

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 1290 (Hurtado)
Version: March 23, 2026
Hearing Date: April 14, 2026
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Cartwright Act: Department of Justice: examination of records

DIGEST

This bill modifies the Cartwright Act to permit the Department of Justice (DOJ) to examine all records, files, documents, accounts, and data related to contracts with a public entity, as defined, that concern a contract amount over \$100,000, in order to identify bid rigging and other violations of California law.

EXECUTIVE SUMMARY

California's Cartwright Act generally prohibits any combinations or agreements which restrain trade or competition or which fix or control prices. Under the Cartwright Act, agreements between competitors to fix or tamper with prices are illegal per se. One such form of per se illegal price fixing is bid rigging, which occurs when two or more bidders for the same contract conspire to ensure that a favored bidder wins the contract, usually resulting in an inflated contract price paid for by the taxpayers. A violation of the Cartwright Act can result in civil and criminal penalties.

According to the author, the DOJ currently has no method for obtaining documents and information from a public entity in connection with a bid rigging investigation prior to the filing of a Cartwright Act suit. This bill would permit the DOJ to demand all records, files, documents, accounts, and data related to public entity contracts over \$100,000, to identify bid rigging and other violations of California law. The author has agreed to a number of amendments to clarify the bill's scope and to ensure that public entities have adequate protections for their own papers and information. The complete text of the bill, as amended, is set forth in Appendix A to this analysis. The author will cross the amendments as author's amendments as soon as the bill is re-referred to the Local Government Committee, so that the amendments are in print several days in advance of the Local Government Committee's hearing on this bill.

This bill is sponsored by Attorney General Rob Bonta. The Committee has not received timely opposition to this bill. If this Committee passes this bill, it will move on to the Senate Local Government Committee.

PROPOSED CHANGES TO THE LAW

Existing constitutional law:

- 1) Provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (U.S. Const., 4th amend.; Cal. Const., art. I, § 13.)
- 2) Provides that no person shall be compelled in a criminal case to be a witness against themselves. (U.S. Const., 5th amend.; Cal. Const., art. II, § 15.)

Existing law:

- 3) Establishes the Cartwright Act. (Bus. & Prof. Code, div. 7, pt. 2, ch. 2, §§ 16700 et seq.)
- 4) Defines “person” within the Cartwright Act to include corporations, firms, partnerships, and associations. (Bus. & Prof. Code, § 16702.)
- 5) Defines a “trust” under the Cartwright Act as a combination of capital, skill, or acts by two or more persons for any of the following purposes:
 - a) To create or carry out restrictions in trade or commerce.
 - b) To limit or reduce the production, or increase the price, of merchandise or of any commodity.
 - c) To prevent competition in manufacturing, making, transportation, sale, or purchase of merchandise, produce, or any commodity.
 - d) To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce, or commerce intended for sale, barter, use, or consumption in the state.
 - e) To make or enter into or execute or carry out any contracts, obligations, or agreements of any kind or description, by which they do all or any combination of the following:
 - i. Bind themselves not to sell, dispose of, or transport any article or any commodity or any article of trade, use, merchandise, commerce, or consumption below a common standard figure, or fixed value.
 - ii. Agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graduated figure.

