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AB-2844 Public contracts: discrimination. (2015-2016)

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Assembly Bill No. 2844

CHAPTER 581

An act to add Section 2010 to the Public Contract Code, relating to public contracts.

[Approved by Governor September 24, 2016. Filed with Secretary of State September 24, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2844, Bloom. Public contracts: discrimination.

Existing law governs the procurement process for contracts of specified public entities. Existing law, the Unruh Civil Rights Act, states that all persons within this state are free and equal and, no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status, are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishments. Existing law, the California Fair Employment and Housing Act, protects and safeguards the right and opportunity of all persons to seek, obtain, and hold employment without discrimination, abridgment, or harassment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

This bill would, with certain exceptions, require a person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a state agency with respect to any contract in the amount of \$100,000 or more to certify, under penalty of perjury, at the time the bid or proposal is submitted or the contract is renewed that they are in compliance with the Unruh Civil Rights Act and the California Fair Employment and Housing Act, and that any policy that they have adopted against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, is not used to discriminate in violation of the Unruh Civil Rights Act or the California Fair Employment and Housing Act. By requiring a person to certify under penalty of perjury, this bill would expand the definition of a crime, thereby imposing a state-mandated local program.

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 making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) California is a leader in protecting civil rights and preventing discrimination.

(b) California's robust nondiscrimination laws include protections on the basis of religion, race, national origin, sex, sexual orientation, gender identity, gender expression, and disability, among other characteristics.

(c) California's strong public policy against unlawful discrimination is reflected in numerous statutes. The California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code) and the Unruh Civil Rights Act (Section 51 of the Civil Code) prohibit unlawful discrimination in employment, housing, public accommodation, and services provided by business establishments on the basis of certain personal characteristics, such as sex, race, color, religion, ancestry, national origin, age, disability, medical condition, genetic information, marital status, or sexual orientation. Section 11135 of the Government Code specifically prohibits unlawful discrimination on the basis of many of these same characteristics in the conduct, operation, or administration of any program or activity that is by the state or by any state agency, funded directly by the state, or receives any financial assistance from the state.

(d) California's Public Contract Code similarly affirms these nondiscrimination policies and prohibits a state agency from entering into certain contracts with any contractor unless the contractor complies with all appropriate state laws concerning wages, workplace safety, rights to association and assembly, and nondiscrimination standards as well as appropriate federal laws.

(e) Both freedom of speech and religion are cornerstones of law and public policy in the United States, and the Legislature strongly supports and affirms these important freedoms.

(f) The exercise of one's First Amendment rights is not a justification for engaging in acts of unlawful discrimination.

(g) California must take action to avoid supporting or financing unlawful discrimination against protected classes.

(h) It is the policy of the State of California to promote fairness and equality and to combat unlawful discrimination and if California hopes to remain a national leader on behalf of these communities, action must be taken to recognize that discriminatory laws and policies are unacceptable for California's partners in business.

(i) California has significant influence in the marketplace. The state at times operates not as a market regulator, but as a market participant, and in this latter role it may determine that companies engaging in discriminatory actions in the conduct and operation of their business adversely affects the state's procurement activities and places the state in a position of supporting activities that could be seen as a violation of the nondiscrimination policies of the State of California.

(j) It is the intent of the Legislature to ensure that taxpayer funds are not used to do business with or otherwise support any state or private entity that engages in discriminatory actions against individuals under the pretext of exercising First Amendment rights. This includes, but is not limited to, discriminatory actions taken against individuals of the Jewish faith under the pretext of a constitutionally protected boycott or protest of the State of Israel.

(k) It is the intent of the Legislature to ensure that taxpayer funds are not used to do business with or support discriminatory actions against any individuals.

SEC. 2. Section 2010 is added to the Public Contract Code, to read:

2010. A person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a state agency with respect to any contract in the amount of one hundred thousand dollars (\$100,000) or more shall certify, under penalty of perjury, at the time the bid or proposal is submitted or the contract is renewed, all of the following:

(a) That they are in compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code).

(b) That they are in compliance with the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).

(c) (1) That any policy that they have against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, is not used to discriminate in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).

(2) Any policy adopted by a person or actions taken thereunder that are reasonably necessary to comply with federal or state sanctions or laws affecting sovereign nations or their nationals shall not be construed as unlawful discrimination in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of

the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.