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SB-1226 Joint powers agreements: zero-emission transportation systems or facilities. (2021-2022)

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Senate Bill No. 1226

CHAPTER 423

An act to add and repeal Section 6538.5 of the Government Code, relating to joint powers.

[Approved by Governor September 18, 2022. Filed with Secretary of State September 18, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1226, Durazo. Joint powers agreements: zero-emission transportation systems or facilities.

(1) Existing law, the Joint Exercise of Powers Act, authorizes 2 or more public agencies by agreement to exercise any power common to the contracting parties. Existing law requires the agreement to state the purposes of the agreement or the power to be exercised, and provides that the agency or entity provided by the agreement to administer or execute the agreement may be one or more of the parties to the agreement, a commission or board constituted pursuant to the agreement, or a person, firm, or corporation, including a nonprofit corporation, designated in the agreement. Existing law authorizes the agreement to, among other things, provide for the repayment or return to the parties of all or any part of any contributions, payments, or advances made by the parties and for payment to the parties of any sum or sums derived from the revenues of said facilities and authorizes the contracting parties to the agreement to issue revenue bonds to pay the cost and expenses of acquiring or constructing a project or conducting a program for specified purposes.

This bill, notwithstanding any other provision of the act, would authorize a private, nonprofit corporation formed for the purposes of providing services to zero-emission transportation systems or facilities, including, but not limited to, finance, design, construction, operation, or maintenance, or authorized by their board of directors to provide such services, to join a joint powers authority or enter into a joint powers agreement with a public agency to facilitate the development, construction, and operation of zero-emission transportation systems or facilities that lower greenhouse gases, reduce vehicle congestion and vehicle miles traveled, and improve public transit connections. The bill, notwithstanding any other law, would prohibit a joint powers authority formed pursuant to these provisions from incurring debt. Under the bill, the authority would be governed by a board of directors, composed as determined by the participating public agency or agencies. The bill would prohibit the representation of private, nonprofit mutual benefit corporations on the board of directors from exceeding 50%. The bill would define terms for its purposes. The bill's provisions would be repealed on January 1, 2032.

(2) Existing law sets forth requirements for the solicitation and evaluation of bids and the awarding of contracts by public entities, including requirements applicable if the public entity is required by statute or regulation to obtain an enforceable commitment that a bidder, contractor, or other entity will use a skilled and trained workforce, as defined, to complete a contract or project. Except as specified, existing law requires that, for workers employed on public works, as defined, not less than the general prevailing rate of per diem wages, determined as provided by the Director of Industrial Relations, for work of a similar character in the locality in which the public work is performed be paid to those workers, as provided.

This bill, except as specified, would require a joint powers authority formed pursuant to the bill that undertakes a project to obtain an enforceable commitment that any entity undertaking the project will use a skilled and trained workforce. The bill would require

a private entity performing the work on a project for the joint powers authority to certify, in writing and under penalty of perjury, that prevailing wages will be paid to workers on the project, as provided, and that a skilled and trained workforce will be used to perform all construction work on the project. By requiring private entities performing work on a project under these provisions to certify this information, thereby expanding the scope of the crime of perjury, the bill would impose a state-mandated local program.

(3) 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. Section 6538.5 is added to the Government Code, to read:

6538.5. (a) Notwithstanding any other provision of this chapter, one or more private, nonprofit mutual benefit corporations that are organized pursuant to Section 501(c)(3) of the Internal Revenue Code, formed for purposes of providing services to zero-emission transportation systems or facilities, including, but not limited to, finance, design, construction, operation, or maintenance, or authorized by their board of directors to provide such services, may join a joint powers authority or enter into a joint powers agreement with one or more public agencies otherwise established pursuant to this chapter. Any joint powers authority formed pursuant to a joint powers agreement as described in this subdivision shall be deemed a public entity, as described in Section 6507, except that, notwithstanding any other law, the authority shall not have the power to incur debt.

(b) The purpose of a joint powers authority or agreement formed pursuant to subdivision (a) shall be to facilitate the development, construction, and operation of zero-emission transportation systems or facilities that lower greenhouse gases, reduce vehicle congestion and vehicle miles traveled, and improve public transit connections.

(c) An authority formed pursuant to subdivision (a) shall be governed by a board of directors, the composition of which shall be determined by the participating public agency or agencies. The representation of private, nonprofit mutual benefit corporations on the board of directors shall not exceed 50 percent.

(d) (1) (A) For a project undertaken by a joint powers authority formed pursuant to a joint powers agreement as described in this section, the joint powers authority shall obtain an enforceable commitment that any bidder, contractor, or other entity undertaking the project will use a skilled and trained workforce to complete the project.

(B) Subparagraph (A) does not apply if either of the following are met:

(i) The joint powers authority has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project to use a skilled and trained workforce.

(ii) The bidder, contractor, or other entity has entered into a project labor agreement that will bind all contractors and subcontractors at every tier performing work on the project to use a skilled and trained workforce.

(2) For a project undertaken by a bidder, contractor, or other entity that is a private entity under contract to or otherwise performing the work for a joint powers authority formed pursuant to a joint powers agreement as described in this section, the private entity shall do both of the following:

(A) Certify, in writing and under penalty of perjury, to the joint powers authority that either of the following is true:

(i) The entirety of the project is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the project is not in its entirety a public work and the project applicant is not required to pay prevailing wages to all construction workers under Article 2 (commencing with Section 1720) of Chapter 1 of Part 7 of Division 2 of the Labor Code, all construction workers employed on construction of the project will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the project is subject to this clause, then for those portions of the project that are not a public work all of the following shall apply:

(I) The joint powers authority shall ensure that the prevailing wage requirement is included in all contracts for the performance of all construction work.

(II) All contractors and subcontractors at every tier shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors at every tier shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying by the joint powers authority and the public as provided by Section 1776 of the Labor Code.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors at every tier to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the project, or by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee through a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(V) Subclauses (III) and (IV) do not apply if all contractors and subcontractors at every tier performing work on the project are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the project and provides for enforcement of that obligation through an arbitration procedure.

(VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(B) Certify, in writing and under penalty of perjury, to the joint powers authority that a skilled and trained workforce will be used to perform all construction work on the project. All of the following requirements shall apply to the project:

(i) The joint powers authority shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to construct the project.

(ii) Every contractor and subcontractor shall use a skilled and trained workforce to construct the project.

(iii) (I) Except as provided in subclause (II), the private entity shall provide to the joint powers authority, on a monthly basis while the project or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the joint powers authority pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. A private entity that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars (\$10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars (\$200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the project using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(II) Subclause (I) shall not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure.

(e) For purposes of this section, the following terms shall have the following definitions:

(1) "Project" means any zero-emission transportation system or facility that is developed, constructed, or operated by a joint powers authority formed pursuant to subdivision (a).

(2) "Project labor agreement" has the same meaning as defined in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(3) "Skilled and trained workforce" has the same meaning as defined in subdivision (d) of Section 2601 of the Public Contract Code and as described in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(f) This section shall remain in effect only until January 1, 2032, and as of that date is repealed.

SEC. 2. 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.