- iii. Establish or settle the price of any article, commodity, or transportation between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity.
 - f) Agree to pool, combine, or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price in any manner might be affected. (Bus. & Prof. Code, § 16720.)
- 6) Makes every trust unlawful, against public policy, and void, except as exempted under the Cartwright Act. (Bus. & Prof. Code, § 16726.)
- 7) Provides that any contract or agreement in violation of the Cartwright Act is absolutely void and not enforceable. (Bus & Prof. Code, § 16722.)
- 8) Authorizes the Attorney General, or the district attorney of any county, subject to specified notice requirements, to initiate a civil action or criminal proceeding for a violation of the Cartwright Act. (Bus. & Prof. Code, § 16754.)
- 9) Authorizes any person who is injured in their business or property by reason of anything forbidden under the Cartwright Act, regardless of whether the injured person dealt directly or indirectly with the defendant, to file a civil action to recover treble damages, interest, and injunctive relief.
 - a) The state and its political subdivisions and public agencies are “persons” for the purpose of 7).
 - b) The Attorney General or a district attorney may file a suit for damages on behalf of a state or county political subdivision, respectively. (Bus. & Prof. Code, § 16750.)
- 10) Authorizes the Attorney General to file a civil action in the name of the people of the State of California, as *parens patriae* on behalf of natural persons residing in the state, for a violation of the Cartwright Act, to secure monetary relief in the form of treble damages sustained by those natural persons, interest, costs, and reasonable attorney fees. (Bus. & Prof. Code, § 16760.)
- 11) Provides that a violation of the Cartwright Act is a conspiracy against trade, and that knowingly engaging or participating in such a conspiracy is a crime, punishable as follows:
 - a) If the violator is a corporation, by a fine of not more than \$6 million or the amount under (c), whichever is greater.
 - b) If the violator is an individual, by imprisonment pursuant to Penal Code section 1170(h) for one, two, or three years; by imprisonment for up to one year in a county jail; by a fine of not more than \$1 million or the amount under (c), whichever is greater; or by both a fine and imprisonment.

- c) If any person derives pecuniary gain from a violation of the Cartwright Act, or the violation results in pecuniary loss to a person other than the violator, the violator may be fined not more than twice the amount of the gain or loss. (Bus. & Prof. Code, § 16755(a).)
- 12) Provides that, in any civil action for a violation of the Cartwright Act brought by the Attorney General or district attorney, a civil penalty of not more than \$1 million shall be assessed, as determined by a court or jury based on specified enumerated factors. (Bus. & Prof. Code, § 16755.1.)
 - 13) Establishes the DOJ and states that it is under the control of the Attorney General. (Gov. Code, § 8000.)
 - 14) Permits the head of each department within the state to make investigations and prosecute actions concerning:
 - a) All matters relating to the business activities and subjects under the jurisdiction of the department.
 - b) Violations of any law or rule or order of the department.
 - c) Such other matters as may be provided by law. (Gov. Code, § 11180.)
 - 15) Permits a department head, in connection with an investigation authorized in 12), to do any of the following:
 - a) Inspect and copy books, records, and other items described in 13)(e).
 - b) Hear complaints.
 - c) Administer oaths.
 - d) Certify to all official acts.
 - e) Issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, any writing, as defined, tangible things, and testimony pertinent or material to any inquiry, investigation, hearing, proceeding, or action conducted in any part of the state.
 - f) Promulgate interrogatories pertinent or material to any inquiry, investigation, hearing, proceeding, or action. (Gov. Code, § 11181.)
 - 16) Establishes the Public Contract Code (PCC), which governs contracts negotiated and entered into by public entities. (*See generally* Pub. Contract Code.)
 - 17) Provides that “public entity” within the PCC means the state, county, city, city and county, district, public authority, public agency, municipal corporation, or any other political subdivision or public corporation in the state. (Pub. Contract Code, § 1100.)
 - 18) Establishes the California Public Records Act (CPRA), which governs the disclosure of information collected and maintained by public agencies. (Gov. Code, tit. 1, div. 10, §§ 7920.000 et seq.)
 - a) States that the Legislature, mindful of the individual right to privacy, finds and declares that access to information concerning the conduct of the people’s

- business is a fundamental and necessary right of every person in this state. (Gov. Code § 7921.000.)
- b) Defines “public records” as any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code § 7920.530.)
 - c) Provides that all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. (Gov. Code § 7922.530.)
- 19) Establishes a number of exceptions to the CPRA, including for vendor identification numbers in public contracts, (Gov. Code, §§ 7928.715
- 20) Provides that no warrant for the search or seizure may issue except upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched, based on the determination of the magistrate who reviews the application. (Pen. Code, §§ 1525, 1528.)

