BILL NUMBER: Assembly Bill 1650 (Feuer) as amended April 27, 2010

SUMMARY

AB 1650 prohibits a person that is engaged in investment activities in the energy sector in Iran from submitting a proposal for or entering into a contract for goods and services with a public entity. The measure requires a person that currently or within the previous three years that has had business activities or other operations outside of the United States to certify that the person is not a person that engages in investment activities in the energy sector in Iran. If the public entity determines that a person has submitted false certification, the public entity is required to report to the Attorney General the name of the person that submitted the false certification. The public entity is also required to notify a person if it determines the person engages in investment activities in the energy sector in Iran, of its intent to not enter into or renew a contract with the person and notify the person of the opportunity to demonstrate that the person is not engaged in investment activity in the energy sector of Iran. The provisions of this measure take effect only if federal legislation is enacted that authorizes states to adopt and enforce contracting prohibitions of the type included in this measure.

PURPOSE OF THE BILL

To prohibit a person 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.

SUMMARY OF AMENDMENTS

The amendments of April 27, 2010 removed the specific term “scrutinized person” from the language of the bill. The term “scrutinized person” was replaced by the phrase “person that engages in investment activities in the energy sector in Iran,” which was the definition of “scrutinized person” prior to these amendments.

BOARD POSITION

Neutral, **if amended** to exclude from the definition of a person that is engaged in investment activities in the energy sector in Iran, an investment firm that does not invest California public pension funds in the energy sector in Iran and to add the provision that CalSTRS shall take action that is consistent with the fiduciary responsibilities of the Board. It is the policy of the Board to be neutral on legislation that does not significantly or adversely impact the benefits or services through the funds administered by CalSTRS or the administration of the retirement plans.

LEGISLATIVE HISTORY

<u>AB 961, Krekorian, 2009 (Died in Assembly Appropriations Committee)</u> would have prohibited companies that were engaged in business with perpetrators of specified genocides that still held

looted or deposited assets of genocide victims or their heirs, from bidding on or submitting proposals for contracts with state agencies.

Chapter 272, Statutes of 2008 (AB 498—Hernandez) requires a company that bids or submits a proposal for a contract for goods and services with a state agency to self-certify that it is not a scrutinized company engaged in specified activities in Sudan.

ACR 79, Anderson, 2008 (Died in Senate Appropriations Committee) called upon the University of California to divest from foreign companies with specified business activities in Iran.

Chapter 671, Statutes of 2007 (AB 221—Anderson) requires CalSTRS and CalPERS, when it is consistent with their fiduciary responsibilities, to divest from companies, as specified, that are invested in or engaged in business operations with entities in the defense, nuclear, petroleum or natural gas sectors of Iran, or that have demonstrated complicity with an Iranian terrorist organization.

AB 1089, Hernandez, 2006 (Died in Senate Appropriations Committee) would have required DGS to identify a list of companies that have substantial business operations with the government of Sudan or were associated with the "Darfur genocide" and prohibited state entities from entering into contracts exceeding $100,000 with such companies.

Chapter 442, Statutes of 2006 (A.B. 2941—Koretz) prohibits CalPERS and CalSTRS from investing in companies with business operations in the Sudan that are complicit in the Darfur genocide or have specified relationships with the Sudanese government or military. It also requires the boards of both retirement systems to divest from such companies, consistent with their fiduciary obligations.

PROGRAM BACKGROUND

Government of Iran
This measure seeks to address concerns regarding the government of Iran’s involvement with the proliferation of nuclear weapons capabilities, violation of human rights, and support of terrorism. In October 2007 the Governor signed AB 221 (Chapter 671, Statutes of 2007), which required CalSTRS and CalPERS to divest from companies with business operations in Iran. Prior to that, the United States government enacted the Iran Sanctions Act in 1996 in response to Iran’s effort to develop its nuclear program and its support of terrorist organizations. It is anticipated that there will be federal legislation that will declare Congress’ intent that state and local governments be able to prohibit entry into or renewal of contracts with companies operating in Iran’s energy sector.

State Contracts
CalSTRS currently obtains most routine office supplies under a state contract entered into by DGS with a private vendor. For other goods, CalSTRS solicits price quotes from two or more vendors and selects the lowest responsive bidder. For purchases greater than $25,000 CalSTRS conducts a more formal request, which incorporates any special terms or conditions, and the lowest responsive bidder is awarded the contract. Among the contracts that CalSTRS enters into

are those with outside investment managers to manage approximately $92 billion of the CalSTRS portfolio.

ANALYSIS:

Existing Law:

The State Contract Act governs contracting between state agencies and private companies and sets forth requirements for the procurement of materials, supplies, equipment, and services by state agencies. Existing law establishes DGS as the state government entity responsible for providing a broad range of business services and functions to the state government. However, CalSTRS' Board policy provides that DGS approval is not required for acquisition of goods or services.

