

AMENDED IN ASSEMBLY APRIL 1, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2452

Introduced by Assembly Member Rod Pacheco

February 21, 2002

An act to amend Section ~~66412~~ of the Government Code, relating to ~~local planning~~, 1092 of the Government Code, and to add Section 7111 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2452, as amended, Rod Pacheco. ~~Subdivision Map Act; agricultural leases~~ Public contracts: void contracts.

Under existing law, a contract is voidable if it was entered into in violation of the prohibition against public officials and employees participating in contracts in which they have a financial interest. It is unlawful under existing law to offer a bribe to any executive officer in this state. An executive or ministerial officer, employee, or appointee of the state or any of its political subdivisions is also prohibited from asking for or receiving a bribe. These unlawful acts are punishable by imprisonment.

This bill would provide that a contract involving a public entity must be declared void by the awarding entity within one year of the conviction of an employee or officer of either the contractor or the contracting public entity for extortion in connection with the formation or awarding of the contract. The bill authorizes the contractor to have the contract declared voidable, rather than void, if the contractor can prove certain facts. The bill would provide that this remedy is in addition to, and does

not supersede, any other existing remedies that are not inconsistent with it.

~~Existing law makes the Subdivision Map Act inapplicable to the leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of a windpowered electrical generation device on the land, if the project is subject to discretionary action by the advisory agency or legislative body of the local agency.~~

~~This bill would expressly provide that this exemption applies to parcels of land.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 66412 of the Government Code is~~
2 *SECTION 1. Section 1092 of the Government Code is*
3 *amended to read:*

4 1092. Every contract made in violation of any of the
5 provisions of Section 1090 may be avoided at the instance of any
6 party except the officer interested therein. *If, however, a conviction*
7 *for bribery results from the violation of Section 1090, Section 7111*
8 *of the Public Contract Code applies and the contract shall be void.*
9 ~~No such~~ contract made in violation of Section 1090 may be
10 avoided because of the interest of an officer therein unless ~~such~~ *the*
11 contract is made in the official capacity of ~~such~~ *the* officer, or by
12 a board or body of which he or she is a member.

13 *SEC. 2. Section 7111 is added to the Public Contract Code, to*
14 *read:*

15 *7111. (a) A contract involving a public entity shall be*
16 *declared void by the awarding entity within one year after the*
17 *conviction of an employee or officer of either the contractor or the*
18 *contracting public entity for bribery, as defined in Sections 67 and*
19 *68 of the Penal Code or commercial bribery, as defined in Section*
20 *641.3 of the Penal Code, in connection with the formation or*
21 *awarding of that contract. The awarding entity shall determine the*
22 *date that the void status takes effect. In addition, the contractor is*
23 *ineligible to bid on the replacement contract.*



1 (b) The awarding entity shall provide written notification to the
2 contractor at least 30 days prior to the date the contract will
3 become void.

4 (c) After conviction, a contractor can apply to a court of law to
5 make the contract voidable. The court shall declare the contract
6 voidable if the contractor proves, by a preponderance of the
7 evidence, the following facts:

8 (1) The contractor cooperated fully with any criminal or civil
9 investigations.

10 (2) The contractor has provided restitution for any damages
11 incurred by the public entity as a result of the actions upon which
12 the conviction was based.

13 (3) The bribery was not connected to the formation or award of
14 the contract.

15 (d) The provisions of this section are in addition to, and do not
16 supersede, any other remedies provided by law that are consistent
17 with this section.

18 ~~amended to read:~~

19 ~~66412. This division shall be inapplicable to all of the~~
20 ~~following:~~

21 ~~(a) The financing or leasing of apartments, offices, stores, or~~
22 ~~similar space within apartment buildings, industrial buildings,~~
23 ~~commercial buildings, mobilehome parks, or trailer parks.~~

24 ~~(b) Mineral, oil, or gas leases.~~

25 ~~(c) Land dedicated for cemetery purposes under the Health and~~
26 ~~Safety Code.~~

27 ~~(d) A lot line adjustment between four or fewer existing~~
28 ~~adjoining parcels, where the land taken from one parcel is added~~
29 ~~to an adjoining parcel, and where a greater number of parcels than~~
30 ~~originally existed is not thereby created, if the lot line adjustment~~
31 ~~is approved by the local agency, or advisory agency. A local~~
32 ~~agency or advisory agency shall limit its review and approval to~~
33 ~~a determination of whether or not the parcels resulting from the lot~~
34 ~~line adjustment will conform to the local general plan, any~~
35 ~~applicable coastal plan, and zoning and building ordinances. An~~
36 ~~advisory agency or local agency shall not impose conditions or~~
37 ~~exactions on its approval of a lot line adjustment except to conform~~
38 ~~to the local general plan, any applicable coastal plan, and zoning~~
39 ~~and building ordinances, to require the prepayment of real~~
40 ~~property taxes prior to the approval of the lot line adjustment, or~~



1 to facilitate the relocation of existing utilities, infrastructure, or
2 easements. No tentative map, parcel map, or final map shall be
3 required as a condition to the approval of a lot line adjustment. The
4 lot line adjustment shall be reflected in a deed, which shall be
5 recorded. No record of survey shall be required for a lot line
6 adjustment unless required by Section 8762 of the Business and
7 Professions Code.

