Date of Hearing: March 13, 2012

ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER PROTECTION
Mary Hayashi, Chair
SB 829 (Rubio) – As Amended: February 23, 2012

SENATE VOTE: (vote not relevant)

SUBJECT: Public contracts: public entities: project labor agreements.

SUMMARY: Prohibits the use of state funds for any charter city public works projects if the charter city has banned the consideration of the use of project labor agreements (PLAs). Specifically, this bill:

1) Provides that, if a charter provision, initiative, or ordinance of a charter city prohibits the governing board’s consideration of a PLA that includes current-law taxpayer protection provisions for some or all of the projects to be awarded by the city, then state funding or financial assistance shall not be used to support any projects awarded by the city.

2) Provides that the above provision shall not be applicable until January 1, 2015, for charter cities in which a charter provision, initiative, or ordinance in effect prior to November 1, 2011, would disqualify a project from receiving state funding or financial assistance.

EXISTING LAW

1) Establishes the State Contract Act for the purpose of governing contract practices between state agencies and private contractors.

2) Defines public works contracts as any construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part from public funds.

3) Establishes the Local Agency Public Construction Act, which sets forth the procedures local agencies are required to use when soliciting and evaluating bids or proposals for the construction of a public work or improvement.

4) Authorizes public entities to use, enter into, or require contractors to enter into a PLA for a construction project only if the agreement includes all of the following taxpayer protection provisions:

   a) The agreement prohibits discrimination based on race, national origin, religion, sex, sexual orientation, political affiliation, or membership in a labor organization in hiring and dispatching workers for the project;

   b) The agreement permits all qualified contractors and subcontractors to bid for and be awarded work on the project without regard to whether they are otherwise parties to collective bargaining agreements;
c) The agreement contains an agreed-upon protocol concerning drug testing for workers who will be employed on the project;

d) The agreement contains guarantees against work stoppages, strikes, lockouts, and similar disruptions of the project; and,

e) The agreement provides that disputes arising from the agreement shall be resolved by a neutral arbitrator.

5) Provides that the members of the governing board of a local public entity may choose by majority vote whether to use, enter into, or require contractors to enter into a PLA that includes the provisions specified above and whether to allocate funding to a project covered by such an agreement. Provides that a charter provision, initiative, or ordinance shall not prevent the governing board of a local public entity, other than a charter city, from exercising this authority on a project-specific basis.

6) Provides that, if a charter provision, initiative, or ordinance of a charter city prohibits the governing board's consideration of a PLA that includes the provisions described above or from allocating funds to a city-funded project covered by such an agreement, state funding or financial assistance shall not be used to support that project. This provision is not applicable until January 1, 2015, for charter cities in which a charter provision, initiative, or ordinance in effect prior to November 1, 2011, would disqualify a project from receiving state funding or financial assistance.

7) Provides the following definitions:

a) "PLA" means a prehire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in the United States Code governing unfair labor practices and allowable labor agreements in the building and construction industry; and,

b) "Public Entity" means a state, county, city, city and county, district, public authority, public agency, municipal corporation, or any other political subdivision or public corporation in the state.

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of this bill. According to the author, "This bill is necessary because anti-union groups/associations continue their campaign to eliminate the option for local governments to utilize PLAs...These are mainly political attacks because PLAs are negotiated on a project-by-project or funding source (i.e., bond) basis and PLAs are not mandated under any state laws. Anti-PLA/union lobbyists, mainly the Associated Builders and Contractors, pushed bans in a few counties (Stanislaus, Orange, San Diego) and Charter Cities (Chula Vista and Oceanside) based on intense lobbying and campaigns waged by non-union contractor organizations that voluntarily choose not to bid on projects governed by a PLA."
"SB 922, which the California Legislature passed and the Governor signed, effectively eliminated the PLA bans imposed by general law cities, counties and special districts. SB 922 also authorized all public entities to utilize a PLA if they meet the criteria of Public Code Section 2500. SB 922 provided, in Public Contract Code Section 2502, that charter cities that have ordinances that prevent the city council from considering the use of a PLA for a project cannot receive state funding for that specific project. SB 829 would extend the law by providing that charter cities that have ordinances that prevent the city council from considering the use of PLAs cannot receive state funding for any of their construction projects."

Background. A PLA is a pre-hire agreement that establishes the terms and conditions of employment for a specific construction project. They are completed before any workers are hired to determine the wage rates and benefits of all employees working on the project and to agree to prevent any strikes, lockouts, or other work stoppages for the length of the project. The terms of the agreement apply to all contractors and subcontractors who successfully bid on the project, union or non-union, and supersede any existing collective bargaining agreements.