This bill:

AB 1650 prohibits a person engaged in investment activities in the energy sector in Iran from submitting a proposal for or entering into a contract with a public entity for goods and services. A person means any natural person, corporation, company, limited liability company, business association, partnership, society, trust, or any other nongovernmental entity, organization or group. A person engages in investment activities in the energy sector in Iran if any of the following is true:

- The person has an investment of $20 million or more in the energy sector in Iran,
- The person provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran, or
- The person is a financial institution that extends $20 million or more in credit to another person, for 45 days or more, if that person will use the credit to invest in the energy sector in Iran.

The measure also requires any person that currently or within the previous three years that has had business activities or other operations outside of the United States, who submits a bid or proposal to enter into a contract with a public entity for good and services, to certify that the person does not engage in investment activities in the energy sector in Iran. If a public entity determines that a person submitted a false certification, the person would be subject to all of the following:

- A civil penalty equal to the greater of $250,000 or twice the amount of the contract for which a bid or proposal was submitted, subject to determination of the Attorney General,
- Termination of existing contract with the public entity at the option of the public entity, and
- Ineligibility to bid on a contract for a period of three years from the date the determination was made that the person submitted the false certification.

The public entity determining that false certification was submitted is required to report the name of the person that submitted the false certification to the Attorney General. The Attorney General determines whether to bring civil action against the person to collect the above mentioned civil penalty. Local public entities may also report the name of the person to the city attorney, county counsel or district attorney, who may decide to bring civil action against the person to collect the civil penalty described above.

This measure also requires that a public entity provide 90 days written notice to a person determined to be engaged in investment activities in the energy sector in Iran, of the entities intent to not renew an existing contract or enter into a new contract for goods or services with the person. The notice has to specify that the person that engages in investment activities in the energy sector in Iran may become eligible for a future contract for goods or services with the public entity if it ceases its investment activities in the energy sector in Iran.

The public entity is also required to provide a person determined to be engaged in investment activities in the energy sector in Iran with an opportunity to demonstrate that the person is not engaged in those investment activities. If the public entity determines that person is not engaged in such activities, the person would be eligible to enter into or renew a contract with the public entity.

The provisions of this measure take effect only if federal legislation is enacted that authorizes states to adopt and enforce contracting prohibitions like the ones included in this measure. If federal legislation is enacted, the provisions of this measure would take effect on January 1, 2011 or the operative date of the authorizing federal legislation, whichever is later.

Chapter 671, Statutes of 2007 (AB 221-Anderson) was enacted in an effort to ensure California public pension systems did not unwittingly contribute to Iranian terrorism and the buildup of nuclear arms, and prohibited CalSTRS and CalPERS from investing in companies with business operations in Iran. AB 1650 is intended to further build upon Chapter 671, by prohibiting a person that engages in investment activities in the energy sector in Iran, from bidding on or entering into, a contract for goods or services with a public entity.

As drafted, AB 1650 would not only effectively prohibit CalSTRS from contracting with investment managers to invest CalSTRS funds in Iranian energy sector, consistent with Chapter 671, but would also prohibit CalSTRS from hiring investment managers who invest other institutional investors' funds in these restricted areas. If there are other funds invested in these areas, this would have the effect of limiting the universe of possible investment managers for CalSTRS to hire. At the present time, CalSTRS is not aware of any of its managers who would meet the definition of a person that engages in investment activities in the energy sector in Iran. Nonetheless, in order to avoid the possibility that CalSTRS might be excluded from hiring an investment manager because the manager invests other institutional funds in the Iranian energy sector, staff recommends the definition of a person that engages in investment activities in the energy sector in Iran be amended to exclude an investment firm that does not invest California public pension funds in the energy sector in Iran.

OTHER STATES' INFORMATION

Each house of the United States Congress has passed legislation known as the "Comprehensive Iran Sanctions, Accountability and Divestment Act of 2009" that, among other things, would authorize states to adopt and enforce contracting prohibitions like the ones included in this measure. However, a conference committee to conform differences in the two measures has not yet met, which has delayed any further action on the legislation.

In 2007, Illinois enacted a statute that, among other things, requires that each bid, offer or proposal for a state contract include a disclosure of whether or not the bidder had any petroleum or mineral extraction business activity in Iran in the last 24 months.

FISCAL IMPACT

<u>Benefit Program Cost</u> – (As currently drafted): Potential loss of investment returns by excluding investment managers that invest other institutional funds in Iran energy sector.

<u>Administrative Costs/Savings</u> – There are administrative costs associated with inserting a new clause to the terms and conditions of CalSTRS' contracts and to monitor compliance of approximately $16,000 per year.

SUPPORT

30 Years After
Anti-Defamation League
American Jewish committee – Los Angeles
Center for the Promotion of Democracy and Human Rights
City of Beverly Hills
City of West Hollywood
Jewish Labor committee, Western Region
Jewish Public Affairs Committee of California
Los Angeles County Board of Supervisors
Simon Wiesenthal Center
United Against a Nuclear Iran

OPPOSITION

American Council of Engineering Companies, California
Associated General Contractors of California
Association of California Life & Health Insurance Companies
California Bankers Association
California Chamber of Commerce
California Manufacturers and Technology Association
Western States Petroleum Association

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