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# Public Entities, Officers and Employees

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# Public Entities, Officers, and Employees

## Public Entities, Officers, and Employees; public works— ineligibility to contract

Public Contract Code §§10285, 10285.1, 10285.2, 10285.3, 10285.4, 10285.5 (new).

AB 101 (Harris); 1985 STAT. Ch 376

Existing law regulates state public works and services contracts.<sup>1</sup> Chapter 376 permits a state agency<sup>2</sup> to suspend any person<sup>3</sup> who has been convicted of specified offenses<sup>4</sup> in connection with the bidding, award, or performance of a public works contract<sup>5</sup> with a public entity,<sup>6</sup> from bidding upon, or being awarded, a public works or services contract.<sup>7</sup> Chapter 376 provides that this restriction will have effect for a period of up to three years from the date of the person's conviction.<sup>8</sup> Furthermore, Chapter 376 authorizes a state agency to determine eligibility by requiring a person to submit a statement declaring under penalty of perjury that neither the person, nor any subcontractor who is to be employed by the person, has been convicted of any of the specified offenses.<sup>9</sup> Before suspending any person, Chapter 376 requires a state agency, upon reasonable notice, to hold a hearing.<sup>10</sup> In making a determination whether to suspend, and for what duration, the agency must consider the degree to which the person cooperated with the state or federal authorities during the criminal

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1. See generally CAL. PUB. CON. CODE §§100-22109.

2. CAL. GOV'T CODE §12800 (list of state agencies).

3. Person is defined as any individual, partnership, joint venture, or association or any other organization or any combination thereof. CAL. PUB. CON. CODE §10285.

4. The specified offenses are fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law. *Id.* §10285.1.

5. *Id.* §1101 (definition of public works contract).

6. *Id.* §1100 (definition of public entity). For the purposes of Chapter 376, public entity also includes the Regents of the University of California and the Trustees of the California State University. *Id.* §10285.1.

7. *Id.* §10285.1. See *id.* §10335 (definition of public services contract). Chapter 376 also allows a state agency to suspend a person from employment as a subcontractor. Chapter 376 further applies when any partner, member, officer, director, responsible managing officer or responsible managing employee of the person, has been so convicted. *Id.* §10285.1.

8. *Id.* §10285.1.

9. *Id.* See *supra* note 4.

10. *Id.* §10285.2.

proceeding,<sup>11</sup> and the degree to which the person has agreed to restitution of any damages incurred by the public entity as a result of the acts upon which the conviction was based.<sup>12</sup> Chapter 376 specifies that when a state agency has suspended a person, any other state agency must adopt the terms of the suspension without further notice or hearing.<sup>13</sup> Chapter 376 allows the suspending agency to terminate the suspension if the termination is in the best interest of the agency.<sup>14</sup> Finally, under Chapter 376, a state agency is not required to employ or to contract with any person on a project funded in whole or in part by federal funds when that person has been suspended or debarred by the federal agency providing the funds.<sup>15</sup>

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11. *Id.* §10285.2(a).

12. *Id.* §10285.2(b). The agency may also consider additional relevant factors. *Id.* §10285.2.

13. *Id.* §10285.3.

14. *Id.* §10285.4. When the suspending agency terminates the suspension, any other agency having adopted the terms of the suspension must also terminate the suspension. *Id.*

15. *Id.* §10285.5.

## **Public Entities, Officers, and Employees; public contract—bidder relief**

Public Contract Code §5101 (amended); §§5108, 10200, 10201, 10202, 10203, 10204, 10205, 10800, 10801, 10802, 10803, 10804, 10805 (repealed).

SB 605 (Dills); 1985 STAT. Ch 262

Support: Associated General Contractors; Department of General Services; Department of Finance

Existing law precludes a bidder on a public works contract<sup>1</sup> from making any change in a bid,<sup>2</sup> or being relieved of a bid because of mistake, unless by consent of the awarding authority.<sup>3</sup> If the awarding authority does not consent to such relief, the bidder may bring an action<sup>4</sup> against the public entity<sup>5</sup> to recover any forfeited bidder's

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1. CAL. PUB. CON. CODE §1101 (definition of public works contract).

2. *Id.* §5100(b) (definition of bid).

3. *Id.* §5101(a).

4. The action must be brought in a court of competent jurisdiction in the county in which the bids were opened. *Id.* The complaint must be filed, and summons served on the director of the department or the chief of the division or other head of the public entity under which the work is to be performed or an appearance made, within 90 days after the opening of the bid; otherwise, the action must be dismissed. *Id.* §5102.

