

FILED
OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND

BILL ANALYSIS



Date: 2009 MAY 28 PM 2:25
May 20, 2009

Bill Number: AB1364

Bill Author: Assembly Member Evans/Senator Florez

DEPARTMENT INFORMATION

Contact: Lily Soo Hoo
Department: Community & Economic Development Agency
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E-mail: lsoohoo@oaklandnet.com

RECOMMENDED POSITION: (SUPPORT, SUPPORT IF AMENDED, NEUTRAL, WATCH, OPPOSE, NOT RELEVANT)

Support

Summary of the Bill

AB1364 amends the Government Code and permits state grant agencies that have entered grant agreements where the state agencies or grant recipients may be unable to comply with the terms of the agreements due to the suspension of state grant funds by the Pooled Money Investment Board in December 2008 to renegotiate schedule and deliverable so as to preserve the validity of the agreements or to invalidate the agreements.

Positive Factors for Oakland

On December 17, 2008, State Department of Parks & Recreation informed the City to suspend all State grant-funded projects due to Pooled Money Investment Board directive to freeze all disbursements. Passage of the bill will provide the City an opportunity to extend the agreement schedule, complete projects to meet grant requirements, and preserve grant funds.

Negative Factors for Oakland

None

Item: _____
Rules & Legislation Comte.
June 11, 2009

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

- Critical** (top priority for City lobbyist, city position required ASAP)
 Very Important (priority for City lobbyist, city position necessary)
 Somewhat Important (City position desirable if time and resources are available)
 Minimal or **None** (do not review with City Council, position not required)

Known support:

California Council of Land Trusts (co-sponsor)	Land Trust of Napa County
California State Parks Foundation (co-sponsor)	Land Trust of Santa Cruz County
Planning and Conservation League (co-sponsor)	Lassen Land & Trails Trust
A Living Library, American Land Conservancy	Marin Agricultural Land Trust
Anza Borrego Foundation, Arroyo Seco Foundation	Mattole Restoration Council
Association of California Construction Managers	Mattole Salmon Group
Bay Area Open Space Council	Mountain Meadows Conservancy
Big Sur Land Trust	Muir Heritage Land Trust
California Association of Nonprofits	Outdoor Heritage Alliance
California ReLeaf	Palos Verdes Peninsula Land Conservancy
California Urban Forest Council	Peninsula Open Space Trust
Canopy	Placer Land Trust
Central Valley Land Trust Council	Redwood Coast Land Conservancy
City of Napa	Sacramento Tree Foundation
City of Oakland	Sacramento Valley Conservancy
City of Sacramento	San Diego River Park Foundation
Community Alliance for Family Farmers	San Francisco Bay Joint Venture
East Bay Regional Park District	San Joaquin River Parkway & Conservation Trust
Elkhorn Slough Foundation	Save Mount Diablo
Environmental Justice Coalition for Water	Sequoia Riverlands Trust
Friends of the Urban Forest	Sierra-Cascade Land Trust Council
Goleta Valley Beautiful	Solano Land Trust
Housing California	Sonoma Land Trust
Lake County Land Trust	The Trust for Public Land
Land Conservancy of San Luis Obispo County	Tree Davis
Land Trust Council	Tri-Valley Conservancy
Land Trust for Santa Barbara County	

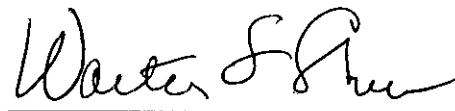
Known Opposition:

None

Attach bill text and state/federal legislative committee analysis, if available.

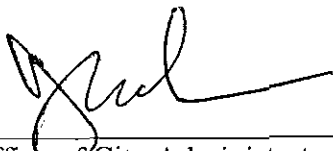
Bill text with bill analyses dated May 12, 2009 and May 20, 2009 attached.

Respectfully Submitted,



Walter S. Cohen
Director, Community & Economic
Development Agency

Approved for Forwarding to
Rules Committee



Office of City Administrator

Item: _____
Rules & Legislation Comte.
June 11, 2009

AMENDED IN ASSEMBLY APRIL 29, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1364

Introduced by Assembly Member Evans
(Principal coauthor: Senator Florez)

February 27, 2009

An act to add Section 16482 to the Government Code, relating to public contracts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1364, as amended, Evans. Public contracts: *state bonds: grant agreements.*

Existing law permits the modification of contracts by state agencies in specified instances.

