



County of Santa Cruz

DEPARTMENT OF PUBLIC WORKS

701 OCEAN STREET, ROOM 410, SANTA CRUZ, CA 95060-4070
(831) 454-2160 FAX (831) 454-2385 TDD (831) 454-2123

JOHN A. FANTHAM
DIRECTOR OF PUBLIC WORKS

AGENDA: September 21, 1999

September 9, 1999

SANTA CRUZ COUNTY BOARD OF SUPERVISORS

701 Ocean Street
Santa Cruz, California 95060

SUBJECT: RESOLUTION IN SUPPORT OF "THE FAIR COMPETITION
AND TAXPAYER SAVINGS ACT"- ASSEMBLY BILL 1448
AND ASSEMBLY CONSTITUTIONAL AMENDMENT 16

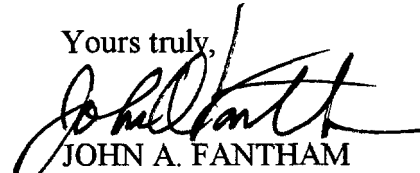
Members of the Board:

As your Board may recall, about two years ago a group of State Department of Transportation employees (Professional Engineers in California Government-PECG) placed a measure on the state ballot (Proposition 224) that would have prevented the state and local governments from using any private engineers or architects on any infrastructure project designs.

While the voters defeated this measure, a subsequent court decision, PECG vs. CALTRANS, essentially now bans the use of private consultants from working on any state highway transportation projects in California. In an attempt to resolve this matter and related efforts to apply this ban upon local government projects as well, legislation has been introduced by Assemblymember Dave Cox (Assembly Bill 1448 and Assembly Constitutional Amendment 16), that attempts to remedy the situation.

Since it will be crucial for the County to continue to be able to hire consultants with various special abilities when necessary to work with us on a vast array of transportation, sanitation, flood control and solid waste projects in the future, we would ask your Board to endorse this legislation.

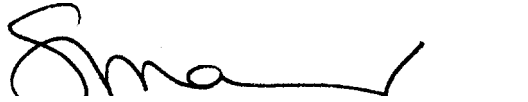
It is therefore recommended that the Board of Supervisors adopt the attached Resolution in support of "The Fair Competition and Taxpayer Savings Act" initiative and Assembly Bill 1448 and Assembly Constitutional Amendment 16.

Yours truly,

JOHN A. FANTHAM
Director of Public Works

TLB:rw

Attachments

RECOMMENDED FOR APPROVAL:



County Administrative Officer

copy to: Public Works

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO. _____

On the motion of Supervisor
duly seconded by Supervisor
the following resolution is adopted:

RESOLUTION IN SUPPORT OF "THE FAIR COMPETITION
AND TAXPAYER SAVINGS ACT"

WHEREAS, California's population growth and deteriorating infrastructure have resulted in the demand for more than \$90 billion worth of highway, school, prison, flood control and other public improvements projects; and

WHEREAS, the need for state and local governments to be able to contract with the private sector for specialized architectural and engineering services has never been greater; and

WHEREAS, a series of successful lawsuits by certain state employees has resulted in effectively banning the state from contracting with private engineers and architects; and

WHEREAS, a recent study by the California Business Roundtable has determined these lawsuits will create a \$3 billion backlog of highway and bridge projects alone; and

WHEREAS, in order to stop these continuing efforts to prevent state and local government from electing to utilize private engineers and architects when necessary, an initiative and legislation known as "The Fair Competition and Taxpayer Savings Act" has been prepared; and

WHEREAS, "The Fair Competition and Taxpayer Savings Act" changes California's laws in order to allow the state and local governments to contract with private companies for architectural and engineering services where they find it to be necessary to augment existing staff capabilities; and

WHEREAS, "The Fair Competition and Taxpayer Savings Act" requires architecture and engineering contracts to be subject to standard accounting practices and requires financial and performance audits as necessary to ensure contract services are delivered within the agreed schedule and budget;

NOW, THEREFORE BE IT RESOLVED, the Board of Supervisors of the County of Santa Cruz supports "The Fair Competition and Taxpayer Savings Act" for architecture and engineering services as an initiative and legislation.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz,
State of California, this o day of f 1999, by the following vote:

AYES: SUPERVISORS

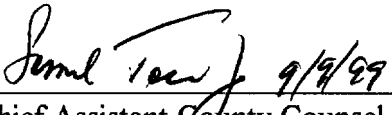
NOES: SUPERVISORS

ABSENT: SUPERVISORS

Chairperson of said Board

ATTEST: _____
Clerk of said Board

Approved as to form:



Chief Assistant County Counsel

Distribution: Planning
General Services
Public Works

Taxpayers for Fair Competition

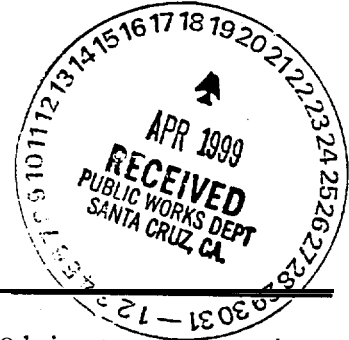
(533)

□ 111 Anza Boulevard, #406 • Burlingame, CA 94010
• 650-340-0470 • FAX: 650-340-1740

□ 11300 W. Olympic Boulevard, #840 • Los Angeles, CA 90064
• 310-996-2600 • FAX: 310-996-2673

April 16, 1999

TO: John Fantham
FR: Dana Rambo/Taxpayers for Fair Competition
RE: Contracting-Out Legislation & New Information
c c : Bob DeWitt



As one of the first organizations to oppose Prop. 224, we wanted to bring to your attention recently introduced legislation and a constitutional ballot initiative supporting contracting-out.

Our effort is in response to a recent court decision, *PECG v Caltrans*, which essentially bans the use of private companies from transportation and other types of infrastructure projects in California. A recent study concluded that this court decision will result in a \$3 billion backlog at Caltrans by 1999. At the local level, efforts are underway to use the *PECG v. Caltrans* decision to stop the use of private architecture and engineers on transportation, water, schools and all other infrastructure projects.

The initiative is scheduled to be on the March 2000 ballot. In the meantime, we are pursuing a legislative remedy. The legislation (AB 1445 and ACA 16) is similar to the initiative and was introduced by Assemblymember Dave Cox (R-Sacramento).

We hope that once you review the enclosed materials that the Southern California Contractors Association will support both the legislation and initiative.

Enclosed please find:

- Fact Sheet
- AB 1445 and ACA 16, authored by Assemblymember Dave Cox (R-Sacramento)
- Description and text of the initiative.
- Legal analysis regarding the initiative and legal history.
- Summary on California's infrastructure. This appeared in the California Taxpayers Association's publication called the *Cal-Tax Digest*.
- Sample resolution. ✓

If you have any questions, please call me at (650) 340-0470. Thank you for your consideration.

ROUTE DATA	COPY	ATT.
DIRECTOR	✓	✓
ASST. DIR. OPR	✓	✓
CS&CLAIMS		
OPR PROJ/PPKG		
PERMITS/ENCR		
RDS/DRAIN/EOP		
SANIT/LANDF		
ASST. DIR. PS.	✓	✓
CONSTRUCTION		
DRAINAGE		
SANIT. ENG		
SOLID WASTE		
ASS. DIR. RE.	✓	✓
DESIGN		
R.D.A.		
RD PLAN/TRAFF		
SURVEY		
CHIEF ADP. Svc	✓	✓
REAL. PR. Svc	✓	✓

The Fair Competition and Taxpayer Savings Initiative

for Architectural and Engineering Services

1. Permits Contracting Out of Architectural and Engineering Services:
Allows state and local governments, special districts and school districts to contract with private companies for architectural and engineering **services**. Defines such services as architectural, landscape architectural, environmental, engineering, land surveying and construction management.

2. Local Choice to Deliver Transportation Projects On-Time:
Gives local governments greater control over transportation improvements so that highway, bridge and transit projects can be delivered on-time and within budget.

3. Competitive Selection and Taxpayer Safeguards:
Requires contracts be awarded through a competitive selection process that:

- Prohibits government employees from awarding contracts if they have a financial or business relationship with the companies involved.
- Requires compliance with all laws regarding **political** contributions, conflicts of interest or unlawful activities.
- Subjects all architecture and engineering contracts to standard accounting practices.
- Permits financial and performance audits as necessary to ensure contract services are delivered within the agreed schedule and budget.

4. Strict Design and Construction Standards:
Already established project seismic safety, project design and construction standards are not changed by the initiative.

5. Only Applies to Architectural and Engineering Services:
This measure does not apply to any other contracts except for architecture and engineering services. For example, it does not apply to peace **officers**, teachers or correction officers.

AMENDED IN ASSEMBLY APRIL 12, 1999

CALIFORNIA LEGISLATURE—1999-2000 REGULAR SESSION

ASSEMBLY BILL

No. 1445

Introduced by Assembly Member Cox
(Coauthors: Assembly Members Campbell, Leach, and
Oller)
(Coauthor: Senator Johannessen)

February 26, 1999

An act to add Chapter 10.3 (commencing with Section 4529.61) to Division 5 of Title 1 of the Government Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1445, as amended, Cox. Public contracts: architectural and engineering services.

The California Constitution provides that the civil service includes every officer and employee of the state, subject to specified exceptions. Statutory provisions govern contracting by state and local agencies for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

This bill would enact statutory provisions to implement a proposed amendment to the California Constitution related to public contracting for architectural and engineering services.