This bill:

- 1) Permits the DOJ to examine all records, files, documents, accounts, and data related to contracts with any public entity, as defined in the PCC, that concern a contract amount over \$100,000 to identify bid rigging and other violations of California law; the DOJ may request or enter any public officer or institution in this state and examine any records, files, books, data, papers, or documents contained therein or belonging thereto for the purpose of making the examination.
- 2) Requires a public entity to permit the examination under 1) and shall produce within 30 days, in complete and unredacted form, all books, records, data, contracts, contract proposals, specified electronic communications, including, but not limited to, emails, and papers in its offices and furnish information touching books, papers, contracts, and other matters pertaining to the public entity.
- 3) Requires the DOJ to pay a fee to the public entity limited to the direct cost of duplication under 2), or a statutory fee, if applicable.
 - a) Upon request, an exact copy shall be provided unless it is impracticable to do so.
 - b) The cost of duplication of an electronic record shall be limited to the direct cost of producing a copy of a record in an electronic format.
- 4) The DOJ shall maintain the confidentiality of the documents or information received to the greatest extent required by law.

COMMENTS

1. Author's comment

According to the author:

Our communities work hard for every dollar they earn, which is why there is a deep and growing frustration among Californians when taxpayer money is not spent with transparency or integrity. SB 1290 responds to this reality by restoring confidence in how public dollars are spent, closing an enforcement gap that currently limits the California Department of Justice's ability to protect taxpayer dollars from collusion and anticompetitive conduct in public contracting of goods and services.

SB 1290 provides a practical, targeted solution that grants the DOJ additional tools to help restore confidence in how public dollars are being spent. By allowing the DOJ to access and examine procurement records for public contracts over \$100,000 early in an investigation, this bill ensures the state can follow the facts before critical decisions are made about enforcement. This bill is carefully structured to complement existing tools while maintaining strong confidentiality protections and reasonable limits on scope. Ultimately, SB 1290 is about accountability – giving the state the ability to detect and deter bid-rigging, ensuring a level playing field for honest businesses, and demonstrating to our communities that their tax dollars are being protected with the seriousness and oversight they deserve.

2. Background on the Cartwright Act and bid rigging

California's Cartwright Act "generally outlaws any combinations or agreements which restrain trade or competition or which fix or control prices."¹ Under the Cartwright Act,² "agreements fixing or tampering with prices are illegal per se."³ These prohibitions "rest on the premise that unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions."⁴ "The [A]ct's principal goal is the preservation of consumer welfare" through the maintenance of competitive markets.⁵ A violation of the Cartwright Act can result in both civil and criminal liability.⁶

¹ *Pacific Gas & Electric Co. v. County of Stanislaus* (1997) 16 Cal.4th 1143, 1147.

² Bus. & Prof. Code, pt. 2, ch. 2, §§ 16700 et seq.

³ *Oakland-Alameda County Builders' Exchange v. F. P. Lathrop Constr. Co.* (1971) 4 Cal.3d 354, 363.

⁴ *Marin County Bd. of Realtors, Inc. v. Palsson* (1976) 16 Cal.3d 920, 935 (internal quotation marks omitted).

⁵ *In re Cipro Cases I & II* (2015) 61 Cal. 4th 116, 136.

⁶ Bus. & Prof. Code, §§16750, 16754, 16755, 16760.