This bill would provide that, notwithstanding any other provision of law, any state agency that has entered into a ~~contract grant agreement~~ *grant agreement for the expenditure of state bond funds* where the *state agency or grant recipient* has or may be unable to comply with the terms of that ~~contract agreement~~ because of the suspension of programs by the Pooled Money Investment Board as described in California Department of Finance Budget Letter 08-33 shall, *with the consent of the grant recipient*, have ~~the authority to amend the terms of the contract to address contract~~ *either renegotiate the deadlines and timetables for* and deliverables *within the grant agreement* that may not be met because of that suspension *in order to preserve the validity of the agreement or to invalidate the grant agreement.*

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

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

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

1 SECTION 1. Section 16482 is added to the Government Code,
2 to read:

3 16482. Notwithstanding any other provision of law, any state
4 agency that has entered into a grant agreement for the expenditure
5 of state bond funds where the state agency or grant recipient has
6 or may be unable to comply with the terms of that agreement
7 because of the suspension of programs by the Pooled Money
8 Investment Board as described in California Department of
9 Finance Budget Letter 08-33 shall, with the consent of the grant
10 recipient, have authority to do either of the following:

11 (a) Renegotiate the deadlines and timetables for deliverables
12 within the grant agreement that may not be met because of the
13 suspension in order to preserve the validity of the agreement.

14 (b) Invalidate the grant agreement.

15 ~~SECTION 1. Notwithstanding any other provision of law, any~~
16 ~~state agency that has entered into a contract where the agency has~~
17 ~~or may be unable to comply with the terms of that contract because~~
18 ~~of the suspension of programs by the Pooled Money Investment~~
19 ~~Board as described in California Department of Finance Budget~~
20 ~~Letter 08-33 shall have authority to amend the terms of the contract~~
21 ~~to address contract deadlines and deliverables that may not be met~~
22 ~~because of that suspension.~~

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

27 In order to permit state agencies to take immediate action to
28 make needed revisions to ~~contracts~~ *agreements*, it is necessary for
29 this act to take effect immediately.

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BILL ANALYSIS

AB 1364
Page 1

Date of Hearing: May 20, 2009

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Kevin De Leon, Chair

AB 1364 (Evans) - As Amended: April 29, 2009

Policy Committee: Business and
Professions Vote: 11-0

Urgency: Yes State Mandated Local Program:
No Reimbursable:

SUMMARY

This bill authorizes any state agency that has entered into a grant agreement for expenditure of state bond funds-where either party may be unable to comply with the agreement due to suspension of bond funded programs by the Pooled Money Investment Board (PMIB)-to, with the consent of the grant recipient, either invalidate the agreement or renegotiate terms that may not be met due to the PMIB action.

FISCAL EFFECT

Potential administrative costs to renegotiate contracts, probably more than offset by savings from avoided legal proceedings by eliminating uncertainty regarding existing contracts.

COMMENTS

1)Background . On December 17, 2008, the PMIB froze all disbursements from the Pooled Money Investment Account (PMIA) because of the state's poor cash position. The PMIA has historically been used to provide interim funding for all bond funded projects until the State Treasurer's Office (STO) is able to issue commercial paper and subsequently sell bonds. The PMIB "freeze" affected approximately 5,700 projects across the state. In the weeks that followed this action, the Department of Finance authorized 276 projects to continue, but the remaining 5,400 projects were directed to be shut-down unless other non-state funding sources were available to enable them to continue.

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AB 1364Page 2

Enactment of the 2009-10 Budget Act in February allowed the STO to re-enter the bond market and resume issuing bonds. Prior to the March 2009 bond sale, the state was unable to sell bonds since June of 2008. A mismatch remains, however, between the amount of bond resources committed through state contracts and the amount of bond funds available. Moreover, the Legislative Analyst's Office, in its recent report, "California's Cash Flow Crisis: May 2009 Update," states that the state's cash flow pressures are likely to reemerge this summer and fall, and the short-term borrowing requirement could reach \$20 billion.

2) Purpose . According to the author's office, "On April 3, the Department of Finance issued Budget Letter 09-09 which says, 'If projects continue with non-state funding sources, the state intends to eventually pay the costs to which it has committed through a valid agreement.' While this passage brings important clarity regarding the state's intentions relating to fiscal assurances, uncertainty now shifts to the validity of contracts where datelines for deliverables are passing. For these reasons, as the state moves ahead with its contract partners, the grey area centers on what constitutes a valid contract. This raises the inevitable question: Since the timetables for deliverables are passing and not being met, are such contracts valid? AB 1364 proposes an affirmative solution to validate these state contracts. The approach proposed to in AB 1364 is for state agencies to amend timetables for these contracts."