PLAs are used on both public and private projects, and their specific provisions are tailored by the contracting parties to meet the needs of a particular project. By governing and establishing work rules, pay rates, and dispute resolution processes for every worker on the project, PLAs can maximize project stability, efficiency and productivity. PLAs can also help minimize the risks and inconvenience to the public that can accompany public work projects, helping ensure that projects are completed on time and on or under budget.

According to a 2001 California Research Bureau report, "PLAs are arguably the most important change in labor management relations in the construction industry in recent years. They have become a fairly common part of the organization of major construction projects in California...Construction of Shasta Dam, which ran from 1938 to 1944, was the first project involving a PLA in California. It was a remarkable success, at least in the sense that the project was completed without a labor strike, at a time when other projects in the western states were plagued with strikes and other labor disturbances. Other notable PLA projects in California include the Bay Area Rapid Transit (BART), San Francisco’s Yerba Buena Project, Los Angeles’ Blue Line, the Los Angeles Convention Center, the San Joaquin Hills Corridor toll road, the Eastside Reservoir Project (the reservoir now known as Diamond Valley), the National Ignition Facility at Lawrence Livermore Labs, San Francisco International Airport’s newest terminals, construction for several large school districts, and others.

"Perhaps surprisingly, private construction projects in California are much more likely to use PLAs than are public projects...nearly three-quarters (of the projects reviewed for the report) were private sector agreements. In addition, 22 out of 23 private cogeneration electricity plants recently built or under construction in California used PLAs.

"The legality of PLAs has been extensively tested in both federal and state courts, and with respect to both private and public construction projects. Their validity has been upheld in both federal and state cases..."

"PLAs involve some controversy, which fits within a 200 year-old tradition of dispute about the role of trade unions in America. In this case, the dispute comes especially from non-union contractors, who object to PLA requirements that they get their labor force from a union hiring hall and who argue that PLAs increase construction costs. Construction firms and owners who
use PLAs judge that the cost savings from avoidance of labor disputes and strikes during a construction project outweigh any costs of complying with the PLA. They also value a PLA’s role in resolving disputes between the many kinds of unions involved in a complex project over which union members should be doing particular tasks. Dispute also occurs between construction firms that use and value PLAs and those that do not."

On February 6, 2009, U.S. President Barack Obama issued an Executive Order requiring the use of PLAs on Federal projects of $25 million or more. According to the order, PLAs promote efficient and timely completion of large-scale construction projects and prevent many of the problems inherent in such construction.

PLAs are not mandated under California law. However, if a state or local agency chooses to use a PLA for a public construction project, the PLA must include minimum taxpayer-protection criteria. Governing boards of local agencies can choose by majority vote whether or not to use a PLA that includes these taxpayer-protection criteria. Governing boards of local agencies can also decide by majority vote whether or not to fund a project that includes such a PLA. Because of the home-rule provision of the California Constitution, this provision does not apply to charter cities.

Local agencies, except charter cities, are also prohibited from adopting blanket prohibitions against using PLAs. Local governing boards have the authority to decide on a case-by-case basis whether to use PLAs.

If a charter city has banned PLAs for a project to be awarded by the city, state financial assistance must not be used for that project. This provision becomes operable January 1, 2015, for charter cities that had ordinances in effect before November 1, 2011, that would disqualify a project from receiving state funding.

This bill further provides that, if a charter city has an ordinance that prevents the city's governing body from considering the use of PLAs, state funding cannot be used to support any projects awarded by the city. This provision also has a delayed effective date of January 1, 2015, for charter cities that had such bans in place before November 1, 2011.

**Charter Cities.** The California Constitution gives cities the power to become charter cities. A charter city has the power to regulate "municipal affairs," while a general law city is subject to the general laws passed by the Legislature. General law cities are creatures of the Legislature and have only the powers that the Legislature, through the general laws of the state, gives them. Charter cities, on the other hand, are separate creatures under state law. The charter adopted by a city actually constitutes state law, with the force of legislative enactment.

City charter and city charter amendment proposals can originate in three ways: a charter commission; the governing body of the city; or, by a petition of the voters. For a charter commission, the proposed charter must be submitted to the voters within specified time frames. A governing body, on its own motion, can propose, amend or repeal a charter and submit the proposal to the voters within specified time frames. Petitions from voters are submitted to the city council for placement on the ballot at an election on a date to be determined by the city council. These provisions also apply to general law cities.

Related legislation.
AB 1804 (Valadao) of 2012 repeals current law governing the use of PLAs in public contracting and the prohibition against using state funds for projects in charter cities that have banned PLAs. This bill is pending in Assembly Business, Professions and Consumer Protection Committee.

Previous legislation.

