

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 616

Introduced by Senator Wright

February 22, 2013

An act to amend Section 9550 of, *and to add and repeal Section 9550.1 of*, the Civil Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 616, as amended, Wright. Public works: payment bonds.

Existing law requires a direct contractor that is awarded a public works contract involving an expenditure greater than \$25,000 to give a payment bond to, and approved by, the officer or public entity by ~~when~~ *whom* the contract was awarded, as specified.

This bill would ~~make nonsubstantive changes to~~, *until January 1, 2017, exempt the Los Angeles Unified School District from this provision when the district enters into a public works contract in an amount less than \$1,000,000 with a contractor that is a small business or microbusiness, as defined, that participates in the district's self-insurance program. The bill would, in order for this exemption to apply, require the district to state in its call for bids that the self-insurance program is available to these small business and microbusiness contractors. The bill would require the district to establish guidelines and requirements for the small business or microbusiness to participate in the program, as specified. The bill would require the district to establish separate accounts for each project that participates in the program to cover the cost of the default or failure of a small business or microbusiness to make payments to subcontractors or material vendors. By increasing the duties of local officials, this bill would create a state-mandated local program.*

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 these statutory provisions.

This bill would provide findings as to the need for special legislation.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
 State-mandated local program: ~~no~~-yes.

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

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

3 *(a) It is the intent of the Legislature to demonstrate an*
 4 *alternative and optional procedure for the bidding of public works*
 5 *projects that is applicable only to the Los Angeles Unified School*
 6 *District (LAUSD).*

7 *(b) The LAUSD should be able to utilize cost-effective options*
 8 *for the delivery of public works projects, to self-insure those*
 9 *projects involving an expenditure of less than \$1,000,000 when*
 10 *the contractor is a small business or microbusiness, as defined in*
 11 *Section 14837 of the Government Code.*

12 *(c) Since 2000, the LAUSD has issued more than 3,100 contracts*
 13 *valued at less than \$1,000,000. The total value of those contracts*
 14 *exceeded more than \$1,000,000,000. The estimated cost of the*
 15 *payment bond passed along to the LAUSD totaled more than*
 16 *\$31,000,000.*

17 *(d) The benefits of the self-insurance program include cost*
 18 *savings through an increase in the pool of qualified contractors,*
 19 *a reduction in bid amounts when contractors pass along the costs*
 20 *to secure payment bonds to the LAUSD.*

21 *(e) The benefits for the small business or microbusiness*
 22 *contractor include access to the LAUSD construction program,*
 23 *whereby the contractor may gain long-term experience that will*
 24 *translate to other public agencies and improve a small business*
 25 *or microbusiness's competitive capacity on future bids.*

1 SECTION 1.

2 SEC. 2. Section 9550 of the Civil Code is amended to read:

3 9550. (a) A direct contractor that is awarded a public works
4 contract involving an expenditure greater than twenty-five thousand
5 dollars (\$25,000) shall, before commencement of work, give a
6 payment bond to and approved by the officer or public entity by
7 whom the contract was awarded.

8 (b) A public entity shall state in its call for bids that a payment
9 bond is required for a public works contract involving an
10 expenditure greater than twenty-five thousand dollars (\$25,000).

11 (c) A payment bond given and approved under this section will
12 permit performance of and provide coverage for work pursuant to
13 a public works contract that supplements the contract for which
14 the bond is given, if the requirement of a new bond is waived by
15 the public entity.

16 (d) For the purpose of this section, a design professional is not
17 deemed a direct contractor and is not required to give a payment
18 bond.

19 (e) This section does not apply to ~~a~~ *either of the following:*

20 (1) A public works contract with a “state entity” as defined in
21 subdivision (d) of Section 7103 of the Public Contract Code.

22 (2) *The Los Angeles Unified School District for a public works*
23 *contract in an amount less than one million dollars (\$1,000,000)*
24 *entered into with a contractor that is a small business or*
25 *microbusiness, as defined in Section 14837 of the Government*
26 *Code, that participates in the district’s self-insurance program*
27 *pursuant to Section 9550.1. This paragraph shall remain operative*
28 *only until January 1, 2017.*

29 SEC. 3. Section 9550.1 is added to the Civil Code, to read:

30 9550.1. (a) *In lieu of requiring a contractor that is a small*
31 *business or microbusiness, as defined in Section 14837 of the*
32 *Government Code, awarded a public works contract for an amount*
33 *less than one million dollars (\$1,000,000) to provide a payment*
34 *bond to the Los Angeles Unified School District pursuant to Section*
35 *9550, the district may provide the small business or microbusiness*
36 *contractor an opportunity to participate in the district’s*
37 *self-insurance program if the district states in its call for bids that*
38 *this program is available.*

39 (b) *As part of the district’s self-insurance program, the district*
40 *shall establish guidelines and requirements for the small business*

1 or microbusiness to participate. The guidelines and requirements
2 shall include, but will not be limited to, a requirement that the
3 small business or microbusiness complete the district's small
4 business training program, complete the district's prequalification
5 process, and adhere to the district's project stabilization
6 agreement.

7 (c) The district shall establish a separate account in which funds
8 shall be set aside for each project in the event the small business
9 or microbusiness defaults or fails to make payment to their
10 subcontractors or materials vendors.

11 (d) If the contractor fails to make payment to the subcontractor
12 or materials vendor, the district shall assume responsibility and
13 ensure prompt payment is made to the subcontractor and materials
14 vendor.

15 (e) At the conclusion of a contract, any funds remaining in the
16 separate account shall be retained by the district to be applied to
17 any future project.

18 (f) This section shall remain in effect only until January 1, 2017,
19 and as of that date is repealed, unless a later enacted statute, that
20 is enacted before January 1, 2017, deletes or extends that date.

21 SEC. 4. The Legislature finds and declares that a special law
22 is necessary and that a general law cannot be made applicable
23 within the meaning of Section 16 of Article IV of the California
24 Constitution because of the unique resources of the Los Angeles
25 Unified School District to implement a self-insurance program
26 and self-monitor public works projects to minimize disruptions to
27 the completion of its public work projects. These include an
28 in-house labor compliance program, a project stabilization
29 agreement, a small business boot camp program, and in-house
30 project managers.

31 SEC. 5. If the Commission on State Mandates determines that
32 this act contains costs mandated by the state, reimbursement to
33 local agencies and school districts for those costs shall be made
34 pursuant to Part 7 (commencing with Section 17500) of Division
35 4 of Title 2 of the Government Code.