
UNFINISHED BUSINESS

Bill No: SB 34
Author: Umberg (D), et al.
Amended: 8/8/22
Vote: 21

PRIOR VOTES NOT RELEVANT

SENATE GOVERNMENTAL ORG. COMMITTEE: 10-0, 8/17/22
AYES: Dodd, Allen, Archuleta, Becker, Bradford, Glazer, Jones, Portantino,
Rubio, Wilk
NO VOTE RECORDED: Nielsen, Borgeas, Hueso, Kamlager, Melendez

ASSEMBLY FLOOR: 74-0, 8/15/22 - See last page for vote

SUBJECT: Public contracts: authorized agent: limitations

SOURCE: Author

DIGEST: This bill clarifies that a contract that was entered into because of an act that would constitute a violation of a state or federal crime relating to bribery of a public official is voidable.

Assembly Amendments deleted the prior language in the bill and instead clarify that a contract that was entered into because of an act that would constitute a violation of a state or federal crime relating to bribery of a public official is voidable.

ANALYSIS:

Existing law:

- 1) Governs the bidding and awarding of public contracts by public entities and generally requires that public contracts be awarded through a competitive bid process.

- 2) Requires, generally, state agencies, for non-IT (information technology) goods and services contracts, to secure at least three competitive bids or proposals for each contract. Three competitive bids or proposals are not required in, among other cases, the following:
 - a) In cases of emergency where a contract is necessary for the immediate preservation of the public health, welfare, or safety, or protection of state property.
 - b) When the state agency awarding the contract has solicited all potential contractors but has received less than three bids or proposals.
 - c) When the state agency and the Department of General Services (DGS) agree that an article of a specified brand or trade name is the only article that will properly meet the needs of the state agency.
- 3) Requires DGS to prescribe the conditions under which a contract may be awarded without competition, and the methods and criteria which shall be used in determining the reasonableness of contract costs when a contract is awarded without competition.
- 4) Prohibits, under Government Code Section 1090, members of the Legislature, state, county, district, judicial district, and city officers from having a financial interest in any contract made by them in their official capacity, or by any board of which they are members.
- 5) Provides, under Penal Code Section 68, that every executive or ministerial officer, employee, or appointee of the State of California, a county or city, or a political subdivision thereof, who asks, receives, or agrees to receive, any bribe is punishable by imprisonment in state prison, as specified, and can be fined, as specified. Penal Code Section 68 also provides that an individual must forfeit his or her office, employment, or appointment, and is forever disqualified from holding any office, employment, or appointment in this state.
- 6) Provides, under Penal Code Section 86, that every member of either house of the Legislature, or any member of the legislative body or a city, county, school district, or other special district who asks, receives or agrees to receive any bribe is punishable by imprisonment in state prison, as specified, can be fined, as specified.

This bill:

- 1) Declares that a contract that was entered into because of an act that would constitute a violation of a state or federal crime relating to bribery of a public official, including, but not limited to, a violation of Section 68 or 86 of the Penal Code is voidable.
- 2) Provides that the provisions of this bill apply to contracts executed on or after January 1, 2023, including contracts negotiated prior to January 1, 2023.

Background

Purpose of the Bill. According to the author's office, "SB 34 comes as a response to recent political and legal malfeasance. In May of 2022, the mayor of Anaheim, Harry Sidhu, announced he would be stepping down from public office, having been accused by the FBI solicitation, bribery, and obstruction of justice. The majority of the accusations have been centered on the city's plan to sell public land to the Los Angeles Angels. Investigators have alleged that the mayor of Anaheim hoped to solicit \$1 million on campaign contributions from the Angels in exchange for assistance in the deal."

The author's office further argues that, "current law governs bidding and awarding of public contracts by public entities. Existing law also makes it a crime for a public official to ask, receive, or agree to receive, any bribe, upon an understanding that their judgement, or action will be influenced. SB 34 declares a contract voidable if it was entered into while committing the above crime. It is my hope that SB 34 is one small step towards restoring the trust and faith of Anaheim residents in their public officials."

Penal Code Section 68. Penal Code Section 68 provides that every executive or ministerial officer, employee, or appointee of the State of California, a county or city, or a political subdivision thereof, who asks, receives, or agrees to receive, any bribe is punishable by imprisonment in state prison. For cases in which no bribe was actually received, current law provides that such a crime is punishable by imprisonment in state prison, for two, three, or four years, and by a restitution fine of at least \$2,000 and no more than \$10,000. In cases in which a bribe was actually received, penalties are increased to at least the actual amount of the bribe or \$2,000, whichever is greater, or any large amount of not more than double the amount of the bribe or \$10,000, whichever is greater. Penal Code Section 68 also provides that that an individual who violates this section shall forfeit his or her

office, employment, or appointment, and is forever disqualified from holding any office, employment, or appointment, in this state.

This bill declares a contract voidable that was entered into because of an act that would constitute a violation of a state or federal crime relating to bribery of a public official, including a violation of Penal Code Section 68.

Penal Code Section 86. Penal Code Section 86 provides that every member of either house of the Legislature, or any member of the legislative body of a city, county, school district, or other special district who asks, receives, or agrees to receive any bribe is punishable by imprisonment in state prison. In cases in which no bribe was actually received, for two, three, or four years, and by a restitution fine of at least \$4,000 and no more than \$20,000. In cases in which a bribe was actually received, penalties are increased to at least the actual amount of the bribe or \$4,000, whichever is greater, or any large amount of not more than double the amount of the bribe or \$20,000, whichever is greater.

This bill declares a contract voidable that was entered into because of an act that would constitute a violation of a state or federal crime relating to bribery of a public official, including a violation of Penal Code Section 68.

Related/Prior Legislation

AB 1666 (Garcia, Chapter 811, Statutes of 2014) doubled the restitution fines for a member of the Legislature or any member of a local government legislative body who asks for or receives a bribe in exchange for influence over his-her official action, as specified.

AB 1692 (Garcia, Chapter 884, Statutes of 2014) limited the use of campaign funds and legal defense funds to pay fines and penalties that are imposed for an improper personal use of campaign funds.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee. No state costs. DGS explains that any contract entered into because of a violation of Penal Code 68 or 86, relating to bribery of a state or local public official, likely violates Government Code Section 1090, which prohibits a state or local officer or employee from being financially interested in a contract. A bribe, kickback or other expectation of financial reward likely constitutes a prohibited financial interest. Existing case law

holds that a Section 1090 violation not just renders a contract voidable, but automatically void. Thus, DGS does not anticipate any fiscal effect from this bill.

SUPPORT: (Verified 8/16/22)

None received

OPPOSITION: (Verified 8/16/22)

None received

ASSEMBLY FLOOR: 74-0, 8/15/22

AYES: Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NO VOTE RECORDED: Chen, Choi, Flora, Gray, Haney, Voepel

Prepared by: Felipe Lopez / G.O. / (916) 651-1530
8/17/22 17:42:04

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