

## CONCURRENCE IN SENATE AMENDMENTS

AB 339 (Ortega)

As Amended August 29, 2025

Majority vote

**SUMMARY**

Requires public agencies regulated by the Meyers-Milias-Brown Act (MMBA) to give a recognized employee organization (REO) no less than 45 days' written notice regarding contracts to perform services that are within the scope of work of job classifications represented by the REO, among other provisions.

**Senate Amendments**

- 1) Reduce the timeframe in which a public agency must give written notice to the REO before issuing a request for proposals, request for quotes, or renewing or extending an existing contract from 120 days to 45 days.
- 2) Remove the requirement that the public agency meet and confer in good faith with a REO within a reasonable time regarding the public agency's proposed decision to enter into the contract and negotiate the effects thereof.
- 3) Expand the applicability exemption to include contracts relating to the planning, design, administration, oversight, review, or delivery of public works, residential, commercial, or industrial buildings, or other infrastructure projects that are subject to adopted uniform codes or standards, as provided.
- 4) Clarify, relating to notice, meet and confer, and other requirements of applicable existing laws, that the proposed changes by this bill must not: i) be interpreted to affected other bargaining rights or obligations that were not created, as provided; ii) diminish any right of an employee or REO provided by a memorandum of understanding; and, iii) invalidate any provision of a MOU in effect on the operative date of the section of existing law proposed to be changed by this bill.

**COMMENTS**

*Common Sense and Cents: Contracting Out – A Need for Increased Public Transparency, Scrutiny, and Accountability*

Government contracting of public services, generally, is to provide a particular service for a common public need. For example, in California, to address significant wildfires, the state may, and does, regularly contract with a private company or companies to operate specialized aircraft for firefighting purposes to cover terrain that is difficult to access by traditional ground equipment and personnel.

Governments also contract with nonprofits to provide services to individuals or communities where it lacks sufficient or cost-effective access, and nonprofits may help to fill a void for an otherwise deficiency in access to, or absence of, such services. In this instance, nonprofits help serve a critical role to assist government in needed access and service provision where many nonprofits can, and do, fulfill not only their mission with the financial support of public or private monies, or both, but also work to adhere to the mandates of governmental contract

performance requirements while providing a service. However, there are instances where, for example, the nonprofit sector has not been immune from engaging in questionable practices; thus, raising concerns regarding transparency, accountability, and service provision.<sup>1</sup>

"Government transparency strengthens democracy, promotes fiscal responsibility, checks corruption, and bolsters public confidence. Sunshine laws enshrine transparency into the fabric of government by guaranteeing citizens access to information regarding government expenditures and policies. When government contractors assume control of public services, in many cases they are able to circumvent sunshine laws and shield important information from disclosure. Corporations may refuse to release records that would otherwise be available by claiming that transparency would hurt their bottom lines. Many times, contractors claim that the information is a "trade secret" or "proprietary" and legally protected from public review.

"To protect the public's right-to-information, decision-maker- should adopt strong sunshine laws that require government contractors to follow the same disclosure rules as government entities. As an additional protection, state and local governments should also include disclosure requirements in contracts." (*Closing the Books: How Government Contractors Hid Public Records*," at p 2. In the Public Interest (ITPI), March 2015.)

In the above-referenced report, ITPI reviewed government contracting practices in several states. Generally, the report specifically identifies among the various states reviewed, how government contractors: a) can hide their fees; b) hide how they spend public funds; and, c) hide indicators of service quality.

In another ITPI report, it's analysis of 22 specific case studies of government contracting in a variety of sectors found that, companies: a) reduce the quality and accessibility of the service for its users and recipients; b) reduce the number of workers, eliminate staff trainings, lower employee compensation, and neglect worker safety (these profit-making measures not only harm employees, but also can impact the service itself); c) remove or fail to implement protections for the general public; and, d) remove or fail to implement protections for the environment.<sup>2</sup>

Additionally, an ITPI memo in 2019, "*Protecting the Common Good in Public Services*," notes, among other things, that, "[as] local and state policymakers look for ways to balance their government budgets, some consider privatization of important public services as a way to save money. But, as shown repeatedly in many localities, privatization is not a cure for financial woes. [It] can actually increase costs for a city, compromise the quality of critical services relied on by residents, and harm the local community and economy. Policy makers may also lose the ability to ensure accountability and exercise critical oversight over public services. Privatization can also outsource responsibilities traditionally performed by government that can have long-lasting negative consequences for residents and undermine the very idea of the common good."

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<sup>1</sup> See, "San Francisco police poised to cut contract of scandal-riddling SF SAFE nonprofit." The San Francisco Standard, February 16, 2024; "Performance Audit of the City of Oakland's Homelessness Services: Better Strategy and data are needed for more effective and accountable service delivery and positive outcomes for Oakland's homeless residents." Oakland City Auditor, September 2022; and, "Exclusive" How Sacramento's NAACP branch leaders mismanaged county funds and hired themselves." The Sacramento Bee, January 8, 2024.