“Bid rigging” refers to arrangements between competitors, including “collusive price-fixing or price-manipulation agreements in auction-type markets, or government or private procurement contracts in which the customer solicits bids from rivals for a project or supply contract.”⁷ Bid rigging arrangements are per se illegal under the Cartwright Act because they are “agreements not to compete on bidding and [therefore] necessarily affect prices.”⁸ Bid rigging schemes can take a number of forms, including:

- Bid rotation, in which the conspiring competitors rotate the winning bid among themselves so that each conspirator gets an agreed-upon share of winning bids;
- Payments between conspirators, e.g., where the winning bidder compensates the losers with a cross-payment or bonus;
- Collusion in bidding with the goal of restricting competition, e.g., by calibrating bids to harm a non-conspirator competitor, or sharing proprietary price information used in bids;
- Submitting artificially high bids in order to make a co-conspirator’s look reasonable;
- Allocating territories, markets, or customers between co-conspirators with an understanding that each co-conspirator will obtain the contracts within their decided-upon allocation.⁹

Bid rigging harms public entities and the public by inflating contract prices, thereby wasting taxpayer funds. In one recent, high-profile example, a Caltrans employee conspired with contractors in a bid rigging scheme in which the Caltrans employee and his co-conspirators ensured that “bids would be submitted only to co-conspirators”; “[o]nce selected to bid, the co-conspirators then colluded to determine who would submit a non-competitive bid so that [another co-conspirator’s company] would win the contract.”¹⁰ In return, the Caltrans employee got 10 percent of the value of the contracts he helped steer “in the form of cash payments, construction work on [his] house, cases of wine, and furniture.”¹¹

3. The DOJ’s current investigatory options

The Government Code gives the DOJ broad authority to investigate “subjects under the jurisdiction of the department.”¹² This includes the ability to inspect and copy books, records, documents, and other information.¹³ The DOJ, however does not utilize this

⁷ Boro & Varanini, *Cal. Anti. & Unfair Comp. L.* (2025 ed.) § 2.06.

⁸ *Ibid.*; *People v. Building Maintenance Contractors’ Ass’n* (1953) 41 Cal.2d 719, 723 (trade association’s bidding rules restricting competition between members constituted price fixing and were *per se* illegal).

⁹ Boro & Varanini, *supra*, § 2.06.

¹⁰ Talbott & Whiddon, *Promoting Competition and Protecting Taxpayer Dollars: A Federal and State Response to Bid Rigging in Public Procurements* (Spring 2025) 39 SPG Antitrust 21, 24.

¹¹ See United States’ Sentencing Memorandum, *United States v. Yong*, Case No. 2:22-CR-00053-KJM (E.D. Cal.), dkt. No. 3, p. 1.

¹² Gov. Code, § 11180.

¹³ *Id.*, § 11181.

investigatory authority does for investigations that may result in criminal charges, such as Cartwright Act investigations, because of potential for violating provisions relating to searches and seizures, and on compelling self-incriminating testimony in criminal matters, in the United States and California Constitutions.¹⁴

The U.S. and California Constitutions permit a search or seizure with a warrant upon a showing of probable cause.¹⁵ “Probable cause to search exists, when, based upon the totality of the circumstances described in [the application], there is a fair probability that contraband or evidence of a crime will be found in a particular place.”¹⁶ Evidence obtained in violation of the warrant requirement, and without one of the judicially established exceptions to the warrant requirement, will be excluded from trial, as will any evidence that was discovered as a result of the warrantless search.¹⁷

Once the DOJ files a lawsuit against a person entity, the DOJ has a wide range of methods for obtaining evidence,¹⁸ but the DOJ needs evidence of wrongdoing before it can file a civil suit or criminal charges.

When the DOJ is investigating possible criminal activity, but before there is probable cause for a search or to file charges, the DOJ can obtain publicly available records from a public entity through the CPRA. According to the DOJ, this process takes longer than they would like, and public entities sometimes produce documents which the DOJ believes redact more information than is appropriate.

4. This bill allows the DOJ to obtain any records relating to a contract with a public entity of at least \$100,000 to identify bid rigging and other violations of California law

The author and sponsor’s stated intent for the bill is to allow the DOJ to request documents and information from a public entity, relating to public contracts of at least \$100,000, to identify bid rigging and other criminal and civil violations relating to the public procurement of goods and services.