8 (e) Boundary line or exchange agreements to which the State
9 Lands Commission or a local agency holding a trust grant of tide
10 and submerged lands is a party.

11 (f) Any separate assessment under Section 2188.7 of the
12 Revenue and Taxation Code.

13 (g) Unless a parcel or final map was approved by the legislative
14 body of a local agency, the conversion of a community apartment
15 project, as defined in Section 1351 of the Civil Code, to a
16 condominium, as defined in Section 783 of the Civil Code, but
17 only if all of the following requirements are met:

18 (1) At least 75 percent of the units in the project were occupied
19 by record owners of the project on March 31, 1982.

20 (2) A final or parcel map of the project was properly recorded,
21 if the property was subdivided, as defined in Section 66424, after
22 January 1, 1964, with all of the conditions of that map remaining
23 in effect after the conversion.

24 (3) The local agency certifies that the above requirements were
25 satisfied if the local agency, by ordinance, provides for that
26 certification.

27 (4) Subject to compliance with subdivision (e) of Section 1351
28 of the Civil Code, all conveyances and other documents necessary
29 to effectuate the conversion shall be executed by the required
30 number of owners in the project as specified in the bylaws or other
31 organizational documents. If the bylaws or other organizational
32 documents do not expressly specify the number of owners
33 necessary to execute the conveyances and other documents, a
34 majority of owners in the project shall be required to execute the
35 conveyances or other documents. Conveyances and other
36 documents executed under the foregoing provisions shall be
37 binding upon and affect the interests of all parties in the project.

38 (h) Unless a parcel or final map was approved by the legislative
39 body of a local agency, the conversion of a stock cooperative, as
40 defined in Section 1351 of the Civil Code, to a condominium, as



1 ~~defined in Section 783 of the Civil Code, but only if all of the~~
2 ~~following requirements are met:~~

3 ~~(1) At least 51 percent of the units in the cooperative were~~
4 ~~occupied by stockholders of the cooperative on January 1, 1981,~~
5 ~~or individually owned by stockholders of the cooperative on~~
6 ~~January 1, 1981. As used in this paragraph, a cooperative unit is~~
7 ~~“individually owned” if and only if the stockholder of that unit~~
8 ~~owns or partially owns an interest in no more than one unit in the~~
9 ~~cooperative.~~

10 ~~(2) No more than 25 percent of the shares of the cooperative~~
11 ~~were owned by any one person, as defined in Section 17, including~~
12 ~~an incorporator or director of the cooperative, on January 1, 1981.~~

13 ~~(3) A person renting a unit in a cooperative shall be entitled at~~
14 ~~the time of conversion to all tenant rights in state or local law,~~
15 ~~including, but not limited to, rights respecting first refusal, notice,~~
16 ~~and displacement and relocation benefits.~~

17 ~~(4) The local agency certifies that the above requirements were~~
18 ~~satisfied if the local agency, by ordinance, provides for that~~
19 ~~certification.~~

20 ~~(5) Subject to compliance with subdivision (e) of Section 1351~~
21 ~~of the Civil Code, all conveyances and other documents necessary~~
22 ~~to effectuate the conversion shall be executed by the required~~
23 ~~number of owners in the cooperative as specified in the bylaws or~~
24 ~~other organizational documents. If the bylaws or other~~
25 ~~organizational documents do not expressly specify the number of~~
26 ~~owners necessary to execute the conveyances and other~~
27 ~~documents, a majority of owners in the cooperative shall be~~
28 ~~required to execute the conveyances or other documents.~~
29 ~~Conveyances and other documents executed under the foregoing~~
30 ~~provisions shall be binding upon and affect the interests of all~~
31 ~~parties in the cooperative.~~

32 ~~(i) The leasing of, or the granting of an easement to, a parcel or~~
33 ~~parcels of land, or any portion or portions thereof, in conjunction~~
34 ~~with the financing, erection, and sale or lease of a windpowered~~
35 ~~electrical generation device on the land, if the project is subject to~~
36 ~~discretionary action by the advisory agency or legislative body.~~

37 ~~(j) The leasing or licensing of a portion of a parcel, or the~~
38 ~~granting of an easement, use permit, or similar right on a portion~~
39 ~~of a parcel, to a telephone corporation as defined in Section 234~~
40 ~~of the Public Utilities Code, exclusively for the placement and~~



1 ~~operation of cellular radio transmission facilities, including, but~~
2 ~~not limited to, antennae support structures, microwave dishes,~~
3 ~~structures to house cellular communications transmission~~
4 ~~equipment, power sources, and other equipment incidental to the~~
5 ~~transmission of cellular communications, if the project is subject~~
6 ~~to discretionary action by the advisory agency or legislative body.~~
7 ~~(k) Leases of agricultural land for agricultural purposes. As~~
8 ~~used in this section, "agricultural purposes" means the cultivation~~
9 ~~of food or fiber, or the grazing or pasturing of livestock.~~

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