

Date of Hearing: April 17, 2012

ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER  
PROTECTION

Mary Hayashi, Chair

AB 1947 (Grove) – As Introduced: February 23, 2012

SUBJECT: Legislative contracts.

SUMMARY: Requires all contracts executed by the Legislature to be approved by the Department of General Services (DGS), and establishes a "low-bid" contracting process for public works contracts let by the Legislature. Specifically, this bill:

- 1) Requires all contracts executed by the Legislature to be approved by DGS, except in cases of emergency.
- 2) Establishes a "low-bid" contracting process for public works contracts executed by the Legislature that requires the time and place for accepting bids to be advertised, and establishes a process for the prequalification of bidders, the acceptance of bids, and award of contracts to the lowest responsible bidder.

EXISTING LAW establishes the Legislative, Executive, and Judicial Branches of state government as co-equal.

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of this bill. According to the author's office, "AB 1947 adds a new section to the Public Contract Code that establishes competitive bidding for the California State Legislature. It would allow the public to know what contracting decisions are made by the Legislature and how they are made, so that the Legislature is accountable to the people for its decisions concerning budgeting and expenditure of the people's money. In addition, AB 1947 would submit the Legislature to the same competitive bidding laws that apply to other legislative bodies in the state, thus stimulating competition in a manner conducive to sound fiscal practices and eliminating favoritism, fraud, and corruption."

Unclear and questionable provisions. This bill would subordinate the internal, administrative operations of the Legislative Branch of state government to the discretion and approval of the Executive Branch by requiring all Legislative contracts to be approved by DGS.

"Low-bid" contracting is the historical method of awarding public works contracts, such as the construction of public infrastructure in the form of buildings, transportation systems, water and sewer systems, etc. However, in recent years low-bid contracting has been increasingly replaced by "best value" contracting that allows public agencies to consider the "value" offered by a contractor in addition to price. In the realm of public works projects, the current trend has been to allow public agencies to use "design-build" contracting, which allows public agencies to execute a single contract for construction projects that would otherwise have been executed through numerous contracts on a low-bid basis. With respect to Capitol restoration projects that

this bill is premised upon, the use of low-bid contracting may not produce the type of work that one needs for the construction, renovation, and repair of the historic and socially significant structure that is embodied by the State Capitol.

It is also noted that this bill would subject all contracts executed by the Legislature to the scrutiny and discretionary approval of the Executive branch of government, yet this bill only provides a contract process for public works projects. Existing state law provides for numerous unique contracting processes for Executive Branch agencies based on the unique needs of the agencies or in recognition of the unique circumstances of specific market dynamics for different products, such as information technology. Accordingly, it appears that the low-bid contracting process proposed by this bill is incomplete.

In summary, the Committee may wish to consider the ramifications of subordinating the internal, administrative operations of the Legislative Branch of government to the discretionary approval of the Executive Branch, and this bill's lack of processes for other types contracts executed by the Legislature.

Support. According to the Labor Issues Solutions, LLC and the Dayton Public Policy Institute, "The people of California expect that their state government agencies – whether in the Legislative Branch, the Executive Branch, or the Judicial Branch – will spend their tax money wisely by using open and competitive bidding for goods and services, in order to get the best quality work from capable and responsible companies at the best price.

"But with the special exemption of the State Legislature from competitive bidding under the State Contract Act, certain legislators and legislative employees have been able to practice favoritism in awarding contracts, without scrutiny... The Legislature could get away with instituting a union-only bid specification in secret, because it is exempt from the state's competitive bidding laws, as confirmed in a 2006 decision of a Sacramento County Superior Court judge and a 2008 decision of the California Third Appellate Court in *The Zumbrun Law Firm v. California Legislature*. (The California Supreme Court [declined] to hear an appeal of that appeals court decision.)"

Previous Legislation. AB 641 (Hagman) of 2009, is an identical bill that would have required all contracts executed by the Legislature to be approved by DGS, and would have established a "low-bid" contracting process for public works contracts let by the Legislature. This bill was held in the Assembly Business, Professions and Consumer Protection Committee.

AB 1070 (Cook) of 2007, is an identical bill that would have required all contracts executed by the Legislature to be approved by DGS, and would have established a "low-bid" contracting process for public works contracts let by the Legislature. This bill was held in the Assembly Business, Professions and Consumer Protection Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Dayton Public Policy Institute  
Labor Issues Solutions, LLC

Opposition

None on file.

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