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AB-2293 Joint powers agreements: health care services. (2023-2024)

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Date Published: 09/30/2024 09:00 PM

Assembly Bill No. 2293

CHAPTER 710

An act to add and repeal Section 6538.6 of the Government Code, relating to joint powers.

[Approved by Governor September 27, 2024. Filed with Secretary of State September 27, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2293, Mathis. Joint powers agreements: health care services.

(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, subject to meeting certain conditions with respect to that agreement. Existing law authorizes a private, nonprofit corporation, until January 1, 2032, formed for the purposes of providing services to zero-emission transportation systems or facilities, 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.

This bill, until January 1, 2034, would authorize one or more private, nonprofit mutual benefit corporations formed for purposes of providing health care services to join a joint powers authority or enter into a joint powers agreement with one or more public entities established under the act, as specified. The bill would deem any joint powers authority formed pursuant to this provision to be a public entity, except that the authority would not have the power to incur debt or to engage in specified other acts, including employing physicians and surgeons or charging for professional services rendered by physicians and surgeons. The bill would require an authority formed to 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.

(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, when undertaking a project applicable to the construction or refurbishment of health facilities, 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 6538.6 is added to the Government Code, to read:

6538.6. (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 health care 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 formed for purposes of providing health care services. Any joint powers authority formed pursuant to a joint powers agreement as described in this section 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 or the power to employ physicians and surgeons, charge for professional services rendered by physicians and surgeons, or otherwise engage in the practice of medicine.

(b) 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.

(c) (1) (A) When applicable to the construction or refurbishment of health facilities, 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 1 (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 (Division 10 (commencing with Section 7920.000)) 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.

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

(1) "Health facilities" has the same meaning as in Section 1250 of the Health and Safety Code.

(2) "Health care services" has the same meaning as in Section 234(d)(2) of Title 42 of the United States Code.

(3) "Project" means any health facilities that are developed, constructed, or operated by a joint powers authority formed pursuant to subdivision (a).

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

(5) "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.

(e) This section shall remain in effect only until January 1, 2034, 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.