Analysis Prepared by : Chuck Nicol / APPR. / (916) 319-2081

BILL ANALYSIS

AB 1364
Page 1

Date of Hearing: May 12, 2009

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Mary Hayashi, Chair
AB 1364 (Evans) - As Amended: April 29, 2009

SUBJECT : Public contracts: state bonds: grant agreements.

SUMMARY : Permits a state agency that has entered into a grant agreement for the expenditure of state bond funds to renegotiate the terms of that agreement under certain specified circumstances. Specifically, this bill :

1) Permits, with the consent of the grant recipient, a state agency that has entered into a grant agreement for the expenditure of state bond funds, and the state agency or grant recipient is unable to comply with the terms of that agreement due to a suspension of programs by the Pooled Money Investment Board (PMIB) as described in California Department of Finance (DOF) Budget Letter 08-33 to:

- a) Renegotiate the deadlines and timetables for deliverables within the grant agreement that may not be met because of the suspension in order to preserve the validity of the agreement; or,
- b) Invalidate the grant agreement.

2) Adds an urgency clause.

EXISTING LAW permits the modification of contracts by state agencies in specified instances.

FISCAL EFFECT : Unknown

COMMENTS :

Purpose of the bill . According to the author's office, "The stop work order and freeze on disbursement of state infrastructure bond funds issued by the Pooled Money Investment Board on December 17th has impacted thousands of projects throughout California, placing the state and its project partners in uncertain and uncharted territory. The disposition of contracts between the state and the recipients remain obligated to the dates, liabilities and deliverables that the

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AB 1364

Page 2

existing contracts and grants contain.

"Since the state's deteriorating budget outlook was an obstacle to the sale of additional bonds to end the freeze, policymakers focused on balancing the budget with the hope that the bond market would respond in turn. Although the Treasurer's recent success in issuing bonds last month is encouraging, enduring questions remain about the road ahead. Prior to the March 2009 bond sale, the state was unable to sell bonds since June of 2008. In addition, a mismatch remains between the amount of bond resources committed through state contracts and the amount of bond funds available.

"Two key questions have shaped discussion about state contracts within the context of the bond freeze. First, what is the status of these contracts since bond funds are not going out? Second, will the state provide fiscal assurances to project partners who proceed with non-state bridge financing, as permitted in Budget Letter 09-05, to continue working on state projects?

"On April 3, the Department of Finance issued Budget Letter 09-09 which says, 'If projects continue with non-state funding sources, the state intends to eventually pay the costs to which it has committed through a valid agreement.' While this passage brings important clarity regarding the state's intentions relating to fiscal assurances, uncertainty now shifts to the validity of contracts where datelines for deliverables are passing. For these reasons, as the state moves ahead with its contract partners, the grey area centers on what constitutes a valid contract. This raises the inevitable question: Since the timetables for deliverables are passing and not being met, are such contracts valid? AB 1364 proposes an affirmative solution to validate these state contracts. The approach proposed to in AB 1364 is for state agencies to amend timetables for these contracts."

Background . According to the DOF, "The Pooled Money Investment Board (PMIB) on December 17, 2008 froze all disbursements from the Pooled Money Investment Account (Account) because of the poor cash position in the Account. This Account has been historically used to provide interim funding for all bond funded projects (general obligation and lease revenue) until the State Treasurer's Office (STO) is able to schedule bond sales. This "freeze" affected approximately 5,700 projects across the state.

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In the weeks that followed this action, the Department of Finance authorized 276 projects to continue and the remaining 5,400 projects were directed to be shut-down unless other non-state funding sources were available to enable them to continue.

"The passage of the Budget in February 2009 allowed the STO to re-enter the bond market and start issuing bonds. However, the Account, while slightly improved still remained in a weak cash position and was unable to provide all the necessary funding for the exempt and shut-down projects to re-start as well as provide the necessary source of cash borrowing for the state's regular day-to-day operations. Therefore, the PMIB has continued the freeze on disbursements, with limited exceptions ?."

Related legislation . AB 672 (Bass) of 2009 authorizes a regional or local agency that is a lead agency for a project that is programmed for bond funding on or after July 1, 2008, to apply to the administrative agency for a letter of no prejudice that would allow the regional or local agency to expend its own funds for any bond-funded component of the project, subject to later reimbursement from bond proceeds, as specified.

