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**AB-848 Public contracts: University of California: California State University: domestic workers.** (2017-2018)

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## Assembly Bill No. 848

### CHAPTER 844

An act to add Chapter 3.9 (commencing with Section 12147) to Part 2 of Division 2 of the Public Contract Code, relating to public contracts.

[ Approved by Governor October 15, 2017. Filed with Secretary of State October 15, 2017. ]

### LEGISLATIVE COUNSEL'S DIGEST

AB 848, McCarty. Public contracts: University of California: California State University: domestic workers.

(1) Existing law requires a state agency to comply with specified procedures in awarding agency contracts. Existing law, with specified exceptions, prohibits a state agency authorized to enter into contracts relating to public benefit programs from contracting for services provided by a call center that directly serves applicants for, recipients of, or enrollees in, those public benefit programs with a contractor or subcontractor unless that contractor or subcontractor certifies in its bid for the contract that the contract, and any subcontract performed under that contract, will be performed solely with workers employed in California. Existing law imposes a civil penalty, as provided, for knowingly providing false information in that certification. Existing law also requires the contract to include a clause providing for a right by the state to terminate the contract for noncompliance and specified penalties, if the contractor or subcontractor performs the contract or the subcontract with workers not employed in California during the life of the contract.

This bill would prohibit, on or after July 1, 2017, the University of California and the California State University from contracting for services with a contractor or subcontractor unless that contractor or subcontractor certifies, under penalty of perjury, in his or her bid for that contract that the contract, and any subcontract performed under that contract, will be performed solely with workers within the United States or describes in his or her bid any parts of the work that will be performed by workers outside of the United States.

The bill would prohibit the University of California and the California State University from expending funds for training for service contract employees located in foreign countries or for training for service contract employees who plan to relocate to a foreign country as part of the service contract, if that service contract displaces an employee of the University of California or the California State University.

The bill would require a contract entered into pursuant to the bill to provide, in the event a contractor or subcontractor performs the contract or the subcontract with workers outside the United States during the life of the contract, for the termination of the contract for noncompliance, as specified.

The bill would specify the circumstances under which a contractor or the University of California or the California State University would be found to have violated a provision of the bill. The bill would define "displace" for purposes of the bill as the layoff,

demotion, involuntary transfer to a new classification or location, or time base reduction of an employee of the University of California or the California State University, under specified conditions.

The bill would specify that nothing in its provisions would preclude the University of California and the California State University from contracting with a contractor or subcontractor that utilizes workers in offshore operations in circumstances that do not directly result in the displacement of an employee of the University of California or the California State University.

The bill would specify that these provisions do not apply to contracts relating to study abroad programs, or to international teaching, research, or public service activities and projects, conducted by the University of California or the California State University.

By requiring contractors and subcontractors to make certifications under penalty of perjury, this bill would create a new crime and thereby impose a state-mandated local program.

(2) 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

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

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

(a) The United States has lost nearly five million manufacturing jobs over the last 20 years, with at least 40 percent of these jobs outsourced to a foreign country.

(b) Outsourcing by the technology sector is a growing trend, with approximately 1.7 million jobs outsourced from the United States and an estimated one billion three hundred sixty million dollars (\$1,360,000,000) lost to outsourcing since the year 2000.

(c) Contractors and subcontractors are using taxpayer dollars to create jobs in foreign countries. State taxpayer funds should be used to create jobs in the United States and in California.

**SEC. 2.** Chapter 3.9 (commencing with Section 12147) is added to Part 2 of Division 2 of the Public Contract Code, to read:

### **CHAPTER 3.9. Offshoring University of California and California State University Contracts**

**12147.** (a) (1) Notwithstanding any other law, on or after July 1, 2017, neither the University of California nor the California State University may contract for services with a contractor or subcontractor unless that contractor or subcontractor does either of the following:

(A) Certifies, under penalty of perjury, in his or her bid for that contract that the contract, and any subcontract performed under that contract, will be performed solely with workers within the United States.

(B) Describes in his or her bid any parts of the work that will be performed by workers outside of the United States.

(2) If the University of California or the California State University enters into a services contract with a contractor whose bid indicates that specific work will be performed by workers outside of the United States, the University of California or the California State University, as appropriate, shall not, for the duration of that contract, displace an employee performing that specific work.

(b) Notwithstanding any other law, neither the University of California nor the California State University may expend funds to train service contract employees located in foreign countries or train service contract employees who plan to relocate to a foreign country as part of the service contract, if that service contract displaces an employee of the University of California or the California State University.

(c) A contract entered into pursuant to subdivision (a) shall provide that, in the event a contractor or subcontractor performs the contract or the subcontract with workers outside the United States during the life of the contract and the contractor or subcontractor does not describe this work in his or her bid as referenced in subdivision (a), the contract shall be terminated for noncompliance, and the contractor or subcontractor shall forfeit penalties to the University of California or the California State University, as appropriate, in an amount equal to the amount paid by the university for the percentage of work that was performed with workers outside the United States.

(d) (1) A contractor shall be found to have violated subdivision (a) only to the extent that he or she fails to note in a bid any work to be accomplished by workers outside of the United States. The University of California or the California State University shall be

found to have violated subdivision (a) only to the extent that the University of California or the California State University displaces an employee performing that specific work after having been notified in the contractor's bid that the specific work would be performed by workers outside of the United States.

(2) For purposes of this section, "displace" means the layoff, demotion, involuntary transfer to a new classification, involuntary transfer to a new location, or time base reduction of an employee, during the operation of a contract that is subject to this chapter, where the employee is performing the specific work that a contractor has identified as to be performed by workers outside of the United States and the reason for the layoff, demotion, involuntary transfer to a new classification, or time base reduction of the employee is a direct result of the University of California or the California State University entering into the contract that is subject to this chapter.

(3) Notwithstanding the limitations imposed by subdivisions (a), (b), and (c), nothing in this section shall preclude the University of California and the California State University from contracting with a contractor or subcontractor that utilizes workers in offshore operations in circumstances that do not directly result in the displacement of an employee of the University of California or the California State University.

(e) This chapter does not apply to a contract if refusing to award that contract, on the basis that the contractor or subcontractor does not certify under penalty of perjury that the contract, and any subcontract performed under that contract, will be performed solely with workers within the United States, would violate the specific terms of the Agreement on Government Procurement of the World Trade Organization or any other bilateral or regional free trade agreement that California has consented to.

(f) This chapter does not apply to either of the following:

(1) Contracts relating to study abroad programs conducted by the University of California or the California State University.

(2) Contracts relating to international teaching, research, or public service activities and projects conducted by the University of California or the California State University.

**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.