

AMENDED IN SENATE AUGUST 18, 2015

AMENDED IN ASSEMBLY MAY 4, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

No. 975

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Introduced by Assembly Member ~~Frazier~~ *Mullin*

February 26, 2015

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~~An act to amend Sections 20101, 20111.5, and 20111.6 of the Public Contract Code, relating to public contracts. An act to add Section 5111 to the Public Contract Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 975, as amended, ~~Frazier Mullin. Local Agency Public Construction Act: bid criteria. School facilities: lease-leaseback contracts: contractor relief.~~

*Existing law, until January 1, 2019, authorizes the governing board of a school district, without advertising for bids, to lease real property owned by the school district for a minimum rental of \$1 per year if the instrument by which this property is leased requires the lessee to construct, or provide for the construction of, a building to be used by the school district during the term of the lease and provides that the title to the building shall vest in the school district at the end of the lease.*

*This bill would provide that when a project for the construction, alteration, repair, or improvement of any structure, building, or other improvement of any kind that was leased through an instrument pursuant to the provisions described above before July 1, 2015, and that*

*instrument is later determined to be invalid, the contractor who entered into the contract with the school district is entitled to be paid the reasonable cost of the labor, equipment, materials, and services furnished by the contractor before the date of the determination, subject to specified conditions.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~The Local Agency Public Construction Act sets forth the requirements for competitive bidding on various types of contracts awarded by state and local agencies, including a school district. The act authorizes a public entity or school district to require prospective bidders for a construction contract to complete and submit to the governing board a prequalification questionnaire and financial statement, and requires the board to adopt and apply a uniform system of rating bidders on the basis of completed questionnaires and financial statements.~~

~~This bill would also prohibit a public agency or school district under the act, from disqualifying a prospective bidder based solely on whether the prospective bidder filed a claim against a project owner.~~

~~Because this bill would impose new requirements on the governing body of a local school board, it would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~yes~~<sup>no</sup>. State-mandated local program: ~~yes~~<sup>no</sup>.

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

- 1     *SECTION 1. Section 5111 is added to the Public Contract*
- 2     *Code, to read:*
- 3     *5111. (a) This section shall apply retroactively to a project*
- 4     *for the construction, alteration, repair, or improvement of any*
- 5     *structure, building, or other improvement of any kind that was*
- 6     *leased through an instrument pursuant to Section 17406 of the*
- 7     *Education Code before July 1, 2015. If at any time the instrument*

1 *is determined to be invalid by a court of competent jurisdiction,*  
2 *the contractor who entered into the instrument with the school*  
3 *district shall be entitled to be paid the reasonable cost of the labor,*  
4 *equipment, materials, and services furnished by the contractor*  
5 *before the date of the determination that the instrument is invalid*  
6 *if all of the following conditions are met:*

7 *(1) The contractor proceeded with construction, alteration,*  
8 *repair, or improvement based upon a good faith belief that the*  
9 *instrument was valid.*

10 *(2) The school district has reasonably determined that the work*  
11 *performed is satisfactory.*

12 *(3) Contractor fraud did not occur in the obtaining or*  
13 *performance of the instrument.*

14 *(b) In no event shall payment to the contractor pursuant to this*  
15 *section exceed the contractor's costs as included in the instrument*  
16 *plus the cost of any approved change orders.*

17 *(c) Notwithstanding subdivision (a), this section shall not affect*  
18 *any protest and legal proceedings, whether contractual,*  
19 *administrative, or judicial, to challenge the award of the public*  
20 *works contract, nor affect any rights under Section 337.1 or 337.15*  
21 *of the Code of Civil Procedure.*

22 *SEC. 2. This act is an urgency statute necessary for the*  
23 *immediate preservation of the public peace, health, or safety within*  
24 *the meaning of Article IV of the Constitution and shall go into*  
25 *immediate effect. The facts constituting the necessity are:*

26 *As a result of a California appellate court decision that was*  
27 *published on June 1, 2015, that called into question the legality*  
28 *of lease-leaseback school construction agreements, school districts*  
29 *have indicated that additional legal challenges are now*  
30 *forthcoming. These challenges may seek disgorgement of all funds*  
31 *from the general contractor for projects that have been completed*  
32 *or are under construction, which may bankrupt even the most*  
33 *stable contractor. In order to ensure that contractors are not*  
34 *subject to disgorgement in these legal challenges if the contractor*  
35 *relied upon a good faith belief that the instrument was valid, it is*  
36 *necessary that this act take effect immediately.*

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**All matter omitted in this version of the bill  
appears in the bill as amended in the  
Assembly, May 4, 2015. (JR11)**

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