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SB-877 State Government. (2017-2018)

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Senate Bill No. 877

CHAPTER 455

An act to add Section 53600 to the Health and Safety Code, to amend Sections 1771.1 and 1773.3 of the Labor Code, and to add Chapter 11 (commencing with Section 19150) to Part 2 of Division 2 of the Public Contract Code, and to amend Section 2 of Chapter 527 of the Statutes of 2013, relating to state government, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor September 17, 2018. Filed with Secretary of State September 17, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 877, Committee on Budget and Fiscal Review. State Government.

(1) Existing law establishes the Department of Housing and Community Development in the Business, Consumer Services, and Housing Agency. The department is responsible for administering various housing and home loan programs throughout the state. Existing law requires the department, on or before January 1, 2019, to establish the Housing for a Healthy California Program to create supportive housing opportunities through grants to counties for capital and operating assistance, as specified, or operating reserve grants and capital loans to developers, or both.

Existing law establishes the Housing Rehabilitation Loan Fund, which is continuously appropriated to the department for specified purposes relating to housing programs.

This bill would authorize the department to charge a person who receives a loan directly from the department pursuant to the Housing for a Healthy California Program an ongoing monitoring fee to cover the costs of project monitoring. The bill would require all moneys received by the department in repayment of any loans made pursuant to the program to be deposited into the Housing Rehabilitation Loan Fund, and would provide that any money so deposited would be continuously appropriated to the department for purposes of the Multifamily Housing Program. By requiring additional funds to be deposited into a continuously appropriated fund, and expanding the purposes of that fund, this bill would make an appropriation.

(2) Existing law, with exceptions, requires all workers employed on a public works project to be paid the general prevailing wage rate, as determined by the Director of Industrial Relations. To facilitate enforcement of prevailing wage requirements, existing law requires a contractor to be registered and qualified by the department in order to bid on, be listed in a bid proposal for, or engage in the performance of any contract for a public work. Existing law requires the Labor Commissioner to issue and serve a stop order prohibiting the use of an unregistered contractor or unregistered subcontractor, as specified. Existing law authorizes service of the order by personal delivery to the contractor or subcontractor or by leaving copies of the order with the person apparently in charge at the site of the public work and subsequently mailing copies to the contractor or subcontractor at the address on file with the Secretary of State or Contractors' State License Board.

This bill would require any employee affected by a work stoppage to be paid by the employer at the prevailing wage rate for any time lost due to a work stoppage, not to exceed 10 days. The bill would also permit service of a stop order, if the contractor or

subcontractor does not have an address on file with the Secretary of State or Contractors' State License Board, by subsequently mailing copies to the contractor or subcontractor at the address of the site of the public work.

Existing law requires an entity awarding a public works contract to provide notice, as specified, to the Department of Industrial Relations. Existing law requires civil penalties to be imposed on an entity that fails to provide that required notice and authorizes the Labor Commissioner to issue a citation for civil penalties to an entity that fails to provide the required notice.

This bill would specify that an entity awarding a public work contract under specified circumstances without a formal bidding process, such as in an emergency, shall also provide notice, as specified, to the Department of Industrial Relations. The bill would also provide due process procedures for the processing of citations and issuance of penalties for a failure to provide notice. By creating new notification requirements for public agencies, this bill would impose a state-mandated local program.

This bill also makes technical, conforming changes.

(3) Existing federal law requires the enumeration of the population of the United States every 10 years, known as the federal decennial census.

Existing law establishes specified requirements applicable to the awarding of certain public contracts, including, but not limited to, contracts for the acquisition of goods or services and information technology goods or services.

This bill would exempt any contract related to the 2020 United States Census entered into by the Government Operations Agency or the Office of Planning and Research from specified provisions of the Public Contract Code applicable to state agencies described above.

(4) Existing law authorizes the Director of Finance to authorize a cashflow loan of up to \$26,000,000 from moneys in the Public Transportation Account in the State Transportation Fund to local mass transit providers in amounts equal to federal transportation grants not received due to noncertification from the federal Department of Labor, as specified. Existing law requires, unless certain contingencies have occurred, that a local mass transit provider repay that loan amount no later than January 1, 2019.

This bill would instead require a local mass transit provider to repay a loan under these provisions, if those contingencies have not occurred, no later than January 1, 2021.

(5) 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(6) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: yes

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

SECTION 1. Section 53600 is added to the Health and Safety Code, to read:

53600. (a) For loans issued directly by the department, the department may charge an ongoing monitoring fee to cover the costs of project monitoring.

(b) All moneys received by the department in repayment of loans made pursuant to this part, including interest and payments in advance in lieu of future interest, shall be deposited into the Housing Rehabilitation Loan Fund established by Section 50661, and, notwithstanding Section 13340 of the Government Code, all such moneys deposited pursuant to this part are continuously appropriated to the department for purposes of the Multifamily Housing Program (Chapter 6.7 (commencing with Section 50675) of Part 2).

SEC. 2. Section 1771.1 of the Labor Code is amended to read:

1771.1. (a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h) (1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j) (1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at one of the following:

(i) The address of the contractor or subcontractor on file with either the Secretary of State or the Contractors' State License Board.

(ii) If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.

SEC. 3. Section 1773.3 of the Labor Code is amended to read:

1773.3. (a) (1) An awarding body shall provide notice to the Department of Industrial Relations of any public works contract subject to the requirements of this chapter, within 30 days of the award, but in no event later than the first day in which a contractor has workers employed upon the public work.

(2) Notwithstanding paragraph (1) and subject to the discretion of the Labor Commissioner, an awarding body shall provide notice to the Department of Industrial Relations of any public works contract awarded pursuant to Section 10122, 20113, 20654, or 22050 of the Public Contract Code that is subject to the requirements of this chapter within 30 days after the award of the contract, but in no event later than the last day in which a contractor has workers employed upon the public work.

