 9, 2009, it was reported that American
18 intelligence agencies have concluded that Iran has already created
19 enough nuclear fuel to develop a nuclear weapon, and United States
20 Ambassador to the International Atomic Energy Agency Glyn
21 Davies declared that Iran had achieved “possible breakout
22 capacity.”

23 (c) On September 21, 2009, Iran sent a letter to the International
24 Atomic Energy Agency acknowledging that it is considering a
25 previously undeclared “new pilot fuel enrichment plan.”

26 (d) On Sept. 25, 2009, President Barack H. Obama, joined by
27 Prime Minister Gordon Brown of Britain and President Nicolas
28 Sarkozy of France, stated that the secret plant “represents a direct
29 challenge to the basic foundation of the nonproliferation regime”
30 and “deepens a growing concern that Iran is refusing to live up to
31 those international responsibilities, including specifically revealing

1 all nuclear-related activities. As the international community
2 knows, this is not the first time that Iran has concealed information
3 about its nuclear program.”

4 (e) The International Atomic Energy Agency has repeatedly
5 called attention to Iran’s unlawful nuclear activities, and, as a
6 result, the United Nations Security Council has adopted a range
7 of sanctions designed to encourage the Government of Iran to
8 cease those activities and comply with its obligations under the
9 Treaty on the Non-Proliferation of Nuclear Weapons (commonly
10 known as the “Nuclear Non-Proliferation Treaty”).

11 (f) It is anticipated that Congress will declare its intent that state
12 and local governments be able to direct divestiture from, prevent
13 investment in, and prohibit entry into or renewal of contracts with,
14 companies operating in Iran’s energy sector. Under federal
15 legislation advancing in the 111th Congress and cosponsored by
16 more than half of the members of the United States Senate and
17 House of Representatives, state and local governments would be
18 expressly authorized to divest and otherwise disassociate
19 themselves from companies with investments that have the result
20 of directly or indirectly supporting the efforts of the Government
21 of Iran to achieve a nuclear weapons capability.

22 (g) On October 7, 2008, then-Senator Obama stated, “Iran right
23 now imports gasoline, even though it’s an oil producer, because
24 its oil infrastructure has broken down. If we can prevent them from
25 importing the gasoline that they need and the refined petroleum
26 products, that starts changing their cost-benefit analysis. That starts
27 putting the squeeze on them.”

28 (h) The serious and urgent nature of the threat from Iran
29 demands that states, local governments, educational institutions,
30 and private institutions work together with the federal government
31 and American allies to do everything possible diplomatically,
32 politically, and economically to prevent Iran from acquiring a
33 nuclear weapons capability.

34 (i) There are moral and reputational reasons for this state and
35 local governments to not engage in business with foreign
36 companies that have business activities benefiting foreign states,
37 such as Iran, that commit egregious violations of human rights,
38 proliferate nuclear weapons capabilities, and support terrorism.

39 (j) It is the responsibility of this state and local governments to
40 decide how, where, and by whom its financial resources should

1 be invested. It also is the prerogative of state and local governments
 2 to not invest in, or do business with, companies whose investments
 3 with Iran place those companies at risk from the impact of
 4 economic sanctions imposed upon the Government of Iran for
 5 sponsoring terrorism, committing egregious violations of human
 6 rights, and engaging in illicit nuclear weapons development.

7 (k) The human rights situation in Iran has steadily deteriorated
 8 in 2009, as punctuated by transparently fraudulent elections and
 9 the brutal repression and murder, arbitrary arrests, and show trials
 10 of peaceful dissidents.

11 (l) During the postelection protests in June 2009, the Iranian
 12 government imposed widespread and unjustifiable restrictions on
 13 telecommunications services, denying the citizens of Iran their
 14 rights and liberties to free speech.

15 (m) On October 14, 2007, Governor Arnold Schwarzenegger
 16 stated his intention to support “efforts to further prevent terrorism”
 17 when signing Assembly Bill 221, which prohibits the state’s
 18 pension funds from investing in companies with active business
 19 in Iran.

20 (n) This state currently honors contracts with foreign companies
 21 that may be at financial risk due to business ties with foreign states,
 22 such as Iran, that are involved in the proliferation of weapons of
 23 mass destruction, commit human rights violations, and support
 24 terrorism.

25 (o) The concerns of the State of California regarding Iran are
 26 strictly the result of the actions of the Government of Iran.

27 (p) The people of the State of California declare all of the
 28 following:

- 29 (1) We have feelings of friendship for the people of Iran.
- 30 (2) We regret that developments in recent decades have created
 31 impediments to that friendship.
- 32 (3) We hold the people of Iran, their culture, and their ancient
 33 and rich history in the highest esteem.

34 (q) In order to effectively address the need for the governments
 35 of this state to respond to the policies of Iran in a uniform fashion,
 36 prohibiting contracts with scrutinized persons doing business in
 37 Iran must be accomplished on a statewide basis, and, therefore,
 38 the subject is a matter of statewide concern rather than a municipal
 39 affair.

40 2202. As used in this chapter, the following definitions apply:

1 (a) “Awarding body” means a department, board, agency,
2 authority, or officer, agent, or other authorized representative of
3 the public entity awarding a contract for goods or services.

4 (b) “Energy sector” means activities to develop petroleum or
5 natural gas resources or nuclear power.

