

AMENDED IN SENATE JANUARY 6, 2014

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 616

Introduced by Senator Wright
(Coauthor: Senator Fuller)

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 relating to aviation.

LEGISLATIVE COUNSEL'S DIGEST

SB 616, as amended, Wright. ~~Public works: payment bonds.~~
Aeronautics Account: California Aid to Airports Program.

Existing federal law authorizes airport sponsors to submit applications to the Secretary of Transportation for financial assistance for airport improvement projects. Under federal law, upon approval by the Secretary of Transportation, the United States government may pay for certain project costs.

Existing law establishes the Aeronautics Account in the State Transportation Fund, and continuously appropriates the moneys in the account for expenditure by the Division of Aeronautics within the Department of Transportation and the California Transportation Commission. Existing law requires that funds in the account be paid to certain public entities owning and operating airports for projects for airport and aviation purposes, as defined, or operation and maintenance purposes, as defined. Existing law authorizes any balance remaining in the account to be used as a portion of the local match for federal Airport Improvement Program grants for certain airports. Existing law prohibits the California Transportation Commission from allocating funds until the federal grant offer is accepted by the public

entity and authorizes the division, upon allocation of the funds by the commission, to pay a public entity 5% of the amount of a federal Airport Improvement Program grant.

Existing regulations implement the California Aid to Airports Program, which includes airport improvement program matching grants and acquisition and development grants. These regulations prohibit payments from the account for the California Aid to Airports Program for projects that the sponsor, as defined, has already started or completed prior to allocation of airport improvement program matching or acquisition and development funds, with the exception of projects for land acquisition, as defined, and project services, as defined.

This bill would, until July 1, 2015, authorize payments from the account for the California Aid to Airports Program for projects that the sponsor has started or completed in accordance with a federal Airport Improvement Program grant.

~~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 whom the contract was awarded, as specified.~~

~~This bill would, 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: yes.

State-mandated local program: ~~yes~~-no.

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

1 ~~SECTION 1. Notwithstanding subdivision (a) of Section 4059~~
2 ~~of the California Code of Regulations, until July 1, 2015, payments~~
3 ~~from the Aeronautics Account for the California Aid to Airports~~
4 ~~Program shall be allowed for projects that the sponsor, as defined~~
5 ~~by subdivision (y) of Section 4052 of the California Code of~~
6 ~~Regulations, has started or completed in accordance with a federal~~
7 ~~Airport Improvement Program grant.~~

8 ~~SECTION 1. The Legislature hereby finds and declares all of~~
9 ~~the following:~~

10 ~~(a) It is the intent of the Legislature to demonstrate an alternative~~
11 ~~and optional procedure for the bidding of public works projects~~
12 ~~that is applicable only to the Los Angeles Unified School District~~
13 ~~(LAUSD):~~

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

19 ~~(c) Since 2000, the LAUSD has issued more than 3,100 contracts~~
20 ~~valued at less than \$1,000,000. The total value of those contracts~~
21 ~~exceeded more than \$1,000,000,000. The estimated cost of the~~
22 ~~payment bond passed along to the LAUSD totaled more than~~
23 ~~\$31,000,000.~~

24 ~~(d) The benefits of the self-insurance program include cost~~
25 ~~savings through an increase in the pool of qualified contractors, a~~
26 ~~reduction in bid amounts when contractors pass along the costs to~~
27 ~~secure payment bonds to the LAUSD:~~

28 ~~(e) The benefits for the small business or microbusiness~~
29 ~~contractor include access to the LAUSD construction program,~~
30 ~~whereby the contractor may gain long-term experience that will~~
31 ~~translate to other public agencies and improve a small business or~~
32 ~~microbusiness's competitive capacity on future bids.~~

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

2 ~~9550. (a) A direct contractor that is awarded a public works~~
3 ~~contract involving an expenditure greater than twenty-five thousand~~
4 ~~dollars (\$25,000) shall, before commencement of work, give a~~
5 ~~payment bond to and approved by the officer or public entity by~~
6 ~~whom the contract was awarded.~~

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

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

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

18 ~~(e) This section does not apply to either of the following:~~

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

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

28 ~~SEC. 3.— Section 9550.1 is added to the Civil Code, to read:~~

29 ~~9550.1. (a) In lieu of requiring a contractor that is a small~~
30 ~~business or microbusiness, as defined in Section 14837 of the~~
31 ~~Government Code, awarded a public works contract for an amount~~
32 ~~less than one million dollars (\$1,000,000) to provide a payment~~
33 ~~bond to the Los Angeles Unified School District pursuant to~~
34 ~~Section 9550, the district may provide the small business or~~
35 ~~microbusiness contractor an opportunity to participate in the~~
36 ~~district’s self-insurance program if the district states in its call for~~
37 ~~bids that this program is available.~~

38 ~~(b) As part of the district’s self-insurance program, the district~~
39 ~~shall establish guidelines and requirements for the small business~~
40 ~~or microbusiness to participate. The guidelines and requirements~~

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

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

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

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

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

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

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