

AMENDED IN ASSEMBLY APRIL 27, 2010  
AMENDED IN ASSEMBLY APRIL 13, 2010  
AMENDED IN ASSEMBLY FEBRUARY 23, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1650**

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**Introduced by Assembly Members Feuer, Blumenfield, and  
Huffman**  
**(Coauthors: Assembly Members Anderson, Bass, Block, De Leon,  
Hill, Jones, Lieu, Miller, Portantino, Silva, and Tran)**  
(Coauthor: Senator Pavley)

January 13, 2010

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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 amended, 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~~ *engaged in investment activities in the energy sector in Iran* 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 *that engages in investment activities in the energy sector in Iran*, 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~~ *that is alleged to be engaging in investment activities in the energy sector in Iran* with an opportunity to demonstrate it is not involved in specified *investment* 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

1 Davies declared that Iran had achieved “possible breakout  
2 capacity.”

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

6 (d) On Sept. 25, 2009, President Barack H. Obama, joined by  
7 Prime Minister Gordon Brown of Britain and President Nicolas  
8 Sarkozy of France, stated that the secret plant “represents a direct  
9 challenge to the basic foundation of the nonproliferation regime”  
10 and “deepens a growing concern that Iran is refusing to live up to  
11 those international responsibilities, including specifically revealing  
12 all nuclear-related activities. As the international community  
13 knows, this is not the first time that Iran has concealed information  
14 about its nuclear program.”

15 (e) The International Atomic Energy Agency has repeatedly  
16 called attention to Iran’s unlawful nuclear activities, and, as a  
17 result, the United Nations Security Council has adopted a range  
18 of sanctions designed to encourage the Government of Iran to  
19 cease those activities and comply with its obligations under the  
20 Treaty on the Non-Proliferation of Nuclear Weapons (commonly  
21 known as the “Nuclear Non-Proliferation Treaty”).

22 (f) It is anticipated that Congress will declare its intent that state  
23 and local governments be able to direct divestiture from, prevent  
24 investment in, and prohibit entry into or renewal of contracts with,  
25 companies operating in Iran’s energy sector. Under bipartisan  
26 federal legislation advancing in the 111th Congress and  
27 cosponsored by more than one-third of the members of the United  
28 States Senate and more than half of the members of the House of  
29 Representatives, state and local governments would be expressly  
30 authorized to divest and otherwise disassociate themselves from  
31 companies with investments that have the result of directly or  
32 indirectly supporting the efforts of the Government of Iran to  
33 achieve a nuclear weapons capability.

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

1 (h) The serious and urgent nature of the threat from Iran  
2 demands that states, local governments, educational institutions,  
3 and private institutions work together with the federal government  
4 and American allies to do everything possible diplomatically,  
5 politically, and economically to prevent Iran from acquiring a  
6 nuclear weapons capability.

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

12 (j) It is the responsibility of the state to decide how, where, and  
13 by whom its financial resources should be invested. It also is the  
14 prerogative of the state to not invest in, or do business with,  
15 companies whose investments with Iran place those companies at  
16 risk from the impact of economic sanctions imposed upon the  
17 Government of Iran for sponsoring terrorism, committing egregious  
18 violations of human rights, and engaging in illicit nuclear weapons  
19 development.

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

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

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

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

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

1 (p) The people of the State of California declare all of the  
2 following:

3 (1) We have feelings of friendship for the people of Iran.

4 (2) We regret that developments in recent decades have created  
5 impediments to that friendship.

6 (3) We hold the people of Iran, their culture, and their ancient  
7 and rich history in the highest esteem.

8 (q) In order to effectively address the need for the governments  
9 of this state to respond to the policies of Iran in a uniform fashion,  
10 prohibiting contracts with ~~scrutinized~~ persons doing business in  
11 Iran must be accomplished on a statewide basis, and, therefore,  
12 the subject is a matter of statewide concern rather than a municipal  
13 affair.

14 2202. As used in this chapter, the following definitions apply:

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

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

20 (c) “Financial institution” means the term as used in Section  
21 14(5) of the Iran Sanctions Act of 1996 (Public Law 104-172; 50  
22 U.S.C. 1701 note).

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

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

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

28 (2) Any governmental entity or instrumentality of a government,  
29 including a multilateral development institution, as defined in  
30 Section 1701(c)(3) of the International Financial Institutions Act  
31 (22 U.S.C. 262r(c)(3)).

