

AMENDED IN SENATE AUGUST 4, 2010
AMENDED IN SENATE AUGUST 2, 2010
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 *Leno*, 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.

Pursuant to this authority, this bill would *90 days after the effective date of this bill*, 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~~ or 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 bill would, *90 days after the effective date of this bill*, for a pending bid or contract proposal, or for a contract for which no false certification was made, require the awarding body, 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 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 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 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

9

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

10

11

12

13

14

15

16

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

17

18

19

20

21

22

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

23

24

25

26

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

27

28

29

30

31

32

33

34

(d) On Sept. 25, 2009, President Barack H. Obama, joined by
Prime Minister Gordon Brown of Britain and President Nicolas
Sarkozy of France, stated that the secret plant “represents a direct
challenge to the basic foundation of the nonproliferation regime”
and “deepens a growing concern that Iran is refusing to live up to
those international responsibilities, including specifically revealing
all nuclear-related activities. As the international community
knows, this is not the first time that Iran has concealed information
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 *(f) On July 1, 2010, President Barack Obama signed into law
21 H.R. 2194, the “Comprehensive Iran Sanctions, Accountability,
22 and Divestment Act of 2010” (Public Law 111-195), which
23 expressly authorizes states and local governments to prevent
24 investment in, including prohibiting entry into or renewing
25 contracts with, companies operating in Iran’s energy sector with
26 investments that have the result of directly or indirectly supporting
27 the efforts of the Government of Iran to achieve nuclear weapons
28 capability.*

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

35 (h) The serious and urgent nature of the threat from Iran
36 demands that states, local governments, educational institutions,
37 and private institutions work together with the federal government
38 and American allies to do everything possible diplomatically,
39 politically, and economically to prevent Iran from acquiring a
40 nuclear weapons capability.

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

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

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

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

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

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

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

34 (p) The people of the State of California declare all of the
35 following:

- 36 (1) We have feelings of friendship for the people of Iran.
37 (2) We regret that developments in recent decades have created
38 impediments to that friendship.
39 (3) We hold the people of Iran, their culture, and their ancient
40 and rich history in the highest esteem.

1 (q) In order to effectively address the need for the governments
 2 of this state to respond to the policies of Iran in a uniform fashion,
 3 prohibiting contracts with persons engaged in investment activities
 4 in the energy sector ~~in~~ of Iran must be accomplished on a statewide
 5 basis, and, therefore, the subject is a matter of statewide concern
 6 rather than a municipal affair.

7 2202. As used in this chapter, the following definitions apply:

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

11 (b) “Energy sector” of Iran means activities to develop
 12 petroleum or natural gas resources or nuclear power in Iran.

13 (c) “Financial institution” means the term as used in Section
 14 ~~14(5)~~ 14 of the Iran Sanctions Act of 1996 (Public Law 104-172;
 15 50 U.S.C. 1701 note).

16 (d) “Iran” includes *the Government of Iran and* any agency or
 17 instrumentality of Iran.

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

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

22 (2) Any governmental entity or instrumentality of a government,
 23 including a multilateral development institution, as defined in
 24 Section 1701(c)(3) of the International Financial Institutions Act
 25 (22 U.S.C. 262r(c)(3)).

26 (3) Any successor, subunit, parent ~~company~~ *entity*, or subsidiary
 27 of, or ~~company~~ *any entity* under common ownership or control
 28 with, any entity described in paragraph (1) or (2).

29 2202.5. For purposes of this chapter, a person engages in
 30 investment activities ~~in the energy sector~~ in Iran if any of the
 31 following is true:

32 (a) The person has an investment of twenty million dollars
 33 (\$20,000,000) ~~or more in the energy sector in Iran.~~

34 ~~(b) The person provides oil or liquefied natural gas tankers, or~~
 35 ~~products used to construct or maintain pipelines used to transport~~
 36 ~~oil or liquefied natural gas, for the energy sector in Iran.~~
 37 ~~(\$20,000,000) or more in the energy sector of Iran, including in~~
 38 ~~a person that provides oil or liquified natural gas tankers, or~~
 39 ~~products used to construct or maintain pipelines used to transport~~
 40 ~~oil or liquified natural gas, for the energy sector of Iran.~~

1 (e)

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

6 2203. (a) A person that engages in investment activities ~~in the~~
7 ~~energy sector~~ in Iran is ineligible to, and shall not, bid on, submit
8 a proposal for, or enter into or renew, a contract with a state agency
9 for goods or services or a contract with a local public entity for
10 goods ~~and~~ or services of one million dollars (\$1,000,000) or more.

