

AMENDED IN SENATE JULY 1, 2010
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

**Introduced by Assembly Members Feuer, Blumenfield, and
Huffman**
**(Coauthors: Assembly Members Anderson, Bass, Block, De León,
Hill, Jones, Lieu, Miller, John A. Pérez, Portantino, Silva, and
Tran)**
(Coauthors: Senators Padilla, Pavley, and Price)

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 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 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 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 engaged in investment activities in the energy sector in Iran with an opportunity to demonstrate it is not engaged in those activities.~~

This bill would make legislative 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 engaged in investment activities
13 in the energy sector in Iran must be accomplished on a statewide
14 basis, and, therefore, the subject is a matter of statewide concern
15 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 2202.5. For purposes of this chapter, a person engages in
38 investment activities in the energy sector in Iran if any of the
39 following is true:

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

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

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

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

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

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

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

28 (2) Termination of an existing contract with the awarding body
29 at the option of the awarding body.

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

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

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

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

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

32 (c) This section shall not apply in the case of a person subject
33 to Section 2205.

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

37 2207. The Legislature shall submit to the Attorney General of
38 the United States a written notice describing this chapter within
39 30 days after the operative date of this chapter.

1 2208. (a) If any one or more provisions, sections, subdivisions,
2 sentences, clauses, phrases, or words of this act or the application
3 thereof to any person or circumstance is found to be invalid, illegal,
4 unenforceable, or unconstitutional, the same is hereby declared to
5 be severable and the balance of this act shall remain effective and
6 functional notwithstanding such invalidity, illegality,
7 unenforceability, or unconstitutionality.

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

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

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