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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.

The federal Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, which became Public Law 111-195 on July 1, 2010, authorizes a state or local government to adopt and enforce

measures meeting certain requirements, to divest the assets of the state or local government from, or prohibit the investment of those assets in, any person that the state or local government, using credible information available to the public, determines to be engaged in investment activities in Iran. The federal act specifies that an investment includes the entry into or renewal of a contract for goods or services, and that such a measure is not preempted by any federal law or regulation.

This

Pursuant to this authority, 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 state agency for goods and services or a contract with a local public entity for goods or services of \$1,000,000 or more. The bill would require a prospective bidder for those contracts to certify, after exercising due diligence, 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 and did not exercise due diligence, as provided. This bill would require an awarding body to give reasonable notice, and hearing if requested, before the penalties are imposed. This bill would impose the penalties on a person that provides a false certification but exercised due diligence, unless the person has ceased or ceases its engagement in investment activities in the energy sector in Iran, as specified.~~This~~

This bill would, for a pending bid or contract proposal, or for a contract for which no false certification was made, require the awarding body of a public entity, if the awarding body determines, using credible information available to the public, that a person is a person that engages in investment activities in the energy sector in Iran, to provide 90 days' written notice of its intent not to enter into or renew a contract for goods or services with the person.~~This bill~~ *and 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 comment in writing that 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.

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

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

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

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

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

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

37 (j) It is the responsibility of the state to decide how, where, and
38 by whom its financial resources should be invested. It also is the
39 prerogative of the state to not invest in, or do business with,
40 companies whose investments with Iran place those companies at

1 risk from the impact of economic sanctions imposed upon the
2 Government of Iran for sponsoring terrorism, committing egregious
3 violations of human rights, and engaging in illicit nuclear weapons
4 development.

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

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

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

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

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

25 (p) The people of the State of California declare all of the
26 following:

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

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

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

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

38 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 2202.5. For purposes of this chapter, a person engages in
 22 investment activities in the energy sector in Iran if any of the
 23 following is true:

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

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

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

33 2203. A person that engages in investment activities in the
 34 energy sector in Iran is ineligible to, and shall not, bid on, submit
 35 a proposal for, or enter into or renew, a contract with a ~~public entity~~
 36 *state agency for goods or services or a contract with a local public*
 37 *entity for goods and services of one million dollars (\$1,000,000)*
 38 *or more.*

39 2204. ~~A~~(a) A state agency or local public entity shall require
 40 a person that submits a bid or proposal to, or otherwise proposes

1 to enter into or renew a contract with, a *state agency or local public*
2 *entity with respect to a contract for goods or services to certify*
3 *described in Section 2203 to certify, after exercising due diligence,*
4 *that the person does not engage in investment activities in the*
5 *energy sector in Iran.*

6 ~~2205. (a) If the awarding body determines that a person has~~
7 ~~submitted a false certification under Section 2204, the person shall~~
8 ~~be subject to all of the following:~~

9 *(b) For purposes of this section and Section 2205, a person*
10 *shall be deemed to have not exercised due diligence if the person*
11 *knows or should have known that the person is engaged in*
12 *investment activities in the energy sector in Iran after having made*
13 *an affirmative, reasonable inquiry as to the facts and circumstances*
14 *surrounding the person’s investments, or if the person fails to make*
15 *that affirmative, reasonable inquiry.*

16 2205. (a) (1) *If the awarding body determines, using credible*
17 *information available to the public and after providing reasonable*
18 *notice, and a hearing if requested, that a person has submitted a*
19 *false certification under Section 2204 without exercising due*
20 *diligence as described in that section, the following shall apply:*

21 ~~(1)~~

22 (A) 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)~~

27 (B) Termination of an existing contract with the awarding body
28 at the option of the awarding body.