11 (b) *The prohibition described in subdivision (a) applies on and*
12 *after the date that is 90 days after the effective date of this act.*

13 2204. (a) A state agency or local public entity shall require a
14 person that submits a bid or proposal to, or otherwise proposes to
15 enter into or renew a contract with, a state agency or local public
16 entity with respect to a contract for goods or services described in
17 Section 2203 to certify, after exercising due diligence, that the
18 person does not engage in investment activities ~~in the energy sector~~
19 in Iran.

20 (b) For purposes of this section and Section 2205, a person shall
21 be deemed to have not exercised due diligence if the person knows
22 or should have known that the person is engaged in investment
23 activities ~~in the energy sector~~ in Iran after having made an
24 affirmative, reasonable inquiry as to the facts and circumstances
25 surrounding the person's investments, or if the person fails to make
26 that affirmative, reasonable inquiry.

27 (c) *The certification described in subdivision (a) is required on*
28 *and after the date that is 90 days after the effective date of this*
29 *act.*

30 2205. (a) (1) If the awarding body determines, using credible
31 information available to the public and after providing reasonable
32 notice, and a hearing if requested, that a person has submitted a
33 false certification under Section 2204 without exercising due
34 diligence as described in that section, the following shall apply:

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

39 (B) Termination of an existing contract with the awarding body
40 at the option of the awarding body.

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

4 (2) (A) If the awarding body determines, using credible
5 information available to the public and after providing reasonable
6 notice, and a hearing if requested, that a person has submitted a
7 false certification under Section 2204 but determines the person
8 has exercised due diligence as described in that section, the
9 awarding body shall provide written notice of its intent to not enter
10 into or renew a contract for goods or services with the person and
11 that the person is subject to the penalties described in
12 subparagraphs (B) and (C) of paragraph (1), unless the person has
13 ceased or ceases its engagement in investment activities ~~in the~~
14 ~~energy sector~~ in Iran within 90 days. The person may still be
15 subject to subparagraph (C) of paragraph (1) due to a false
16 certification made on another contract.

17 (B) If a person described in subparagraph (A) that ceased its
18 engagement in investment activities ~~in the energy sector~~ in Iran is
19 awarded the contract or contract renewal for which the false
20 certification was made, and the awarding body later determines,
21 using credible information available to the public and after
22 providing reasonable notice, and a hearing if requested, that the
23 person is engaged in investment activities ~~in the energy sector~~ in
24 Iran during the term of that contract, the person shall be subject
25 to the penalties described in subparagraphs (B) and (C) of
26 paragraph (1).

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

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

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 that is not subject to Section 2205,
14 or has submitted a pending bid or contract proposal to, or otherwise
15 proposes to enter into a contract with, the awarding body, 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, or contract renewal, for goods or
22 services with the awarding body.

23 (b) The awarding body shall provide a person with an
24 opportunity to comment in writing to the awarding body that it is
25 not engaged in investment activities ~~in the energy sector~~ in Iran.
26 If the person demonstrates to the awarding body that the person
27 is not engaged in investment activities ~~in the energy sector~~ in Iran,
28 the person shall be eligible to enter into or renew a contract for
29 goods or services with the awarding body, unless the person is
30 otherwise ineligible to bid on a contract as described in
31 subparagraph (C) of paragraph (1) of subdivision (a) of Section
32 2205.

33 (c) This section shall apply to contracts for goods ~~and~~ *or* services
34 with a state agency and contracts for goods ~~and~~ *or* services of one
35 million dollars (\$1,000,000) or more with a local public entity
36 entered into, or renewed, on and after the date that is 90 days after
37 ~~the operative date of this chapter~~ *effective date of this act*.

38 2207. The Legislature shall submit to the Attorney General of
39 the United States a written notice describing this chapter within

1 30 days after the ~~operative date of this chapter~~ *effective date of*
2 *this act.*

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

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

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

22 ~~(b)~~
23 SEC. 2. Section 1 of this act shall become inoperative upon
24 the date that federal law ceases to authorize the states to adopt and
25 enforce the contracting prohibitions of the type provided for in
26 that section.