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

35 (f) ~~“Scrutinized person” means a person that engages in~~  
36 ~~investment activities in the energy sector in Iran. A person engages~~

37 (f) *A person engages in investment “investment activities in the*  
38 *energy sector in Iran” if any of the following is true:*

39 (1) The person has an investment of twenty million dollars  
40 (\$20,000,000) or more in the energy sector in Iran.

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

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

8 2203. ~~A scrutinized person~~ *person that engages in investment*  
9 *activities in the energy sector in Iran* is ineligible to, and shall not,  
10 bid on, submit a proposal for, or enter into, a contract with a public  
11 entity for goods or services.

12 2204. A public entity shall require a person that submits a bid  
13 or proposal to, or otherwise proposes to enter into a contract with,  
14 a public entity with respect to a contract for goods or services, that  
15 currently or within the previous three years has had business  
16 activities or other operations outside of the United States, to certify  
17 that the person ~~is not a scrutinized person~~ *does not engage in*  
18 *investment activities in the energy sector in Iran.*

19 2205. (a) If the awarding body determines that a person has  
20 submitted a false certification under Section 2204, the person shall  
21 be subject to all of the following:

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

26 (2) Termination of an existing contract with the awarding body  
27 at the option of the awarding body.

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

31 (b) The awarding body shall report to the Attorney General the  
32 name of the person that the awarding body determines has  
33 submitted a false certification under Section 2204, together with  
34 its information as to the false certification, and the Attorney  
35 General shall determine whether to bring a civil action against the  
36 person to collect the penalty described in paragraph (1) of  
37 subdivision (a). The awarding body of a local public entity may  
38 also report to the city attorney, county counsel, or district attorney  
39 the name of the person that the awarding body determines has  
40 submitted a false certification under Section 2204, together with

1 its information as to the false certification, and the city attorney,  
2 county counsel, or district attorney may determine whether to bring  
3 a civil action against the person to collect the penalty described in  
4 paragraph (1) of subdivision (a). If it is determined in that action  
5 that the person submitted a false certification, the person shall pay  
6 all reasonable costs and fees incurred in a civil action, including  
7 costs incurred by the awarding body for investigations that led to  
8 the finding of the false certification and all reasonable costs and  
9 fees incurred by the Attorney General, city attorney, county  
10 counsel, or district attorney.

11 2206. (a) If the awarding body, using credible information  
12 available to the public, determines that a person that has an existing  
13 contract with the awarding body, or has submitted a pending bid  
14 or contract proposal to, or otherwise proposes to enter into a  
15 contract with, the awarding body, ~~is a scrutinized person~~ *engages*  
16 *in investment activities in the energy sector in Iran*, the awarding  
17 body shall provide 90 days' written notice of its intent to not enter  
18 into or renew a contract for goods or services with the person. The  
19 notice shall specify that the person, if it ceases its engagement in  
20 investment activities in the energy sector in Iran, may become  
21 eligible for a future contract for goods or services with the awarding  
22 body.

23 (b) The awarding body shall provide a person ~~determined to be~~  
24 ~~a scrutinized person~~ with an opportunity to demonstrate to the  
25 awarding body that it is not engaged in investment activities in the  
26 energy sector in Iran. If the awarding body determines that the  
27 person is not engaged in investment activities in the energy sector  
28 in Iran, the person shall be eligible to enter into or renew a contract  
29 for goods or services with the awarding body.

30 2207. The Legislature shall submit to the Attorney General of  
31 the United States a written notice describing this chapter within  
32 30 days after the operative date of this chapter.

33 2208. (a) If any one or more provisions, sections, subdivisions,  
34 sentences, clauses, phrases, or words of this act or the application  
35 thereof to any person or circumstance is found to be invalid, illegal,  
36 unenforceable, or unconstitutional, the same is hereby declared to  
37 be severable and the balance of this act shall remain effective and  
38 functional notwithstanding such invalidity, illegality,  
39 unenforceability, or unconstitutionality.

1 (b) The Legislature hereby declares that it would have passed  
2 this act, and each provision, section, subdivision, sentence, clause,  
3 phrase, or word thereof, irrespective of the fact that any one or  
4 more provisions, sections, subdivisions, sentences, clauses, phrases,  
5 or words are declared invalid, illegal, unenforceable, or  
6 unconstitutional.

7 SEC. 2. (a) Section 1 of this act shall become operative only  
8 if federal legislation authorizing states to adopt and enforce  
9 contracting prohibitions of the type provided for in that section is  
10 enacted and, in that event, shall become operative on the later of  
11 January 1, 2011, or the operative date of the authorizing federal  
12 legislation.

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