BILL NUMBER: AB 1650 (Feuer) as amended August 31, 2010

SUMMARY

AB 1650 prohibits a person who is identified on a list created and maintained by the Department of General Services as being engaged in investment activities in the energy sector in Iran from submitting a proposal for or entering into or renewing a contract for goods and services with a state agency or with a local public entity for more than $1 million. The measure requires a person who submits a bid or proposal to enter into or renew such a contract with a state agency or local public entity to certify that the person is not identified as being engaged in investment activities in the energy sector in Iran and would impose penalties, as specified, for a person that submits a false certification. Penalties would be imposed as specified on a person who submitted false certification unless the person ceased or ceases its engagement in investment activities in Iran as specified. The measure allows exemptions for person indentified as being engaged in investment activities in Iran to enter into or renew a contract for goods or services with a public entity, if specified conditions are met.

Before finalizing a list that identifies persons engaged in investment activities in Iran, the Department of General Services would provide written notice of its intent to include the person on the list and an opportunity to comment in writing that it is not engaged in investment activities in Iran. If the person demonstrates that it is not engaged in investment activities in Iran, the person would not be included on the list. The Department of General Services would be allowed to assess a fee that would be paid by persons that use the list to comply with the requirements of this measure.

RECOMMENDATION AND SUPPORTING ARGUMENTS

NEUTRAL, If Amended. This measure could prohibit CalSTRS from hiring investment managers who invest other institutional investors' funds in Iran, which would limit the universe of possible investment managers for CalSTRS to hire.

PURPOSE OF THE BILL

To prohibit a person who is engaged in investment activities in the energy sector in Iran from bidding on, entering into or renewing a contract with a state agency or public entity for goods or services.

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, on or after June 1, 2011, a person identified on a list created by the Department of General Services (DGS) as a person engaging in investment activities in Iran, from submitting a proposal for entering into or renewing a contract with a public entity for goods and services of $1 million or more. A person is also prohibited, on or after July 1, 2011, from entering into or renewing such a contract when the person engages in investment activities in Iran at the time of bidding. 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 Iran if any of the following is true:

- The person provides good or services of $20 million or more in the energy sector in Iran, including a person that 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 provide goods or services in the energy sector in Iran and is identified on a list created by the DGS as a person engaging in investment activities in Iran.

By June 1, 2011 the DGS must develop, or contract to develop, a list of persons it determines engage in investment activities in Iran using credible information available to the public. DGS is also required to update the list every 180 days. DGS would be authorized to charge a fee to persons who use the list to comply with the requirements of this measure, in order to pay for the costs of creating and maintaining the list. Before finalizing the initial or updated list, DGS would do the following:

- Provide 90 days written notice of its intent to include the person on the list, specifying that inclusion on the list would make the person ineligible for contracting for goods and services of $1 million or more with a public entity. The notice must specify that the person may become eligible for a future contract, or contract renewal, for goods or services with the public entity upon removal from the list.
- Provide the person an opportunity to comment in writing that the person is not engaged in investment activities in Iran. If the person demonstrates that it is not engaged in such activities, the person would not be included on the list and would be eligible to enter into or renew a contract with the public entity unless the person falls under the three-year ban for submitting a false certification.

A provision in the measure specifies that a person who has a contract with CalPERS or CalSTRS, or both, would not be deemed to be a person who engages in investment activities in Iran on the basis of those investments with CalPERS and CalSTRS.

A person engaged in investment activities in Iran could be allowed to enter into or renew a contract if either of the two following conditions for an exemption are met:

1. All of the following occur:
    a. The investment activities in Iran were made before July 1, 2010

   b. The investment activities in Iran have not been expanded or renewed after July 1, 2010.
   c. The awarding body determines that it is in the best interest of the state or local public entity to contract with the person. In the case of state contracts, the "awarding body" is DGS.
   d. The person has adopted, publicized, and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran.