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

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making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

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

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

1 SECTION 1. Chapter 10.3 (commencing with
2 Section 4529.61) is added to Division 5 of Title 1 of the
3 Government Code, to read:

4
5 **CHAPTER 10.3. FAIR COMPETITION AND TAXPAYER**
6 **SAVINGS ACT**
7

8 4529.61. For purposes of Article XXII of the California
9 Constitution and this chapter, the term “architectural
10 and engineering services” ~~includes~~ *shall include* all
11 architectural, landscape architectural, environmental,
12 engineering, land surveying, and construction project
13 management services.

14 4529.62. All projects included in the State
15 Transportation Improvement Program programmed and
16 funded as interregional improvements or” as regional
17 improvements ~~are~~ *shall* be subject to Article XXII of the
18 California Constitution. The sponsoring governmental
19 entity ~~has~~ *shall have* the choice and the authority to
20 contract with qualified private entities for architectural
21 and engineering services. For projects programmed and
22 funded as regional improvements, the sponsoring
23 governmental entity ~~is~~ *shall be* the regional or local
24 project sponsor. For projects programmed and funded as
25 interregional improvements, the sponsoring
26 governmental entity ~~is~~ *shall be* the State of California,
27 unless there is a regional or local project sponsor ~~then~~ in

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1 ~~which case~~ the sponsoring governmental entity ~~is~~ shall be
 2 the regional or local project sponsor. The regional or local
 3 project sponsor ~~is~~ shall be a regional or local
 4 governmental entity proposing, nominating, adopting, or
 5 submitting the project for ~~entity~~ inclusion in the State
 6 Transportation Improvement Program.

7 ~~4529.63~~ An open, publicly advertised, competitive
 8 selection process shall be used by the State of California
 9 and all other governmental entities, including, but not
 10 limited to, cities, counties, cities and counties, special
 11 districts, local and regional agencies, and joint powers
 12 agencies, to procure private architectural and private
 13 engineering services where the cost of the services are
 14 projected to exceed fifty thousand dollars (\$50,000).

15 ~~4529.64~~. All architectural and engineering services
 16 procured by the State of California and all other
 17 governmental entities, including, but not limited to,
 18 cities, counties, cities and counties, special districts, local
 19 and regional agencies, and joint powers agencies, shall
 20 contain a contractual provision that requires the private
 21 entity to be liable to the governmental entity.

22 ~~4529.65~~.

23 4529.63. All architectural and engineering services
 24 shall be procured pursuant to a ~~procedure that is~~
 25 *competitive selection process which* prohibits
 26 governmental agency employees from participating in
 27 the selection process ~~if~~ *when* they have a financial or
 28 business relationship with ~~the~~ *any* private entity seeking
 29 the ~~contract. The contract, and the~~ procedure shall
 30 require compliance with all laws regarding political
 31 contributions, conflicts of interest, or unlawful activities.

32 ~~4529.66~~. This chapter does not

33 4529.64. *Nothing contained in this chapter shall be*
 34 *construed to change project design standards, seismic*
 35 *safety standards, or project construction standards*
 36 *established by state, regional, or local governmental*
 37 *entities. This chapter does not* *Nor shall any provision of*
 38 *this chapter be construed to prohibit or restrict the*
 39 *authority of the Legislature to* ~~provide statutorily for~~
 40 *statutorily provide* different procurement methods for

1 design-build projects or design-build and operate
2 projects.

3 ~~4529.67.—~~

4 4529.65. Architectural and engineering *services*
5 contracts procured by public agencies ~~are~~ *shall be* subject
6 to standard accounting practices and may require
7 financial and performance audits *as* necessary to ensure
8 that contract services are delivered within the agreed
9 schedule and budget.

10 ~~4529.68.—~~

11 4529.66. This chapter ~~applies only~~ *only applies* to
12 architectural and engineering services defined in Section
13 4529.61. ~~This chapter does not~~ *Nothing contained in this*
14 *chapter shall be construed to* expand or restrict the
15 authority of governmental entities to contract for fire,
16 ambulance, police, sheriff, probation, corrections, or
17 other peace officer services. ~~This chapter does not~~ Nor
18 *shall anything in this chapter be construed to* expand or
19 restrict the authority of governmental entities to contract
20 for education services including, but not limited to,
21 teaching services, services of ~~unclassified~~ *classified* school
22 personnel, and school administrators.

23 ~~4529.69.—~~

24 4529.67. This chapter ~~may~~ *shall* not be applied in a
25 manner that ~~results~~ *will result* in the loss of federal
26 funding to any governmental entity.

27 ~~529.70.—~~

28 4529.68. The provisions of this chapter are severable.
29 If any provision of this chapter or its application is held
30 invalid, that invalidity *shall* not affect other provisions or
31 applications that can be given effect without the invalid
32 provision or application.