5. *Id.* §5100(a) (definition of public entity).

security.<sup>6</sup> If an awarding authority consents to grant relief to a bidder because of mistake, Chapter 262 requires the awarding authority to prepare a written report documenting the grounds for granting the relief.<sup>7</sup> Prior law contained separate bidder relief provisions for contracts awarded pursuant to the State Contract Act<sup>8</sup> and the California State University Contract Law.<sup>9</sup> These separate provisions permitted a bidder to bring an action for relief of a bid in a substantially identical manner as the general bidder relief provisions, except they did not allow for relief by consent of the awarding authority.<sup>10</sup> Chapter 262 repeals these separate bidder relief provisions<sup>11</sup> and thereby allows an awarding authority previously regulated by those provisions either to choose to relieve the bidder by consent or to require the bidder to seek relief by bringing an action pursuant to the general bidder relief provisions.<sup>12</sup>

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6. *Id.* §5101(a). All bids must be accompanied by a bidder's security equal to at least ten percent of the amount bid. *Id.* §§10167, 10765. If the successful bidder fails to execute the contract, the bidder's security is forfeited to the state. *Id.* §§10181, 10781. The plaintiff may recover only the amount forfeited, without interest or costs. If the plaintiff fails to recover judgment the plaintiff must pay all costs incurred by the public entity in the suit, including a reasonable attorney's fee to be fixed by the court. *Id.* §5101(a). Grounds for relief are satisfied by establishing the following: (1) a mistake was made; (2) written notice specifying how the mistake occurred was given to the public entity within five days after the opening of the bids; (3) the mistake made the bid materially different than the bidder intended it to be; and (4) the mistake was made in filling out the bid and not due to error in judgment or to carelessness. *Id.* §5103; *see also* *A & A Electric, Inc. v. City of King*, 54 Cal. App. 3d 457, 464, 126 Cal. Rptr. 585, 589 (1976) (bidder relief provisions establish the exclusive procedure for relieving a bidder from a mistake in a bid submitted to a public entity).

7. CAL. PUB. CON. CODE §5101(b). *Id.* §5103 (elements required to establish a ground for relief).

8. *Id.* §§10100-10284 (State Contract Act).

9. 1982 Cal. Stat. c. 435, §2, at 1803, 1804 (enacting CAL. PUB. CON. CODE §5108) (applicability of the general bidder relief provisions). CAL. PUB. CON. CODE §§10700-10874 (California State University Contract Law).

10. *Compare* 1981 Cal. Stat. c. 306, §2, at 1434, 1441 (enacting CAL. PUB. CON. CODE §§10200-10205) (State Contract Act bidder relief provisions) *and* 1984 Cal. Stat. c. 1128, §4, at \_\_\_\_\_ (enacting CAL. PUB. CON. CODE §§10800-10805) (California State University Contract Law bidder relief provisions) *with* CAL. PUB. CON. CODE §§5100-5107 (general bidder relief provisions).

11. 1985 Cal. Stat. c. 262, §3, at \_\_\_\_\_ (repealing CAL. PUB. CON. CODE §§10200-10205); *id.* §4, at \_\_\_\_\_ (repealing CAL. PUB. CON. CODE §§10800-10805).

12. *Id.* §2, at \_\_\_\_\_ (repealing CAL. PUB. CON. CODE §5108); CAL. PUB. CON. CODE §5101(a).

## Public Entities, Officers, and Employees; conflict of interest

Penal Code §1424 (amended).

AB 734 (Frizzelle); 1985 STAT. Ch 724

Support: Attorney General; Department of Finance; California District Attorneys Association

Existing law provides that a district attorney may be disqualified from prosecuting a criminal case when a conflict of interest exists which would render it unlikely that the defendant would receive a fair trial.<sup>2</sup> Chapter 724 extends the possibility of disqualification to any proceeding litigated by a district attorney.<sup>3</sup> Existing law specifies the procedures for notice,<sup>4</sup> hearing<sup>5</sup> and appeal<sup>6</sup> with regard to a motion to disqualify.<sup>7</sup> These procedural requirements are not affected by Chapter 724.<sup>8</sup>

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1. *People v. Conner*, 34 Cal. 3d 141, 148, 193 Cal. Rptr. 148, 151, 666 P.2d 5, 8, (1983). A conflict exists when the circumstances of a case evidence a reasonable possibility that the district attorney's office may not exercise its discretionary function in an evenhanded manner. *Id.*

2. CAL. PENAL CODE §1424.

3. *Compare id. with* 1980 Cal. Stat. c. 780, at 2373 (enacting CAL. PENAL CODE §1424).

4. Notice of a motion to disqualify the district attorney must be served on the district attorney and the Attorney General at least ten days before the motion is heard and must state the relevant facts and the legal authorities relied upon by the moving party. CAL. PENAL CODE §1424.

5. The Attorney General may file a written opinion with the court hearing the motion and may appear at the hearing on the motion. *Id.*

6. A recusal order may be appealed by the district attorney or the Attorney General and will be stayed pending an appeal. *Id.*

7. *Id.*

8. *Id.*

## Public Entities, Officers, and Employees; punitive damages

Government Code §825 (amended).