6 (c) “Financial institution” means the term as used in Section
7 14(5) of the Iran Sanctions Act of 1996 (Public Law 104-172; 50
8 U.S.C. 1701 note).

9 (d) “Iran” includes any agency or instrumentality of Iran.

10 (e) “Person” means any of the following:

11 (1) A natural person, corporation, company, limited liability
12 company, business association, partnership, society, trust, or any
13 other nongovernmental entity, organization, or group.

14 (2) Any governmental entity or instrumentality of a government,
15 including a multilateral development institution, as defined in
16 Section 1701(c)(3) of the International Financial Institutions Act
17 (22 U.S.C. 262r(c)(3)).

18 (3) Any successor, subunit, parent company, or subsidiary of,
19 or company under common ownership or control with, any entity
20 described in paragraph (1) or (2).

21 (f) “Scrutinized person” means a person that engages in
22 investment activities in the energy sector in Iran. A person engages
23 in investment activities in the energy sector in Iran if any of the
24 following is true:

25 (1) The person has an investment of twenty million dollars
26 (\$20,000,000) or more in the energy sector in Iran.

27 (2) The person provides oil or liquified natural gas tankers, or
28 products used to construct or maintain pipelines used to transport
29 oil or liquified natural gas, for the energy sector in Iran.

30 (3) The person is a financial institution that extends twenty
31 million dollars (\$20,000,000) or more in credit to another person,
32 for 45 days or more, if that person will use the credit to invest in
33 the energy sector in Iran.

34 2203. A scrutinized person is ineligible to, and shall not, bid
35 on, submit a proposal for, or enter into, a contract with a public
36 entity for goods or services.

37 2204. A public entity shall require a person that submits a bid
38 or proposal to, or otherwise proposes to enter into a contract with,
39 a public entity with respect to a contract for goods or services, that
40 currently or within the previous three years has had business

1 activities or other operations outside of the United States, to certify
2 that the person is not a scrutinized person.

3 2205. (a) If the awarding body determines that a person has
4 submitted a false certification under Section 2204, the person shall
5 be subject to all of the following:

6 (1) Pursuant to an action under subdivision (b), a civil penalty
7 in an amount that is equal to the greater of two hundred fifty
8 thousand dollars (\$250,000) or twice the amount of the contract
9 for which the false certification was made.

10 (2) Termination of an existing contract with the awarding body
11 at the option of the awarding body.

12 (3) Ineligibility to bid on a contract for a period of three years
13 from the date of the determination that the person submitted the
14 false certification.

15 (b) The awarding body shall report to the Attorney General the
16 name of the person that the awarding body determines has
17 submitted a false certification under Section 2204, together with
18 its information as to the false certification, and the Attorney
19 General shall determine whether to bring a civil action against the
20 person to collect the penalty described in paragraph (1) of
21 subdivision (a). If it is determined in that action that the person
22 submitted a false certification, the person shall pay all costs and
23 fees the plaintiff incurred in a civil action, including costs incurred
24 by the awarding body for investigations that led to the finding of
25 the false certification and all costs and fees incurred by the Attorney
26 General.

27 2206. (a) If the awarding body, using credible information
28 available to the public, determines that a person that has an existing
29 contract with the awarding body, or has submitted a pending bid
30 or contract proposal to, or otherwise proposes to enter into a
31 contract with, the awarding body, is a scrutinized person, the
32 awarding body shall provide 90 days' written notice of its intent
33 to not enter into or renew a contract for goods or services with the
34 person. The notice shall specify that the person, if it ceases its
35 engagement in investment activities in the energy sector in Iran,
36 may become eligible for a future contract for goods or services
37 with the awarding body.

38 (b) The awarding body shall provide a person determined to be
39 a scrutinized person with an opportunity to demonstrate to the
40 awarding body that it is not engaged in investment activities in the

1 energy sector in Iran. If the awarding body determines that the
2 person is not engaged in investment activities in the energy sector
3 in Iran, the person shall be eligible to enter into or renew a contract
4 for goods or services with the awarding body.

5 2207. The Legislature shall submit to the Attorney General of
6 the United States a written notice describing this chapter within
7 30 days after the operative date of this chapter.

8 2208. (a) If any one or more provisions, sections, subdivisions,
9 sentences, clauses, phrases, or words of this act or the application
10 thereof to any person or circumstance is found to be invalid, illegal,
11 unenforceable, or unconstitutional, the same is hereby declared to
12 be severable and the balance of this act shall remain effective and
13 functional notwithstanding such invalidity, illegality,
14 unenforceability, or unconstitutionality.

15 (b) The Legislature hereby declares that it would have passed
16 this act, and each provision, section, subdivision, sentence, clause,
17 phrase, or word thereof, irrespective of the fact that any one or
18 more provisions, sections, subdivisions, sentences, clauses, phrases,
19 or words are declared invalid, illegal, unenforceable, or
20 unconstitutional.

21 SEC. 2. (a) Section 1 of this act shall become operative only
22 if federal legislation authorizing states to adopt and enforce
23 contracting prohibitions of the type provided for in that section is
24 enacted and, in that event, shall become operative on the later of
25 January 1, 2011, or the operative date of the authorizing federal
26 legislation.

27 (b) Section 1 of this act shall become inoperative upon the date
28 that federal law ceases to authorize the states to adopt and enforce
29 the contracting prohibitions of the type provided for in that section.