As currently in print, however, the bill is not so limited. Subdivision (a) of the bill permits the DOJ to request documents and information relating to public contracting, but it does not specify that the request must be made to a public entity. Additionally, the bill does not currently limit the scope of the DOJ’s inquiry to bid rigging and other public procurement violations; the bill permits the DOJ to request documents and information relating to bid rigging and “other violations of California law.” Taken literally, this bill would appear to allow the DOJ to obtain documents and information from anyone, about any potential crime, provided that it relates to a public contract

¹⁴ See U.S. Const., 4th & 5th amends.; Cal. Const., art. I, §§ 13, 15.

¹⁵ U.S. Const., 4th amend.; Cal. Const., art. I, § 13.

¹⁶ *People v. Farley* (2009) 46 Cal.4th 1053, 1099 (internal quotation marks omitted).

¹⁷ *E.g., Arizona v. Evans* (1995) 514 U.S. 1, 10.

¹⁸ See, *e.g.*, Code Civ. Proc., pt. 4, tit. 4, §§ 2016 et seq; Pen. Code, §§ 1054, 1326.

over \$100,000. The author has offered amendments to narrow these provisions, which are incorporated into the amendments set forth in Appendix A.

Additionally, as drafted, this bill gives the DOJ broad leeway to demand a public private entity's papers without obtaining a warrant, and it does not facially permit a public entity to withhold documents protected by confidentiality laws or longstanding privileges. The bill also does not provide a public entity any mechanism to challenge a demand that the entity believes is overbroad.

To the extent this bill is needed to speed up the DOJ's ability, in the early stages of an investigation, to obtain publicly available records, this bill is unproblematic. The DOJ also states that they do not intend this bill to require an entity to disclose its own privileged information; such a limitation, though not in the bill, is consistent with existing law. The DOJ does, however, want to be able to obtain some information relating to public contracting that might be confidential under the CPRA, but in which the entity itself has no privacy interest. For example, when a contractor includes proprietary business information in a bid, that information can be redacted under the CPRA to prevent competitors from obtaining a competitive advantage. With respect to turning that information over to the DOJ, however, the public entity itself has no separate interest in keeping that information private – it redacts such information under the CPRA to protect the third party's interests – and it seems unlikely that a third party would reasonably expect that, when it turns information over to a public entity, that information would remain wholly and forever free of scrutiny from law enforcement.

For purposes of detecting early signs of bid rigging, it appears reasonable to allow the DOJ to obtain information that a public entity received from, or sent to, third parties in connection with a public contract over \$100,000. The author has agreed to amendments to narrow the scope of the bill to allow such shared information, along with anything that can be obtained under the CPRA; the author has also agreed to clarify that a public entity need not turn over privileged documents, and that any documents obtained by the DOJ cannot be disclosed by the DOJ under the CPRA. This will ensure that any confidential information provided to a public entity in connection with a bid remains out of the public eye. The bill, as amended, is set forth in Appendix A to this analysis.

5. Arguments in support

According to Attorney General Rob Bonta:

Antitrust violations can be civil or criminal, and it is often difficult to know at the outset which is appropriate. Existing investigatory tools available to the DOJ include criminal grand jury subpoenas and search warrants, and civil subpoenas under Government Code § 11180 ("11180 subpoenas"). However, grand jury subpoenas and search warrants are specific to the criminal process, whereas 11180 subpoenas are intended for civil cases. These investigative tools can be

inadequate when an investigation is in its early stages because it may not be clear yet whether a potential antitrust violation has occurred or if the violation is criminal or civil in nature.

Accordingly, SB 1290 would grant DOJ the authority to review procurement materials independent of civil 11180 subpoenas or criminal grand jury authority. It is critical that DOJ be able to access documents and data related to public procurement possessed by state and local public entities, particularly during the early stages of an investigation before we know if there is a potential violation or whether it is civil or criminal. Under the bill, this authority extends to procurement documents and data related to contracts with any state or local public entity where the contract amount is over \$100,000. Public entities must permit such examination of the records and produce complete and unredacted copies to DOJ. Confidentiality of this information is guaranteed to the full extent required by law.

