

AMENDED IN SENATE JUNE 23, 2010  
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, *John A. Pérez*, Portantino, Silva, and  
Tran)**

~~(Coauthor: Senator Pavley)~~

*(Coauthors: Senators Padilla, Pavley, and Price)*

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 person that is engaged in investment activities in the energy sector in Iran, *as described*, from bidding on or entering into *or renewing* 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 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 person that engages in investment activities in the energy sector in Iran, to provide written notice of its intent ~~to not~~ *not to* enter into or renew a contract for goods or services with the person. This bill would require the awarding body to provide a person that is alleged to be ~~engaging~~ *engaged* in investment activities in the energy sector in Iran with an opportunity to demonstrate it is not ~~involved~~ *engaged* in ~~specified investment activities in Iran~~ *those activities*.

This bill would make legislative ~~finding~~ *findings* 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.

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

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

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

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

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

38 (g) On October 7, 2008, then-Senator Obama stated, “Iran right  
39 now imports gasoline, even though it’s an oil producer, because  
40 its oil infrastructure has broken down. If we can prevent them from

1 importing the gasoline that they need and the refined petroleum  
2 products, that starts changing their cost-benefit analysis. That starts  
3 putting the squeeze on them.”

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

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

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

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

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

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

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

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

3 (p) The people of the State of California declare all of the  
4 following:

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

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

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

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

16 2202. As used in this chapter, the following definitions apply:

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

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

22 (c) “Financial institution” means the term as used in Section  
23 14(5) of the Iran Sanctions Act of 1996 (Public Law 104-172; 50  
24 U.S.C. 1701 note).

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

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

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

30 (2) Any governmental entity or instrumentality of a government,  
31 including a multilateral development institution, as defined in  
32 Section 1701(c)(3) of the International Financial Institutions Act  
33 (22 U.S.C. 262r(c)(3)).

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

37 ~~(f) A~~

38 2202.5. *For purposes of this chapter, a person engages in*  
39 ~~“investment~~ *investment activities in the energy sector in Iran” Iran*  
40 *if any of the following is true:*

1     ~~(1)~~  
2     ~~(a)~~ The person has an investment of twenty million dollars  
3     ~~(\$20,000,000)~~ or more in the energy sector in Iran.

4     ~~(2)~~  
5     ~~(b)~~ The person provides oil or liquified natural gas tankers, or  
6     products used to construct or maintain pipelines used to transport  
7     oil or liquified natural gas, for the energy sector in Iran.

8     ~~(3)~~  
9     ~~(c)~~ The person is a financial institution that extends twenty  
10    million dollars (~~\$20,000,000~~) or more in credit to another person,  
11    for 45 days or more, if that person will use the credit to invest in  
12    the energy sector in Iran.

13    2203. A person that engages in investment activities in the  
14    energy sector in Iran is ineligible to, and shall not, bid on, submit  
15    a proposal for, or enter into *or renew*, a contract with a public  
16    entity for goods or services.

17    2204. A public entity shall require a person that submits a bid  
18    or proposal to, or otherwise proposes to enter into *or renew* a  
19    contract with, a public entity with respect to a contract for goods  
20    or services, that currently or within the previous three years has  
21    had business activities or other operations outside of the United  
22    States, to certify that the person does not engage in investment  
23    activities in the energy sector in Iran.

24    2205. (a) If the awarding body determines that a person has  
25    submitted a false certification under Section 2204, the person shall  
26    be subject to all of the following:

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

31    (2) Termination of an existing contract with the awarding body  
32    at the option of the awarding body.

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

36    (b) The awarding body shall report to the Attorney General the  
37    name of the person that the awarding body determines has  
38    submitted a false certification under Section 2204, together with  
39    its information as to the false certification, and the Attorney  
40    General shall determine whether to bring a civil action against the

1 person to collect the penalty described in paragraph (1) of  
2 subdivision (a). The awarding body of a local public entity may  
3 also report to the city attorney, county counsel, or district attorney  
4 the name of the person that the awarding body determines has  
5 submitted a false certification under Section 2204, together with  
6 its information as to the false certification, and the city attorney,  
7 county counsel, or district attorney may determine whether to bring  
8 a civil action against the person to collect the penalty described in  
9 paragraph (1) of subdivision (a). If it is determined in that action  
10 that the person submitted a false certification, the person shall pay  
11 all reasonable costs and fees incurred in a civil action, including  
12 costs incurred by the awarding body for investigations that led to  
13 the finding of the false certification and all reasonable costs and  
14 fees incurred by the Attorney General, city attorney, county  
15 counsel, or district attorney.

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

28 (b) The awarding body shall provide a person with an  
29 opportunity to demonstrate to the awarding body that it is not  
30 engaged in investment activities in the energy sector in Iran. If the  
31 awarding body determines that the person is not engaged in  
32 investment activities in the energy sector in Iran, the person shall  
33 be eligible to enter into or renew a contract for goods or services  
34 with the awarding body.

35 (c) *This section shall not apply in the case of a person subject*  
36 *to Section 2205.*

37 (d) *This section shall apply to contracts entered into, or*  
38 *renewed, on and after the date that is 90 days after the operative*  
39 *date of this chapter.*

1 2207. The Legislature shall submit to the Attorney General of  
2 the United States a written notice describing this chapter within  
3 30 days after the operative date of this chapter.

4 2208. (a) If any one or more provisions, sections, subdivisions,  
5 sentences, clauses, phrases, or words of this act or the application  
6 thereof to any person or circumstance is found to be invalid, illegal,  
7 unenforceable, or unconstitutional, the same is hereby declared to  
8 be severable and the balance of this act shall remain effective and  
9 functional notwithstanding such invalidity, illegality,  
10 unenforceability, or unconstitutionality.

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

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

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