

AMENDED IN ASSEMBLY APRIL 19, 2017

AMENDED IN ASSEMBLY APRIL 5, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 848

Introduced by Assembly Member McCarty

February 16, 2017

An act to amend Section 5703 of the Government Code, and to add Chapter 3.9 (commencing with Section 12147) to Part 2 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 848, as amended, 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 the University of California, as a condition of receiving state funding, California and the California State University, University from contracting for services with a contractor or subcontractor where that contract displaces a career employee of the University of California or the California State University, unless that contractor or subcontractor certifies under penalty of perjury in his or her bid for the contract that the contract, and any subcontract performed under that contract, will be performed solely with workers within the United States. This~~

~~The bill would prohibit the University of California, as a condition of receiving state funding, California and the California State University, University from allocating or expending funds for employment training for contract employees located in foreign countries, if that contract displaces a career employee of the University of California or the California State University. The~~

~~The bill would require a contract 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 also specify that these provisions do not apply to a contract, if refusing to award that contract would violate the specific terms of federal trade treaties, as specified.~~

~~The bill would specify that these provisions do not apply to agreements entered into by the Treasurer in connection with the sale of any evidence of indebtedness, contracts relating to study abroad programs 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.
State-mandated local program: yes.

The people of the State of California do enact as follows:

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

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

6 (b) Outsourcing by the technology sector is a growing trend,
7 with approximately 1.7 million jobs outsourced from the United
8 States and an estimated one ~~hundred thirty-six billion dollars~~
9 *(\$136,000,000,000) billion three hundred sixty million dollars*
10 *(\$1,360,000,000)* lost to outsourcing since the year 2000.

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

14 SEC. 2. ~~Section 5703 of the Government Code is amended to~~
15 ~~read:~~

16 ~~5703. (a) Except as provided in subdivisions (b), (c), and (d),~~
17 ~~the Treasurer, in exercising the duties of agent for offering and~~
18 ~~selling bonds, whose duties include, among others, establishing~~
19 ~~the timing of a sale, preparation or approval of the documentation~~
20 ~~for the sale, sole authority to select the underwriters for negotiating~~
21 ~~the sale, and executing the bond purchase agreement on behalf of~~
22 ~~the state or the state's agencies, is responsible for developing and~~
23 ~~implementing a competitive process for selection of underwriters~~
24 ~~for negotiated offerings of bonds. The competitive process may~~
25 ~~be conducted on an issue-by-issue basis or to establish one or more~~
26 ~~pools of underwriters for various types of issues. The competitive~~
27 ~~process shall have at least all of the following features:~~

28 ~~(1) Solicitation of written qualifications from at least 20~~
29 ~~underwriting firms.~~

30 ~~(2) Consideration of the goals for minority and women business~~
31 ~~enterprise participation in professional bond services contracts.~~

32 ~~(3) The written submissions shall be available for inspection at~~
33 ~~the office of the Treasurer for a period of at least six months.~~

34 ~~(4) If a pool of underwriters is established, the competitive~~
35 ~~process shall be repeated at least every 24 months to reestablish~~
36 ~~the pool of underwriters.~~

37 ~~(b) For negotiated offerings of bonds by state financing~~
38 ~~authorities that act as conduits to provide financing to other public,~~

1 nonprofit, or private organizations, the Treasurer shall use the
2 competitive process described in subdivision (a) to establish one
3 or more pools of underwriters for each financing authority. The
4 Treasurer may make additions to a pool without competitive
5 solicitation, on a case-by-case determination upon the
6 recommendation of a project applicant, where the Treasurer finds
7 that the underwriter to be added has provided significant services
8 to the project applicant with the expectation of compensation for
9 those services from underwriting the revenue bonds which will
10 fund the applicant's project.

11 (e) The Treasurer may select underwriters for a negotiated sale
12 of bonds by means other than as described in subdivision (a) if the
13 Treasurer makes a written finding that extraordinary market
14 conditions do not allow enough time to comply with subdivision
15 (a) without risking financial detriment to the state.

16 (d) Subdivisions (a), (b), and (c) shall not apply to the issuance
17 of state bonds for which the Treasurer is precluded by statute from
18 selecting underwriters.