Support . The California Council of Land Trusts, California State Parks Foundation, and Planning and Conservation league, write in support, "We are writing as co-sponsors to urge your support of Assembly Bill 1364 - the only measure introduced to the Assembly that specifically addresses concerns regarding the detrimental impacts of the bond freeze to all state agencies and all of their partners adversely affected by this cash-flow crisis.

"In the four months since the Department [of Finance] issued Budget Letter 08-33, this bill has played an instrumental role in advancing the conversation at the State Capitol as to what this Legislature can do to provide both short-term and long-term solutions to this ongoing crisis. Consequently, AB 1364 has become more than a bill on the bond freeze. It has become a catalyst for advancing other important objectives outside the scope of the legislation, and will undoubtedly continue to do so as the measure moves forward."

REGISTERED SUPPORT / OPPOSITION :

Support

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California Council of Land Trusts (co-sponsor)
California State Parks Foundation (co-sponsor)
Planning and Conservation League (co-sponsor)
A Living Library
American Land Conservancy
Anza Borrego Foundation
Arroyo Seco Foundation
Association of California Construction Managers
Bay Area Open Space Council
Big Sur Land Trust
California Association of Nonprofits
California ReLeaf
California Urban Forest Council
Canopy
Central Valley Land Trust Council
City of Napa
City of Oakland
City of Sacramento
Community Alliance for Family Farmers
East Bay Regional Park District
Elkhorn Slough Foundation
Environmental Justice Coalition for Water
Friends of the Urban Forest
Goleta Valley Beautiful
Housing California
Lake County Land Trust
Land Conservancy of San Luis Obispo County
Land Trust Council
Land Trust for Santa Barbara County
Land Trust of Napa County
Land Trust of Santa Cruz County
Lassen Land & Trails Trust
Marin Agricultural Land Trust
Mattole Restoration Council
Mattole Salmon Group
Mountain Meadows Conservancy
Muir Heritage Land Trust
Outdoor Heritage Alliance
Palos Verdes Peninsula Land Conservancy
Peninsula Open Space Trust
Placer Land Trust
Redwood Coast Land Conservancy
Sacramento Tree Foundation
Sacramento Valley Conservancy

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AB 1364

Page 5

San Diego River Park Foundation
San Francisco Bay Joint Venture
San Joaquin River Parkway and Conservation Trust
Save Mount Diablo
Sequoia Riverlands Trust
Sierra-Cascade Land Trust Council
Solano Land Trust
Sonoma Land Trust
The Trust for Public Land
Tree Davis
Tri-Valley Conservancy

Opposition

None on file.

Analysis Prepared by : Rebecca May / B. & P. / (916) 319-3301

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 MAY 28 PM 2:25

Approved as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER

RESOLUTION DECLARING COUNCIL SUPPORT FOR ASSEMBLY BILL NO. 1364, WHICH, WITH CONSENT OF GRANT RECIPIENTS, WOULD PERMIT STATE AGENCIES DISBURSING STATE BOND FUNDS TO RENEGOTIATE GRANT DEADLINES AND TIMETABLES, OR TO INVALIDATE SUCH GRANTS, WHEN GRANT DEADLINES AND TIMETABLES ARE AFFECTED BY THE SUSPENSION OF PROGRAMS BY THE POOLED MONEY INVESTMENT BOARD

WHEREAS, AB 1364 (Evans), currently pending in the California Legislature (Assembly Committee on Appropriations) would authorize any state agency that has entered into a grant agreement for expenditure of state bond funds where the state agency or recipient may be unable to comply with the agreement due to suspension of bond funded programs by the Pool Money Investment Board (PMIB) on December 17, 2008, to either invalidate the agreement or renegotiate deadlines and timetables that may not be met due to the PMIB action; and

WHEREAS, the PMIB's suspension of funds affected approximately 14 park capital improvement projects for the City of Oakland and a total of \$3.7 million; and

WHEREAS, the City of Oakland is committed to improve and maximize recreational opportunities for youths and the public and the Council approved a park prioritization list as the basis for implementation of a recreational facilities improvement plan; and

WHEREAS, AB 1364 would facilitate City's ability to maintain state bond funds necessary to complete existing grant-funded park projects; now therefore, be it

RESOLVED: That the City Council declares its support for AB 1364 (Evans) and the City Administrator is directed to advocate the City's position to the State Legislature through the City's state lobbyist.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT BRUNNER

NOES -
ABSENT -
ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California