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SB-331 Public contracts: local agencies: negotiations. (2015-2016)

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Senate Bill No. 331

CHAPTER 714

An act to add Chapter 4.5 (commencing with Section 22175) to Part 3 of Division 2 of the Public Contract Code, relating to public contracts.

[Approved by Governor October 09, 2015. Filed with Secretary of State October 09, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 331, Mendoza. Public contracts: local agencies: negotiations.

Existing law relating to public contracts requires local agencies, including cities and counties, to comply with specified procedures for public contracting for public construction.

The Meyers-Milias-Brown Act requires the governing body of a local public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of a recognized employee organization.

This bill would enact the Civic Reporting Openness in Negotiations Efficiency Act to establish specific procedures for the negotiation and approval of certain contracts valued at \$250,000 or more for goods or services by cities, counties, cities and counties, or special districts that have adopted a civic openness in negotiations ordinance, or COIN ordinance, defined as an ordinance imposing specified requirements as part of any collective bargaining process undertaken pursuant to the Meyers-Milias-Brown Act. The act would require the designation of an independent auditor to review and report on the cost of any proposed contract. The act would require a city, county, city and county, or special district to disclose prescribed information relating to the contract and contract negotiations on its Internet Web site. The act would prohibit a final determination by the governing body regarding approval of any contract until the matter has been heard at a minimum of 2 public meetings of the governing body.

The act would exempt from its provisions contracts required to respond to, recover from, or mitigate the effects of a temporary public safety emergency declared by the chief law enforcement officer of a city, county, city and county, or special district, or a state of war emergency, state of emergency, or local emergency, as those terms are defined in the California Emergency Services Act. The act would also exempt from its provisions a renewal of a contract if the employees performing the services are covered by a collective bargaining agreement that is governed by the National Labor Relations Act.

By imposing new requirements on cities, counties, cities and counties, and special districts, this bill would impose a state-mandated local program.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

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. Chapter 4.5 (commencing with Section 22175) is added to Part 3 of Division 2 of the Public Contract Code, to read:

CHAPTER 4.5. Civic Openness in Negotiations

22175. This chapter shall be known, and may be cited, as the Civic Reporting Openness in Negotiations Efficiency Act, or CRONEY.

22176. As used in this chapter, "civic openness in negotiations ordinance" or "COIN ordinance" means an ordinance adopted by a city, county, city and county, or special district that requires any of the following as a part of any collective bargaining process undertaken pursuant to the Meyers-Millas-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code):

(a) The preparation of an independent economic analysis describing the fiscal costs of benefit and pay components currently provided to members of a recognized employee organization, as defined in Section 3501 of the Government Code.

(b) The completion of the independent economic analysis prior to the presentation of an opening proposal by the public employer.

(c) Availability for review by the public of the independent economic analysis before presentation of an opening proposal by the public employer.

(d) Updating of the independent economic analysis to reflect the annual or cumulative costs of each proposal made by the public employer or recognized employee organization.

(e) Updating of the independent economic analysis to reflect any absolute amount or change from the current actuarially computed unfunded liability associated with the pension or postretirement health benefits.

(f) The report from a closed session of a meeting of the public employer's governing body of offers, counteroffers, or supposals made by the public employer or the recognized employee organization and communicated during that closed session.

(g) The report from a closed session of a meeting of the public employer's governing body of any list of names of persons in attendance during any negotiations session, the date of the session, the length of the session, the location of the session, or pertinent facts regarding the negotiations that occurred during a session.

22177. (a) This chapter applies only to a city, county, city and county, or special district that has adopted a COIN ordinance, which is effective and operative. This chapter shall not apply if the city, county, city and county, or special district suspends, repeals, or revokes its COIN ordinance.

(b) This chapter shall not apply to a contract if the contract is required to respond to, recover from, or mitigate the effects of any of the following:

(1) A temporary public safety emergency declared by the chief law enforcement officer of a city, county, city and county, or special district.

(2) A state of war emergency, state of emergency, or local emergency, as those terms are defined in Section 8558 of the Government Code.

(c) This chapter shall not apply to a renewal of a contract if the employees performing the services are covered by a collective bargaining agreement that is governed by the National Labor Relations Act (29 U.S.C. Sec. 151 et seq.).

22178. (a) This chapter shall apply to any contracts with a value of at least two hundred fifty thousand dollars (\$250,000), and to any contracts with a person or entity, or related person or entity, with a cumulative value of at least two hundred fifty thousand dollars (\$250,000) within the fiscal year of the city, county, city and county, or special district, being negotiated between the city, county, city and county, or special district, and any person or entity that seeks to provide services or goods to the city, county, city

and county, or special district, in the following areas: accounting, financing, hardware and software maintenance, health care, human resources, human services, information technology, telecommunications, janitorial maintenance, legal services, lobbying, marketing, office equipment maintenance, passenger vehicle maintenance, property leasing, public relations, public safety, social services, transportation, or waste removal.

(b) The city, county, city and county, or special district shall designate an unbiased independent auditor to review the cost of any proposed contract. The independent auditor shall prepare a report on the cost of the contract and provide the report to all parties and make it available to the public before the governing body takes any action to approve or disapprove the contract. The report shall comply with the following:

(1) The report shall include a recommendation regarding the viability of the contract, including any supplemental data upon which the report is based, and shall determine the fiscal impacts attributable to each term and condition of the contract.

(2) The report shall be made available to the public at least 30 days before the issue can be heard before the governing body and at least 60 days before any action to approve or disapprove the contract by the governing body.

(3) Any proposed changes to the contract after it has been approved by the governing body shall adhere to the same approval requirements as the original contract. The changes shall not go into effect until all of the requirements of this subdivision are met.

(c) The city, county, city and county, or special district shall disclose all offers and counteroffers to the public within 24 hours on its Internet Web site.

(d) Before approving any contract, the city, county, city and county, or special district shall release a list of names of all persons in attendance, whether in person or by electronic means, during any negotiation session regarding the contract, the date of the session, the length of the session, the location where the session took place, and any pertinent facts regarding the negotiations that occurred in that session.

(e) Representatives of the governing body shall advise the governing body of all offers, counteroffers, information, or statements of position discussed by the contracting person or entity and city, county, city and county, or special district representatives participating in negotiations regarding any contract.

(f) Each governing body member and staff members of governing body offices shall disclose publicly all verbal, written, electronic, or other communications regarding a subject matter related to the negotiations or pending negotiations they have had with any official or unofficial representative of the private entity within 24 hours after the communication occurs.

(g) A final governing body determination regarding approval of any contract shall be undertaken only after the matter has been heard at a minimum of two meetings of the governing body wherein the public has had the opportunity to review and comment on the matter.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which adds Chapter 4.5 (commencing with Section 22175) to Part 3 of Division 2 of the Public Contract Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

This act ensures that members of the public have the opportunity to be informed of, and meaningfully participate in, the negotiation and approval of contracts for goods and services by a city, county, city and county, or special district that has adopted a civic openness in negotiations (COIN) ordinance, thereby furthering the purposes of Section 3 of Article I of the California Constitution.

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 under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.