By collecting and analyzing documents and data possessed by public entities, DOJ can deter and prevent anticompetitive procurement to ensure fair competition for public contracts and safeguard the efficiency and value of government spending. Attorney General Bonta has made robust antitrust enforcement a top priority, and thanks you for authoring this important bill to strengthen DOJ's ability to enforce antitrust law and protect taxpayer dollars.

SUPPORT

Attorney General Rob Bonta (sponsor)

OPPOSITION

None received

RELATED LEGISLATION

Pending legislation: SB 1365 (Allen, 2026), among other things, authorizes a city attorney in a city with a population in excess of 750,000 to bring actions to enforce the Cartwright Act. SB 1365 is pending before the Senate Public Safety Committee.

Prior legislation:

SB 763 (Hurtado, Ch. 426, Stats. 2025) increased the existing criminal penalties and permits the Attorney General or a district attorney to seek civil penalties of up to \$1 million for a violation of the Cartwright Act.

SB 761 (Laird, 2024) would have authorized the Attorney General to engage in investigations to determine whether any person has violated, or is about to violate, the

civil rights laws of California or of the United States, or to aid in the enforcement of these laws, or in the prescribing of rules and forms by any other state agency under those laws; would have granted the Attorney General broad investigatory powers and authority to accomplish such investigations; and would have authorized the Attorney General to publish information concerning their determination that a violation of the civil rights laws of California or of the United States has occurred. SB 761 died in the Senate Appropriations Committee.

SB 697 (Hurtado, 2024) would have increased both the monetary penalties and potential terms of imprisonment under the Cartwright Act. SB 697 died in the Assembly Appropriations Committee.

APPENDIX A

The text of the bill, as it will be amended by the author after the bill is re-referred to the Senate Local Government Committee, is set forth below, subject to any nonsubstantive changes the Office of Legislative Counsel may make.

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

SECTION 1. Section 16763 is added to the Business and Professions Code, to read:

16763. (a) The Department of Justice may request to examine Contract Records held by a public entity or to enter any public office or institution in this state and examine Contract Records, where all of the following are true.

(1) The request seeks information reasonably related to an active investigation initiated by the Attorney General to identify bid rigging and other violations of California law concerning the public procurement of goods and services.

(2) The contract amount exceeds \$100,000.

(3) "Contract Records" is limited to records, files, documents, emails, communications, accounts and data related to a contract with any public entity, as defined by Section 1100 of the Public Contract Code, that are received from, sent to, or communicated with a third party outside the public entity, or would be available under a Public Records Act (PRA) request.

(b) A public entity shall permit the examination under subdivision (a) and, upon demand, shall produce within 30 days, in complete and unredacted form, copies of all Contract Records.

(c) The department shall pay a fee to the public entity limited to the direct cost of duplication under this section, or a statutory fee, if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. The cost of duplication of an electronic record shall be limited to the direct cost of producing a copy of a record in an electronic format.

(d) (1) Information and documents obtained under subdivisions (a) and (b) shall be used only for the purpose of identifying bid rigging and other violations of California law related to the public procurement of goods and services.

(2) A public entity responding to a request shall not be required to permit examination of, or to produce copies of, documents or information protected by the attorney-client privilege or any other applicable privilege.

(e) (1) The department shall maintain the confidentiality of the documents or information received to the greatest extent required by law, and at a minimum as if they had been subpoenaed under Govt Code section 11180 et seq.

(2) Information obtained under this Section shall not be considered a public record and shall not be disclosed by the department pursuant to a request under the California Public Records Act. This paragraph does not affect a public entity's obligation to produce records under the California Public Records Act.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which adds Section 16763 to the Business and Professions Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to facilitate cooperation by public agencies and the expeditious transfer and examination of records, it is necessary that this act limit the public's right of access to that information.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.