29 ~~(3)~~

30 (C) 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 (2) (A) *If the awarding body determines, using credible*
34 *information available to the public and after providing reasonable*
35 *notice, and a hearing if requested, that a person has submitted a*
36 *false certification under Section 2204 but determines the person*
37 *has exercised due diligence as described in that section, the*
38 *awarding body shall provide written notice of its intent to not enter*
39 *into or renew a contract for goods or services with the person and*
40 *that the person is subject to the penalties described in*

1 *subparagraphs (B) and (C) of paragraph (1), unless the person*
2 *has ceased or ceases its engagement in investment activities in the*
3 *energy sector in Iran within 90 days. The person may still be*
4 *subject to subparagraph (C) of paragraph (1) due to a false*
5 *certification made on another contract.*

6 *(B) If a person described in subparagraph (A) that ceased its*
7 *engagement in investment activities in the energy sector in Iran is*
8 *awarded the contract or contract renewal for which the false*
9 *certification was made, and the awarding body later determines,*
10 *using credible information available to the public and after*
11 *providing reasonable notice, and a hearing if requested, that the*
12 *person is engaged in investment activities in the energy sector in*
13 *Iran during the term of that contract, the person shall be subject*
14 *to the penalties described in subparagraphs (B) and (C) of*
15 *paragraph (1).*

16 (b) The awarding body shall report to the Attorney General the
17 name of the person that the awarding body determines has
18 submitted a false certification under Section 2204, together with
19 its information as to the false certification, and the Attorney
20 General shall determine whether to bring a civil action against the
21 person to collect the penalty described in *subparagraph (A) of*
22 *paragraph (1) of subdivision (a).* The awarding body of a local
23 public entity may also report to the city attorney, county counsel,
24 or district attorney the name of the person that the awarding body
25 determines has submitted a false certification under Section 2204,
26 together with its information as to the false certification, and the
27 city attorney, county counsel, or district attorney may determine
28 whether to bring a civil action against the person to collect the
29 penalty described in *subparagraph (A) of paragraph (1) of*
30 *subdivision (a).* If it is determined in that action that the person
31 submitted a false certification, the person shall pay all reasonable
32 costs and fees incurred in a civil action, including costs incurred
33 by the awarding body for investigations that led to the finding of
34 the false certification and all reasonable costs and fees incurred
35 by the Attorney General, city attorney, county counsel, or district
36 attorney. *Only one civil action against the person to collect the*
37 *penalty described in subparagraph (A) of paragraph (1) of*
38 *subdivision (a) may be brought for a false certification on a*
39 *contract.*

1 2206. (a) If the awarding body, using credible information
2 available to the public, determines that a person that has an existing
3 contract with the awarding body *that is not subject to Section 2205*,
4 or has submitted a pending bid or contract proposal to, or otherwise
5 proposes to enter into a contract with, the awarding body, engages
6 in investment activities in the energy sector in Iran, the awarding
7 body shall provide 90 days' written notice of its intent to not enter
8 into or renew a contract for goods or services with the person. The
9 notice shall specify that the person, if it ceases its engagement in
10 investment activities in the energy sector in Iran, may become
11 eligible for a future contract, or contract renewal, for goods or
12 services with the awarding body.

13 (b) The awarding body shall provide a person with an
14 opportunity to ~~demonstrate~~ *comment in writing* to the awarding
15 body that it is not engaged in investment activities in the energy
16 sector in Iran. If the ~~awarding body determines~~ *person*
17 *demonstrates to the awarding body* that the person is not engaged
18 in investment activities in the energy sector in Iran, the person
19 shall be eligible to enter into or renew a contract for goods or
20 services ~~with the awarding body~~.

21 ~~(c) This section shall not apply in the case of a person subject~~
22 ~~to Section 2205. with the awarding body, unless the person is~~
23 ~~otherwise ineligible to bid on a contract as described in~~
24 ~~subparagraph (C) of paragraph (1) of subdivision (a) of Section~~
25 ~~2205.~~

26 ~~(d)~~

27 (c) This section shall apply to contracts *for goods and services*
28 *with a state agency and contracts for goods and services of one*
29 *million dollars (\$1,000,000) or more with a local public entity*
30 entered into, or renewed, on and after the date that is 90 days after
31 the operative date of this chapter.

32 2207. The Legislature shall submit to the Attorney General of
33 the United States a written notice describing this chapter within
34 30 days after the operative date of this chapter.

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

1 functional notwithstanding such invalidity, illegality,
2 unenforceability, or unconstitutionality.

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

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

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