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## Committee quashes contract rules

### Bill would have required Legislature to follow fair play rules in awarding its projects.



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SACRAMENTO -- Lawmakers usually have something to say. But not this time.

Two weeks ago, rookie Assemblyman Paul Cook, R-Yucaipa, was in the Business and Professions Committee presenting Assembly Bill 1070. His bill sought to address controversial legislative expenditures, like the \$6.8 million to build a security barrier around the Capitol, by setting standards for when the Legislature administers a contract.

As it stands, the Legislature is exempt from the Public Contracts Code; there are no requirements that it publicly solicit bids or even accept the lowest offer.

Cook spoke for a few minutes, trying to address two concerns in the committee's bill analysis. In both cases, he promised to make changes as the analysis suggested.

"A fair bidding process is intended to reduce favoritism, so that all contractors – women, minority, veterans' contractors and so forth – are provided a fair shot at Capitol contracts," Cook said concluding his presentation. "This bill is an opportunity to do this."

No one spoke in opposition (and no one else spoke in support). And when it came time for the committee to vote, there were no questions or comments – the members simply defeated the bill, 6-4. Of the committee's seven Democratic members, only one voted yes.

"This was obviously a very sensitive matter," said Assemblyman Chuck Devore, R-Irvine, when I showed him a tape of the hearing. DeVore, a member of the Assembly Budget Committee, said the bill was a threat to the Democratic-controlled Legislature's unfettered power.

AB 1070 was born out of Cook's frustrations with the Capitol security project. Completed last year, the project built security pavilions and a security barrier or posts and concrete planters. It was in response to the Sept. 11 attacks and an incident in January 2001 when a man rammed his big rig into the Capitol.

The contract was administered by the Legislature, which mandated that only union companies be eligible for the job. That's not allowed under the contract code.

"You had a very, very arbitrary selection process that ... excluded a lot of people on what's supposed to be considered a level playing field," Cook said. "And that disturbed me."

The Zumbrun Law Firm challenged the legality of that move and sought records detailing who requested the all-union work force and how a winning bidder was selected. So far, the Legislature hasn't had to turn over that information, Ronald Zumburn said.

"Right now, today, we don't know who was responsible for things," said Zumbrun, who has appealed his case to the state Court of Appeals. A lower court ruled the Legislature doesn't have to abide by a competitive-bid process.

Jon Waldie, chief administrative officer of the Assembly, told me the Legislature only administers contracts when the three bodies in the Capitol – the Assembly, Senate and the governor's office – have decided that they do not have time to wait through the standard competitive-bidding process. That's on a case-by-case basis.

Waldie couldn't give me an estimate of how often that happens, but he said it's not common and limited to projects under \$10 million.

Cook challenged it on principle, and submitted the bill in February. (Cook said he decided not to publicize the bill because he wanted to make a policy argument rather than use politics to pressure lawmakers to pass it.)

Cook convinced one Democrat on the committee to support the bill. Wilmer Amina Carter of Rialto told me she wanted small businesses to have a fair shot at getting contracts. But she wasn't nearly enough.

I asked Assembly Business and Professions Committee Chairman Mike Eng, D-Monterey Park, why he voted against Cook's bill. He said wording in the bill would subjugate the Legislature's contracting authority to the executive branch. Fellow committee member Alberto Torrico, D-Fremont, gave me a similar explanation.

Cook, however, specifically addressed that concern in his comments to the committee, saying that the language was an error and he had no intention of reducing the Legislature's independence. He also promised to change the bill to require acceptance of the "best value" bidder, not the "lowest responsible bidder," as the analysis recommended.

So I pressed Eng, who first indicated he didn't remember whether Cook actually offered amendments, and then said it didn't really matter. He was concerned about language.

"We can only vote on the bills that are in front of us," Eng told me.

(Actually, lawmakers often vote on amendments without seeing any language, said Barbara O'Connor of Cal State Sacramento. After the vote, staff is directed to draft language reflecting the spirit of what was agreed. "It happens all the time," O'Connor said.)

Cook said he thought he made it clear to the committee he was making changes. Watching the video, it seems clear to me, too. But whatever the case, Cook said he'll bring the bill back, in one form or another.

"Maybe we've all become Don Quixote-like, we're going to go after the windmill," Cook said. "But I think every now and then you've got to challenge the system."

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