<sup>2</sup> "Cutting Corners: How Government Contractors Harm the Public in Pursuit of Profit, ITPI, April 2016.

Some of the public services privatization risks identified in the memo are: a) little or no cost savings; b) reduced service quality; loss of middle-class jobs; c) loss of accountability and transparency; lack of adequate monitoring and oversight; and, d) money leaves the community.

In the ITPI reports and memo, suggested approaches to address the common findings center on the overall theme of contractual performance, and more specifically, the need for increased transparency, accountability, and increased monitoring for efficacy by government officials.

### *This Bill*

This bill does not prohibit contracting out, but provides guardrails towards improving compliance that increase public transparency and accountability to taxpayers.

Please see the various policy committee analyses for a full discussion of this bill.

### **According to the Author**

"Local governments use a procurement process, often involving RFPs and requests for qualifications (RFQs), for externally contracted services. This process is distinct from formal competitive bidding and can have different requirements regarding public bidding laws and disclosure. Additionally, proposals submitted in response to an RFP or RFQ are typically exempt from disclosure under the California Public Records Act.

When local governments decide to contract out the work of their public employees, the Meyers-Milias-Brown Act (MMBA) and the Public Employment Relations Board (PERB) case law requires the agency to notify the union and bargain over either the decision or its impacts. However, very few local governments comply with this requirement. Unions are unaware that their bargaining unit work has been contracted out until it's too late to meaningfully engage their existing bargaining rights."

### **Arguments in Support**

Generally, labor organizations in support of this bill express that the practice of contracting out unionized work weakens bargaining power and worker protections. Although existing law requires employer to negotiate with unions before contracting out bargaining unit work, local government employers rarely comply with this requirement. They expressly note that this bill does not prohibit contracting out. Rather, it is intended to improve compliance and employer-employee relations at the local government level.

Other non-labor organizations supporters articulate a belief that a strong public sector is critical to fulfilling the missions of their organizations, and that during times of uncertainty, local government jobs help stabilize communities by providing job security and healthcare. However, the contracting out of that work is counterproductive to those important attributes by destabilizing and degrading the working conditions for workers across all sectors.

### **Arguments in Opposition**

Generally, local government agency opponents assert, among other things, that the notice, and meet and confer requirements will restrict local public agencies' ability to ensure necessary services are provided to the public, especially when urgent action is needed. This bill expands beyond the requirements of the Meyers-Milias-Brown Act (governing local public employer-employee relations).

Community-based organizations, such as nonprofits, contend that they operate on tight budgets, and cannot afford delays to provide services to communities and individuals most in need. With federal government (budgetary) actions, resources are declining and operational costs are increasing while the demand for their services is unprecedented. They further contend that this bill will reduce their ability to pursue new or renew partnered efforts and reduce public dollars to already under-resourced communities.

## **FISCAL COMMENTS**

According to the Senate Committee on Appropriations, by imposing specified duties on local officials, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines that the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs. The magnitude is unknown, but potentially in excess of \$50,000 annually (General Fund, see Staff Comments). Further, this bill would not have a fiscal impact to the Public Employment Relations Board.

## **VOTES:**

### **ASM PUBLIC EMPLOYMENT AND RETIREMENT: 4-0-3**

**YES:** McKinnor, Boerner, Elhawary, Garcia

**ABS, ABST OR NV:** Lackey, Alanis, Nguyen

### **ASM APPROPRIATIONS: 11-2-2**

**YES:** Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Hart, Pacheco, Pellerin, Solache

**NO:** Dixon, Tangipa

**ABS, ABST OR NV:** Sanchez, Ta

### **ASSEMBLY FLOOR: 51-11-17**

**YES:** Addis, Aguiar-Curry, Ahrens, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Muratsuchi, Ortega, Papan, Pellerin, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Schiavo, Schultz, Sharp-Collins, Soria, Stefani, Valencia, Ward, Wicks, Wilson, Zbur, Rivas

**NO:** DeMaio, Dixon, Ellis, Flora, Gallagher, Jeff Gonzalez, Hadwick, Hoover, Macedo, Patterson, Tangipa

**ABS, ABST OR NV:** Alanis, Carrillo, Castillo, Chen, Davies, Hart, Irwin, Lackey, Nguyen, Pacheco, Patel, Petrie-Norris, Blanca Rubio, Sanchez, Solache, Ta, Wallis

### **SENATE FLOOR: 28-11-1**

**YES:** Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Cortese, Durazo, Gonzalez, Grayson, Hurtado, Limón, McGuire, McNerney, Menjivar, Padilla, Pérez, Richardson, Rubio, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson, Wiener

**NO:** Alvarado-Gil, Choi, Dahle, Grove, Jones, Laird, Niello, Ochoa Bogh, Seyarto, Strickland, Valladares

**ABS, ABST OR NV:** Reyes

**UPDATED**

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