
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1505 **Hearing Date:** June 14, 2016
Author: Roger Hernández
Version: May 27, 2016
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Statute of Limitations: Public Contracts*

HISTORY

Source: Author

Prior Legislation: None applicable

Support: Betty Yee, California's State Controller

Opposition: None known

Assembly Floor Vote: No longer relevant

PURPOSE

The purpose of this bill is to extend from one to three years the statute of limitations for specified Public Contract Code misdemeanors relating to competitive bidding.

Existing law provides that a school district must put contracts out to bid for specified contracts involving equipment or services for more than \$50,000 or construction contracts for more than \$15,000. (Public Contract Code § 20111)

Existing law provides public projects by a local agency of more than \$175,000 shall be let to contract by a formal bidding contract, projects of less than \$175,000 may be bid by informal procedures. (Public Contract Code § 22032)

Existing law provides that all contracts for any improvement in excess of \$25,000 by a reclamation district shall be let to the lowest responsible bidder. (Public Contract Code § 20921)

Existing law provides that a community college may make repairs, alterations etc. without bidding when the job does not exceed 350 hours if the districts number of full-time students is less than 15,000 and the job does not exceed 750 hours or \$21,000 if the number of students exceeds 15,000. (Public Contract Code § 2065)

Existing law provides that when the expenditure for a public project by a local agency exceeds \$5,000 it shall be contracted for and let to the lowest bidder after notice. (Public Contract Code § 20162)

Existing law provides that in counties of 500,000 or less, public projects between \$4,000 and \$10,000 shall be let to contract by informal bidding procedures and public projects of \$10,000 or more shall be let by formal bidding procedures. (Public Contract Code § 20150.4)

Existing law provides that in counties with a population of 2,000,000 or more must use a formal bidding process for public buildings if the cost is more than \$4,000 but they do not have to do work by bid if the cost estimate is less than \$6,500 and the requirements do not apply to repair work on county owned buildings if the cost is under \$50,000. (Public Contract Code §§ 20121; 20122; 20123)

Existing law provides that it shall be unlawful for a school district, community college district, reclamation agency or local agency to split or separate into smaller work orders or projects any work, project, service or purchase for the purpose of evading the provisions requiring contracting after competitive bidding. (Public Contract Code §§ 20116; 20657; 20922; 22033)

Existing law provides that when the expenditure required for a public project exceeds \$5,000, it shall be contracted for and let go to the lowest responsible bidder after notice. (Public Contract Code § 20162)

Existing law provides that in any county, it is unlawful to split or separate into small work orders or projects any public work project for the purpose of evading the provisions requiring public work to be done by contract after competitive bidding. The penalty for a violation of these sections is a misdemeanor. (Public Contract Code §§ 20123.5; 20150.11; 20163)

Existing law provides that in general the prosecution for a misdemeanor shall be commenced within one year after the commission of the offense.

This bill provides instead that a the prosecution for a violation of the Public Contracts Code prohibiting the splitting of jobs into smaller jobs to avoid competitive bidding shall be commenced within three years of the commission of the offense.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed

capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

In April of 2014, Assemblymember Hernández formally requested that the Controller’s Office conduct an audit of West Covina’s finances in response to several complaints of misuse of public funds.

On June 9th 2015, State Controller Betty T. Yee announced the results of a detailed review of the City of West Covina’s administrative and internal accounting controls, finding serious and pervasive deficiencies. Of the 79 control components evaluated, West Covina was found to be adequate in seven.

According to the Controller’s Office, West Covina violated California Public Contract Code section 20163, which would constitute a misdemeanor had the statute of limitations not expired. “It makes no sense that the statute of limitations for violating state and local contracting laws is one year from when the money is spent,” said Controller Yee. The Controller urged the legislature to, “consider a

statutory change if we expect to ferret out fraud and prevent willful abuses of state law and taxpayer dollars.”

The detailed review of the City of West Covina’s administrative and internal accounting controls by Controller Yee confirms troubling practices that harm our community and brings into question government waste and corruption. Over the years several cities have violated the public’s trust, including the city of Industry, Maywood, Beaumont, Bell, Irwindale, Richmond, Cudahy, and Montebello.

AB 1505 expands the statute of limitations by three years for violating state and local public contracting laws beyond the current one-year statute. Through AB 1505, we will be able to hold all of our elected officials to greater accountability when they are appropriating taxpayer dollars.

2. The Statute of Limitations Generally; Law Revision Commission Report

The statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. A prosecution is initiated by filing an indictment or information, filing a complaint, certifying a case to superior court, or issuing an arrest or bench warrant. (Penal Code § 804.) The failure of a prosecution to be commenced within the applicable period of limitation is a complete defense to the charge. The statute of limitations is jurisdictional and may be raised as a defense at any time, before or after judgment. *People v. Morris* (1988) 46 Cal.3d 1, 13. The defense may only be waived under limited circumstances. (See *Cowan v. Superior Court* (1996) 14 Cal.4th 367.)

The Legislature enacted the current statutory scheme regarding statutes of limitations for crimes in 1984 in response to a report of the California Law Revision Commission:

The Commission identified various factors to be considered in drafting a limitations statute. These factors include: (a) The staleness factor. A person accused of crime should be protected from having to face charges based on possibly unreliable evidence and from losing access to the evidentiary means to defend. (b) The repose factor. This reflects society’s lack of a desire to prosecute for crimes committed in the distant past. (c) The motivation factor. This aspect of the statute imposes a priority among crimes for investigation and prosecution. (d) The seriousness factor. The statute of limitations is a grant of amnesty to a defendant; the more serious the crime, the less willing society is to grant that amnesty. (e) The concealment factor. Detection of certain concealed crimes may be quite difficult and may require long investigations to identify and prosecute the perpetrators.

The Commission concluded that a felony limitations statute generally should be based on the seriousness of the crime. Seriousness is easily determined based on classification of a crime as felony or misdemeanor and the punishment specified, and a scheme based on seriousness generally will accommodate the other factors as well. Also, the simplicity of a limitations period based on seriousness provides predictability and promotes uniformity of treatment.¹

¹ 1 Witkin Cal. Crim. Law Defenses, Section 214 (3rd Ed. 2004), citing 17 Cal. Law Rev. Com. Reports, pp.308-314.

3. Expansion of the Statute of Limitations for Violating Local Contracting Laws

Existing law, with some exceptions, provides that the statute of limitations for a misdemeanor is one year. This bill would make the statute of limitations for misdemeanor evading provisions requiring work projects to be done by contract after competitive bidding three years.

In support State Controller Betty Yee States:

As part of my July 2016 review of the City of West Covina's administrative and internal controls, my auditors discovered the city violated PCC 20163, which precludes cities from splitting work orders on public work projects into smaller pieces in order to avoid the state's competitive bidding requirements. Violation of this law is a misdemeanor, but prosecution of any alleged violation must take place within a year of the violation occurring.

Unfortunately in the case of West Covina, the violations were not discovered during that one-year period. By extending the period of time from one year to three years in which charges must be filed, AB 1505 will give prosecutors more time to discover violations of the Public Contract Code and hold local government administrators accountable.

While a three year statute of limitations may be appropriate for these offenses, it is not clear that the sections that this bill extends the statute of limitations for will actually deals with the issue. Depending on the section, competitive bidding is required at contract amounts as low as \$5,000. Is the issue that entities are breaking contracts in to such small increments? Will this bill deal with the issue the Controller found?

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