AB 1254 (Davis) of 2011 requires the High-Speed Rail Authority, in awarding contracts for the construction of the high-speed rail system, to require that a minimum of 25% of the aggregate dollar amount of contracts awarded be subject to PLAs, as defined. This bill was held in Assembly Transportation Committee.

SB 922 (Steinberg), Chapter 431, Statutes of 2011, establishes parameters for the use of PLAs in public contracting, and prohibits state funding or financial assistance from supporting specified non-PLA projects.

REGISTERED SUPPORT / OPPOSITION:

Support

State Building and Construction Trades Council of California, AFL-CIO (sponsor)
Air Conditioning and Refrigeration Contractors Association
Air Conditioning and Sheet Metal Association
Associated Plumbing and Mechanical Contractors of Sacramento
Bay Area Chapter of the Sheet Metal and Air Conditioning Contractors National Association
Bragg Crane and Rigging Co.
Brice Mechanical, Inc.
California BlueGreen Alliance
California Chapters of the National Electrical Contractors Association
California Labor Federation
California Landscape and Irrigation Council
California League of Conservation Voters
California Legislative Conference of the Plumbing, Heating and Piping Industry
California Professional Firefighters
California Sheet Metal and Air Conditioning Contractors' National Association
California State Pipe Trades Council
California Teamsters Public Affairs Council
Cement Masons Local 300
Center for Sustainable Neighborhoods
Contra Costa Building and Construction Trades Council
Councilmember Xavier E. Campos, City of San Jose
Fresno, Madera, Kings and Tulare Counties Building and Construction Trades Council
Imperial County Building and Construction Trades Council
International Association of Heat and Frost Insulators Local 5
International Brotherhood of Boilermakers Local 92
International Brotherhood of Electrical Workers Local 11
International Brotherhood of Electrical Workers Local 40
International Brotherhood of Electrical Workers Local 180
International Brotherhood of Electrical Workers Local 234
International Brotherhood of Electrical Workers Local 413
International Brotherhood of Electrical Workers Local 440
International Brotherhood of Electrical Workers Local 441
International Brotherhood of Electrical Workers Local 551
International Brotherhood of Electrical Workers Local 569
International Brotherhood of Electrical Workers Local 595
International Brotherhood of Electrical Workers Local 617
International Brotherhood of Electrical Workers Local 639
International Brotherhood of Electrical Workers Local 952
International Brotherhood of Electrical Workers Ninth District
International Union of Elevator Constructors Local 18
Iron Workers Local 155
Iron Workers Local 229
Iron Workers Local 416
Iron Workers Local 433
Jerry Thompson and Sons Painting, Inc.
KBI Painting, Inc.
L&H Airco
Los Angeles Unified School District
Los Angeles/Orange Counties Building and Construction Trades Council
Mayor Antonio R. Villaraigosa, City of Los Angeles
Metalclad Insulation Corporation
Mid Valley Building and Construction Trades Council
Napa-Solano Counties Building and Construction Trades Council
Northeastern California Building and Construction Trades Council
Northern California Glass Management Association
Northern California Painting and Finishing Contractors Association
Painters and Allied Trades District Council 16-Local 741
Painters and Allied Trades District Council 36
Painters and Allied Trades Local 272
Painters and Allied Trades Local 3
Painters, Tapers, Floorcoverers and Glaziers District Council 16 Local 294
 Plumbers and Pipefitters Local 447
 Plumbers, Steamfitters and Refrigeration Fitters Local 467
 Road Sprinkler Fitters Local 669
 Sacramento-Sierra's Building and Construction Trades Council
 San Bernardino and Riverside Counties Building and Construction Trades Council
 San Diego and Imperial Counties Labor Council
 San Diego County Building and Construction Trades Council
 San Joaquin, Calaveras, Amador and Alpine Counties Building and Construction Trades Council
 San Mateo County Building and Construction Trades Council
 Santa Clara and San Benito Counties Building and Construction Trades Council
 Sheet Metal Workers' Local Union No. 104
 Sonoma, Mendocino and Lake Counties Building and Construction Trades Council
 Southern California Pipe Trades District Council 16
 Sprinkler Fitters U.A. Local 709
 United Association of Plumbers and Steamfitters Local 230
 United Association of Plumbers and Steamfitters Local 355
 United Association of Plumbers and Steamfitters Local 398
United Association of Plumbers and Steamfitters Local 582
United Union of Roofers, Waterproofers, and Allied Workers Local 36
United Union of Roofers, Waterproofers, and Allied Workers Local 81
United Union of Roofers, Waterproofers, and Allied Workers Local 220
Ventura County Plumbers and Pipe Fitters Local 484
Western States Council Sheet Metal Workers' International Association
Numerous individuals

Opposition

Associated Builders and Contractors of California
League of California Cities

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