OR

2. One of the following occur:
   a. For a contract of $1 million or more with a local public entity, the public entity finds that it would be unable to obtain the goods or services specified in the contract unless it is able to enter into a contract with the person engaged in investment activities in Iran.
   b. For a contract of $1 million or more with a state agency, the Governor makes finds that the state agency would be unable to obtain the goods or services specified in the contract unless it is able to enter into a contract with the person engaged in investment activities in Iran.
   c. For a contract of $1 million or more with an office of a state constitutional officer, the state constitutional officer finds that his or her office would be unable to obtain the goods or services specified in the contract unless it is able to enter into a contract with the person engaged in investment activities in Iran.

A public entity would exempt from the contracting prohibitions a person who is a financial institution that extends $20 million or more in credit to a person who will use the credit to provide goods or services in the energy sector in Iran, if the person receiving the credit is permitted to submit a bid on a contract under the exemptions listed above.

The measure also requires any person who submits a bid or proposal to enter into or renew a contract with a public entity for good and services of $1 million or more to certify, at the time the bid is submitted, that the person is not identified on the list created by DGS or otherwise engages in investment activities in Iran,. A state agency would be required to submit the certification information to DGS. A public entity could not require a person who falls under the exemptions described above to certify that it is not identified on the list created by DGS or otherwise engages in investment activities in Iran. The certification requirement would apply on and after June 1, 2011, except if the person is financial institution the requirement would apply on July 1, 2011. A person that is a financial institution would have 30 days after any subsequent lists created by DGS become available to certify that it is not identified on that list, and within those 30 days would use the immediately prior list to make its certification.

If the local public entity, or DGS in the case of state contracts, determines that a person submitted a false certification, and the person does not demonstrated that the person has ceased its engagement in the investment activities in Iran with 90 days after the determination of 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 awarding body or DGS, 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 local public entity or DGS may use credible information available to the public to determine that a person submitted a false certification. The local public entity or DGS would be required to provide the person 90 days written notice and an opportunity to comment in writing for the person to demonstrate that it is not engaged in investment activities in Iran, in situations where a person is determined to have submitted a false certification before the person is subject to the above listed consequences for submitting a false certification. The person would also have the opportunity to demonstrate that the person has ceased its engagement in the investment activities in Iran within 90 days after the determination of a false certification.

The local public entity or DGS is required to report the name of the person who 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. However, only one civil action may be brought against a person for submitting a false certification on a contract and this measure does not create a private right of action or enforcement of the penalties authorized under this measure. An unsuccessful bidder or any other person other than the awarding body would have no right to protest the awarding of a contract or contract renewal on the basis of a false certification.

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.

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 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. This measure specifically states that a person who has a contract with CalPERS or CalSTRS shall not be deemed a person that engages in investment activities in Iran on the basis of those investments. However, this provision does not address investment activities on behalf of other investors, and could inhibit the willingness of investment managers to submit bids on contracts with CalSTRS due to the risk of inadvertently submitting a false certification and, therefore being subject to penalties under this measure. 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 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, CalSTRS had recommended the definition of a person that engages in investment activities in Iran be amended to exclude an investment firm that does not invest California public pension funds in the energy sector in Iran.

LEGISLATIVE HISTORY

AB 961, Krekorian, (2009) (Held in Assembly Appropriations Committee) 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) (Held 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) (Held 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. On July 1, 2010 the president of the United States signed federal legislation that declared 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.

OTHER STATES' INFORMATION

On July 1, 2010 the president of the United States signed into law the "Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010" (H.R. 2194) that, among other things, would authorize states to adopt and enforce contracting prohibitions like the ones included in this measure.

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> – 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/OPPOSITION

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: None known.

ARGUMENTS

Pro: Will help ensure that a person who is engaged in investment activities in the energy sector in Iran does not bid on, enter into or renew a contract with a state agency or public entity for goods or services.

Con: This measure could prohibit CalSTRS from hiring investment managers who invest other institutional investors’ funds in Iran, which would limit the universe of possible investment managers for CalSTRS to hire.

LEGISLATIVE STAFF CONTACT

Sal Sanchez
Legislative Analyst,
CalSTRS Legislative Affairs,
414-1984
ssanchez@calstrs.com

Mary Anne Ashley
Assistant Director,
CalSTRS Governmental Affairs & Program Analysis,
414-1981
mashely@calstrs.com

Berman Obaldia
Director,
CalSTRS Governmental Affairs and Program Analysis,
414-1977
bobaldia@calstrs.com