(3) The notice shall be transmitted electronically in a format specified by the department and shall include the name and registration number issued by the Department of Industrial Relations pursuant to Section 1725.5 of the contractor, the name and registration number issued by the Department of Industrial Relations pursuant to Section 1725.5 of any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, jobsite location, and any additional information the department specifies that aids in the administration and enforcement of this chapter.

(b) In lieu of responding to any specific request for contract award information, the department may make the information provided by awarding bodies pursuant to this section available for public review on its Internet Web site.

(c) (1) An awarding body that fails to provide the notice required by subdivision (a) or that enters into a contract with or permits an unregistered contractor or subcontractor to engage in the performance of any public work in violation of the requirements of Section 1771.1, shall, in addition to any other sanction or penalty authorized by law, be subject to a civil penalty of one hundred dollars (\$100) for each day in violation of either requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000) for each project.

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first

time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(d) An awarding body shall withhold final payment due to the contractor until at least 30 days after all of the required information in paragraph (2) of subdivision (a) has been submitted, including, but not limited to, providing a complete list of all subcontractors. If an awarding body makes a final payment to a contractor after that time and an unregistered contractor or subcontractor is found to have worked on the project, the awarding body shall be subject to a civil penalty assessed by the Labor Commissioner of one hundred dollars (\$100) for each full calendar day of noncompliance, for a period of up to 100 days, for each unregistered contractor or subcontractor.

(e) The Labor Commissioner may issue a citation for civil penalties to the awarding body pursuant to subdivisions (c) and (d). The citation shall be served pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail.

(f) The procedure for the processing and appeal of a citation or civil penalty issued by the Labor Commissioner pursuant to this section shall be the same as that prescribed in Section 1023. For these purposes, "person" as used in Section 1023 shall include an awarding body.

(g) Whenever the Labor Commissioner determines that an awarding body has willfully violated the requirements of this section or chapter with respect to two or more public works contracts or projects in any 12-month period, the awarding body shall be ineligible to receive state funding or financial assistance for any construction project undertaken by or on behalf of the awarding body for one year, as defined by subdivision (d) of Section 1782. The debarment procedures adopted by the Labor Commissioner pursuant to Section 1777.1 shall apply to any determination made under this subdivision.

(h) A contractor or subcontractor shall not be liable for any penalties assessed against an awarding body pursuant to this section. An awarding body may not require a contractor or subcontractor to indemnify or otherwise be liable for any penalties assessed against an awarding body pursuant to this section.

(i) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(j) This section shall apply only if the public works contract is for a project of greater than twenty-five thousand dollars (\$25,000) when the project is for construction, alteration, demolition, installation, or repair work or if the public works contract is for a project of greater than fifteen thousand dollars (\$15,000) when the project is for maintenance work.

SEC. 4. Chapter 11 (commencing with Section 19150) is added to Part 2 of Division 2 of the Public Contract Code, to read:

CHAPTER 11. Exemptions

19150. Any contract related to the 2020 United States Census and entered into by the Government Operations Agency or the Office of Planning and Research is exempt from this part.

SEC. 5. Section 2 of Chapter 527 of the Statutes of 2013 is amended to read:

Sec. 2. (a) Notwithstanding any other law, the Director of Finance may authorize a cashflow loan of up to twenty-six million dollars (\$26,000,000) from moneys in the Public Transportation Account in the State Transportation Fund to local mass transit providers upon their request to the Director of Finance. The cashflow loans shall be provided as follows:

(1) The loan to a local mass transit provider shall be in an amount equal to the federal transportation grant not received by the provider due to the noncertification by the United States Secretary of Labor, or his or her designee, under subsection (b) of Section 5333 of Title 49 of the United States Code for the funds scheduled to lapse on September 30, 2013, as determined by the Director of Finance.

(2) The Director of Finance shall provide a schedule to the State Controller for the disbursement of the loan amount for each local mass transit provider that receives a loan under paragraph (1).

(3) The Controller shall draw warrants against the Public Transportation Account in the State Transportation Fund per the schedule provided by the Director of Finance in paragraph (2) within 14 days of receipt of the schedule.

(b) (1) On or before 60 days after a federal district court rules that the United States Secretary of Labor, or his or her designee, erred in determining that application of the California Public Employees' Pension Reform Act of 2013 precludes certification under subsection (b) of Section 5333 of Title 49 of the United States Code, or longer if so authorized by the Director of Finance, a local mass transit provider shall repay the amount loaned pursuant to subdivision (a) to the Public Transportation Account in the State Transportation Fund with the interest calculated at the rate earned by the Pooled Money Investment Account at that time of loan, unless interest charges are waived by the Director of Finance.

(2) On or before 60 days after a certification by the United States Secretary of Labor, or his or her designee, that results in the receipt of funds described in paragraph (1) of subdivision (a), a local mass transit provider shall repay the amount loaned pursuant to subdivision (a) to the Public Transportation Account in the State Transportation Fund with the interest calculated at the rate earned by the Pooled Money Investment Account at that time of loan, unless interest charges are waived by the Director of Finance.

(3) No later than January 1, 2021, if neither of the contingencies described in paragraph (1) or (2) have occurred, a local mass transit provider shall repay the amount loaned pursuant to subdivision (a) to the Public Transportation Account in the State Transportation Fund with the interest calculated at the rate earned by the Pooled Money Investment Account at that time of loan, unless interest charges are waived by the Director of Finance.

(c) A cashflow loan from the Public Transportation Account in the State Transportation Fund authorized by this section does not constitute budgetary expenditures. A cashflow loan, and the repayment of a cashflow loan, made under this section shall not affect the budgetary reserve.

SEC. 6. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 7. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.