33 ~~4529.71.—~~

34 4529.69. *If any other act of the Legislature conflicts*
35 *with the provisions of this chapter, this chapter will*
36 *prevail.*

37 4529.70. This chapter shall be liberally construed to
38 accomplish its purposes.

39 ~~529.72.—~~

1 4529.71. This chapter seeks to comprehensively
 2 regulate the matters which are contained within its
 3 provisions. These are matters of statewide concern and
 4 ~~this chapter if enacted is when enacted~~ are intended to
 5 apply to charter cities 'as well as all other governmental
 6 entities.

7 SEC. 2. Notwithstanding Section 17610 of the
 8 Government Code, if the Commission on State Mandates
 9 determines that this act contains costs mandated by the
 10 state, reimbursement to local agencies and school
 11 districts for those costs shall be made pursuant to Part 7
 12 (commencing with Section 17500) of Division 4 of Title
 13 2 of the Government Code. If the statewide cost of the
 14 claim for reimbursement does not exceed one million
 15 dollars (\$1,000,000), reimbursement shall be made from
 16 the State Mandates Claims Fund.

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Assembly **Constitutional** Amendment

No. 16

Introduced by Assembly Member Cox

March 3, 1999

Assembly Constitutional Amendment No. 16—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by adding Article XXII thereof, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

ACA 16, as introduced, Cox. Public contracts: architectural and engineering services.

The California Constitution provides that the civil service includes every officer and employee of the state, subject to specified exceptions. Statutory provisions govern contracting by state and local agencies for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

This measure would provide that the state and all other governmental entities are permitted to contract with private entities for architectural and engineering services, for all public works of improvement, without regard to funding source, whether the project is programmed by specified entities, or whether the project is part of a state-owned or state-operated system or facility.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

1 WHEREAS, It is the intent of the people of the State of
2 California in enacting this measure to do **all** of the
3 following:

4 (a) Remove existing restrictions on contracting for
5 architectural and engineering services and allow state,
6 regional, and local governments to use qualified private
7 architectural and engineering firms to **help** deliver
8 transportation, schools, water, and other **infrastructure**
9 projects safely, cost-effectively, and on time;

10 (b) Encourage the kind of public or private
11 partnerships necessary to ensure that California
12 taxpayers benefit from the use of private sector
13 transportation, earthquake safety, and other
14 **infrastructure** experts:

15 (c) Promote fair competition so that both public and
16 private sector architects and engineers work more
17 efficiently. and ultimately deliver better value to
18 taxpayers:

19 (d) Speed the completion of a **multibillion** dollar
20 backlog of highway, bridge, transit, and other projects;

21 (e) Ensure that contracting for architecture and
22 engineering services occurs through an open and publicly
23 advertised competitive selection process, free of undue
24 **political** influence. to obtain the best quality and value for
25 California taxpayers;

26 (f) Ensure that private **firms** contracting for
27 architectural and **engineering** services with
28 **governmental** entities meet established design and
29 construction standards and are held responsible for the
30 performance of their contracts: now, therefore, be it

31 **Resolved by the Assembly, the Senate concurring,** That
32 the Legislature of the State of California at its 1999-2000
33 Regular Session commencing on the **seventh** day of
34 December 1998, two-thirds of the membership of each
35 house concurring, hereby proposes to the people of the
36 State of California that the Constitution of the State be
37 **amended** by adding **Article XXII** thereof, to read:

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ARTICLE XXII

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PUBLIC CONTRACTS

SECTION 1. This article shall be known as the "Fair Competition and Taxpayer Savings Act."

SEC. 2. The State of California and all other public entities, including, but not limited to, cities, counties, cities and counties, special **districts**, local and regional agencies, and joint powers agencies, may contract with private entities for architectural and engineering services for all public works of improvement. The choice and authority to contract extends to all phases of project development, **including** permit and environmental studies, rights-of-way services, design phase services, and construction phase services. **The** choice and authority to contract exist without regard to funding **source, whether** federal, State, regional, local, or private, whether or not the project is programmed by a State, regional, or local government entity, or whether or not the completed project is a part of any state-owned or state-operated system or facility.

SEC. 3. Article VII may not be construed to restrict or prohibit the State or any other public entities, including, but **not** limited to, cities, counties, cities and counties, **special** districts, local and regional agencies, and joint power agencies, from contracting with private entities for the performance of architectural or engineering services.

SEC. 4. Chapter 10.3 (commencing with Section 4529.61) of Division 5 of Title 2 of the Government Code, or any successor, may be amended only by a bill that furthers the purposes of this measure and is passed in each house of the Legislature by **rollcall** vote entered in the journal, two-thirds of the membership concurring.

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