

# **AB 1947 (2012) – Competitive Bidding for Legislative Contracts**

## ***Assemblywoman Shannon Grove (R-Bakersfield) – Assembly District 32***

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### **IN BRIEF**

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This bill changes state law to require the California State Legislature to bid its contracts under fair and open competitive bidding, for the purpose of stimulating competition in a manner conducive to sound fiscal practices and for eliminating favoritism, fraud, and corruption. AB 1947 also creates transparency in the development and execution of bid specifications, so that the legislature is accountable to the people for its policy decisions concerning contracts funded by the people.

### **EXISTING LAW**

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Public Contract Code Section 100 states that the Legislature finds and declares that placing all public contract law in one code will make that law clearer and easier to find. Section 100 also states it is the intent of the Legislature in enacting this [Public Contract] code to achieve the following objectives:

- a) To clarify the law with respect to competitive bidding requirements.
- b) To ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds.
- c) To provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices.
- d) To eliminate favoritism, fraud, and corruption in the awarding of public contracts.

In addition, Public Contract Code Section 102 states that “To encourage competition for public contracts and to aid public officials in the efficient administration of public contracting, to the maximum extent possible, for similar work performed for similar agencies, California’s public contract law should be uniform.”

According to a November 30, 2006 Sacramento County Superior Court decision in *The Zumbrun Law Firm v. California Legislature*, the legislature was not precluded from a contracting requirement requiring contractors to use an “all union workforce” because of its exemption from competitive bidding requirements as indicated in Public Contract Code Section 10295(c)(5).

### **THE ISSUE**

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In 2005, someone in the California State Legislature directed the California Department of General Services to insert a provision in the bid specifications for the State Capitol Park Safety and Security Improvements Project that stated “Workforce: contractor and subcontractors shall employ an all union workforce.”

Setting aside the issue of whether or not the legislature was fair to contractors and their employees or fiscally responsible to require its outside private construction contractors to employ an “all union workforce,” this directive violated two principles that the people expect when the California State Legislature conducts the public’s business:

1. The policy was instituted internally, without public scrutiny or debate and without any publicly available written records generated in the process of decision-making leading up to the directive emailed to DGS.

Repeated requests for public records and even a lawsuit (*The Zumbrun Law Firm v. California Legislature*) failed to produce any records for public scrutiny about the origins of this policy. (Assemblywoman Grove’s bill AB 1946 will clarify that the California State Legislature is required to provide internal records about its contracting decisions.)

2. The requirement for the contractor on the project to employ an “all union workforce” would have been illegal, except the California

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State Legislature is exempt from provisions of the California Public Contract Code.

The bidding specifications for the State Capitol Park Safety and Security Improvements Project provide a real example of how the legislature's exemptions to competitive bidding violate the legislative intent of the Public Contract Code. Behind closed doors, someone (probably a legislator on the Senate Rules Committee in 2004 or 2005) made a decision regarding the union affiliation of all employees working for all contractors on a construction project at the state capitol. The process was so haphazard and devoid of scrutiny that no definition was given as to the criteria that define "all union workforce." The legislature as a whole cannot find out who made the decision and was not able to question or debate whether or not the decision would have resulted in favoritism. And, even if the bid specification was determined to result in favoritism, the law as now written allows the legislature to exercise favoritism in bidding.

## **THE SOLUTION**

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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 California State Legislature and how they are made, so that the state legislature is accountable to the people for its decisions concerning the budgeting and expenditure of the people's money. In addition, AB 1947 would submit the California State 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.

## **FOR MORE INFORMATION**

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### **Sources:**

*California Public Contract Code Legislative Intent:*

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pcc&group=00001-01000&file=100-102>

*Legislature's Exemption from Competitive Bidding:*

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pcc&group=10001-11000&file=10295-10299>

*Lawsuit Filed Against Legislature (The Zumbrun Law Firm v. California Legislature):*

See <http://zumbrunlaw.com/news.htm>

*California Appellate Court Decision in The Zumbrun Law Firm v. California Legislature:*

<http://caselaw.findlaw.com/ca-court-of-appeal/1453631.html>

### **PDF of Bill Text:**

[http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_1901-1950/ab\\_1947\\_bill\\_20120223\\_introduced.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1901-1950/ab_1947_bill_20120223_introduced.pdf)

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