SB 969 (Robbins); 1985 STAT. Ch. 1373

Support: California Peace Officers Association; Alameda County District Attorney; Los Angeles County

Opposition: County Supervisors Association of California; American Civil Liberties Union; National Association for the Advancement of Colored People

Under existing law, a public entity is liable for compensatory damages proximately caused by the act or omission of an employee

or former employee while within the scope of employment.<sup>1</sup> A public entity is not, however, liable for a punitive damage award,<sup>2</sup> and is not authorized to pay that part of a *claim or judgment* against the employee that is for punitive damages.<sup>3</sup> Chapter 1373 creates an exception to existing law by providing that a local public entity<sup>4</sup> is authorized to pay that part of a *judgment* against the employee, or former employee, that is for punitive damages if the governing body of the entity makes the following findings: (1) the judgment is based on the employee's act or omission within the course and scope of employment;<sup>5</sup> (2) the employee acted or failed to act in good faith, without actual malice and in the apparent best interests of the public entity;<sup>6</sup> and (3) payment of the claim or judgment would be in the best interests of the public entity.<sup>7</sup> Chapter 1373 provides that the possibility that a public entity may pay that part of a judgment which is for punitive damages is not to be disclosed in any trial in which it is alleged that a public employee is liable for punitive damages.<sup>8</sup> Under Chapter 1373, such a disclosure is to be grounds for a mistrial.<sup>9</sup>

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1. CAL. GOV'T CODE §825. See generally 1 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Agency and Employment*, §§153-180 (8th ed. 1973) (liability of principal for torts of agent).

2. CAL. GOV'T CODE §818. See CAL. CIV. CODE §3294 (exemplary damages; when allowable).

3. CAL. GOV'T CODE §825.

4. CAL. GOV'T CODE §900.4 (definition of a local public entity).

5. *Id.* §825(b)(1).

6. *Id.* §825(b)(2).

7. *Id.* §825(b)(3). The discovery of the assets of a public entity and the introduction of evidence of the assets of a public entity is not permitted in an action in which it is alleged that a public employee is liable for punitive damages. *Id.*

8. *Id.*

9. *Id.*

## **Public Entities, Officers, and Employees; vehicle ownership certificates**

Government Code §818.5 (new).

AB 455 (Papan); 1985 STAT. Ch 437

Support: Independent Automobile Dealers Association

Opposition: Department of Motor Vehicles; Department of Finance

Under existing law, a public entity is not liable for any injury caused by the issuance, denial, suspension, or revocation of, or failure to

issue, deny, suspend, or revoke, specified types of authorization<sup>1</sup> when the public entity has been granted discretion by statute to determine whether or not authorization should be issued, denied, suspended, or revoked.<sup>2</sup> Case law, however, holds that given a mandatory duty,<sup>3</sup> the liability imposed by statute<sup>4</sup> takes precedence over immunity given to discretionary acts of public entities.<sup>5</sup> Chapter 437 provides that if the Department of Motor Vehicles negligently omits the name of the lienholder from an ownership certificate and that omission is the proximate cause of any injury sustained by the lienholder or a good faith purchaser of the vehicle, the Department will be held liable.<sup>6</sup> Chapter 437 further provides that it is the intent of the legislature that this new section not be construed as establishing any precedent for creating state liability in any other situation or circumstance.<sup>7</sup>

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1. Authorization includes any permit, license, certificate, approval, order, or other similar act. CAL. GOV'T CODE §818.4.

2. *Id.*

3. *Morris v. County of Marin*, 18 Cal. 3d 901, 908, 136 Cal. Rptr. 251, 255, 559 P.2d 606, 610 (1977) (defines "mandatory duty" as "an obligatory duty which a governmental entity is required to perform, as opposed to a permissive power which a governmental entity may exercise or not as it chooses").

4. CAL. GOV'T CODE §815.6. "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity established that it exercised reasonable diligence to discharge the duty". *Id.*

5. *Slagle Const. Co. Inc. v. Contra Costa County*, 67 Cal. App. 3d 559, 562, 136 Cal. Rptr. 748, 749 (1977); *See generally State v. Superior Court of Sacramento County*, 150 Cal. App. 3d 848, 854, 197 Cal. Rptr. 914, 917. "Government Code §815.6 contains a three-pronged test for determining whether liability may be imposed on a public entity: 1) an enactment must impose a mandatory, not discretionary, duty; 2) the enactment must intend to protect against the kind of risk of injury suffered by the party asserting §815.6 as a basis for liability; and 3) breach of the mandatory duty must be a proximate cause of the injury suffered." *Id.*

6. CAL. GOV'T CODE §818.5. Such liability is not to exceed the actual cash value of the vehicle. *Id.*

7. 1985 Cal. Stat. c. 437, §1, at \_\_\_\_\_.