

Introduced by Senator Yee

January 20, 2011

An act to amend Section 4217.12 of the Government Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 118, as introduced, Yee. Public contracts: energy service contracts: competitive bidding requirements.

Existing law requires public agencies to adhere to competitive bidding requirements and procedures when entering into public works contracts, subject to various exceptions based on the size and cost of the project, among other factors. One exception from these bidding requirements provides the authority for a public agency to enter into energy service contracts and related facility ground leases, as defined, if the governing body makes a determination at a public hearing that specified cost savings and benefits of the project are in the public agency's best interests.

This bill, on and after January 1, 2012, would authorize a public agency, notwithstanding any other law, to enter into an energy service contract and any necessarily related facility ground lease only if its contracting process is in accordance with competitive bidding requirements and procedures for public contracts, as specified.

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

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

- 1 SECTION 1. It is the intent of the Legislature to require public
- 2 agencies entering into energy service contracts that are subject to

1 Section 4217.12 of the Government Code to follow competitive
2 bidding procedures.

3 SEC. 2. Section 4217.12 of the Government Code is amended
4 to read:

5 4217.12. (a) Notwithstanding any other provision of law *and*
6 *except as provided in subdivision (c)*, a public agency may enter
7 into an energy service contract and any necessarily related facility
8 ground lease on terms that its governing body determines are in
9 the best interests of the public agency if the determination is made
10 at a regularly scheduled public hearing, public notice of which is
11 given at least two weeks in advance, and if the governing body
12 finds:

13 (1) That the anticipated cost to the public agency for thermal
14 or electrical energy or conservation services provided by the energy
15 conservation facility under the contract will be less than the
16 anticipated marginal cost to the public agency of thermal, electrical,
17 or other energy that would have been consumed by the public
18 agency in the absence of those purchases.

19 (2) That the difference, if any, between the fair rental value for
20 the real property subject to the facility ground lease and the agreed
21 rent, is anticipated to be offset by below-market energy purchases
22 or other benefits provided under the energy service contract.

23 (b) State agency heads may make ~~these~~ findings *pursuant to*
24 *subdivision (a)* without holding a public hearing.

25 (c) *On and after January 1, 2012, notwithstanding any other*
26 *provision of law, a public agency may enter into an energy service*
27 *contract and any necessarily related facility ground lease only if*
28 *its contracting process is in accordance with the competitive*
29 *bidding requirements and procedures set forth in the Public*
30 *Contract Code.*