19 (e) For negotiated sales, the Treasurer shall maintain records of
20 all cost information pertinent to the initial offering of all state
21 bonds, except that in the case of bonds issued by a state financing
22 authority, as described in subdivision (b), the issuing state financing
23 authority shall instead be responsible for maintaining the same
24 cost information on bonds it has issued. The information shall
25 include, but not be limited to, all of the following:

26 (1) All amounts paid out of bond proceeds to the underwriter,
27 detailed by management fee, takedown, risk, and underwriter's
28 expenses.

29 (2) All costs paid out of bond proceeds to rating agencies for
30 rating of the bonds.

31 (3) All fees paid out of bond proceeds to bond counsels, trustees,
32 or financial advisers relating to the initial offering of the bonds.

33 (4) The interest rate to be paid on the bonds.

34 (f) For competitive sales, the Treasurer shall maintain records
35 of all bids submitted and the documentation of bid verifications
36 including the terms of sale and the calculation of net interest cost
37 or true interest cost.

38 (g) The State Auditor shall audit the cost records required to be
39 maintained pursuant to subdivision (e) and conduct a review of
40 the records required to be maintained pursuant to subdivision (f).

1 ~~(h) The State Auditor shall report whether this section is being~~
 2 ~~fully implemented. The State Auditor shall make cost and interest~~
 3 ~~rate comparisons with similar initial bond offerings of other states~~
 4 ~~where possible. The State Auditor shall submit a report to the~~
 5 ~~Legislature on March 1, 1993, and March 1, 1995, for bonds sold~~
 6 ~~during the two calendar years immediately preceding the year in~~
 7 ~~which the report is due.~~

8 (i) The following provisions of the Public Contract Code do not
 9 apply to agreements entered into by the Treasurer in connection
 10 with the sale of any evidence of indebtedness:

11 ~~(1) Section 10295.~~

12 ~~(2) Article 4 (commencing with Section 10335) of Chapter 2~~
 13 ~~of Part 2 of Division 2.~~

14 ~~(3) Chapter 3.9 (commencing with Section 12147) of Part 2 of~~
 15 ~~Division 2.~~

16 ~~SEC. 3.~~

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

19

20 CHAPTER 3.9. OFFSHORING UNIVERSITY OF CALIFORNIA AND
 21 CALIFORNIA STATE UNIVERSITY CONTRACTS

22

23 12147. (a) Notwithstanding any other law, ~~except as provided~~
 24 ~~in subdivision (e)~~, neither the University of California nor the
 25 California State University may contract for services with a
 26 contractor or ~~subcontractor~~ *subcontractor*, where that contract
 27 *displaces a career employee of the University of California or the*
 28 *California State University*, unless that contractor or subcontractor
 29 certifies under penalty of perjury in his or her bid for ~~the contract~~
 30 *that contract* that the contract, and any subcontract performed
 31 under that contract, will be performed solely with workers within
 32 the United States.

33 (b) Notwithstanding any other law, ~~except as provided in~~
 34 ~~subdivision (e)~~, neither the University of California nor the
 35 California State University may expend funds to train *contract*
 36 employees located in foreign countries or train contract employees
 37 who plan to relocate to a foreign country as part of ~~the contract.~~
 38 *contract, if that contract displaces a career employee of the*
 39 *University of California or the California State University.*

1 (c) The contract shall provide that, in the event a contractor or
 2 subcontractor performs the contract or the subcontract with workers
 3 outside the United States during the life of the contract, the contract
 4 shall be terminated for noncompliance, and the contractor or
 5 subcontractor shall forfeit penalties to the University of California
 6 or the California State University, as appropriate, in an amount
 7 equal to the amount paid by the university for the percentage of
 8 work that was performed with workers outside the United States.
 9 *States, if that contract displaces a career employee of the*
 10 *University of California or the California State University.*

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

19 (e) ~~This chapter shall apply to the University of California as a~~
 20 ~~condition of receiving state funding.~~ *does not apply to contracts*
 21 *relating to study abroad programs conducted by the University of*
 22 *California or the California State University.*

23 ~~SEC. 4.~~

24 SEC. 3. No reimbursement is required by this act pursuant to
 25 Section 6 of Article XIII B of the California Constitution because
 26 the only costs that may be incurred by a local agency or school
 27 district will be incurred because this act creates a new crime or
 28 infraction, eliminates a crime or infraction, or changes the penalty
 29 for a crime or infraction, within the meaning of Section 17556 of
 30 the Government Code, or changes the definition of a crime within
 31 the meaning of Section 6 of Article XIII B of the California
 32 Constitution.