

AMENDED IN ASSEMBLY MARCH 31, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2557

Introduced by Assembly Members Santiago and Bloom

February 19, 2016

An act to amend Section ~~12990~~ 65858 of the Government Code, relating to ~~public contracting~~: *land use*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2557, as amended, Santiago. ~~State contracts: nondiscrimination clause. Zoning regulations: interim ordinances.~~

The Planning and Zoning Law authorizes the legislative body of a city, including a charter city, a county, or a city and county under specified conditions to adopt for a period of 45 days as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, the planning commission, or the planning department is considering or studying or intends to study within a reasonable time. Existing law prohibits the extension of an interim ordinance that would have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing, except upon specified findings supported by substantial evidence on the record.

This bill would instead prohibit an interim ordinance from having the effect of denying approvals needed for the development of projects with a significant component of multifamily housing.

~~Existing law, the California Fair Employment and Housing Act (FEHA), prohibits an employer or labor organization, among others, from discriminating against a person in specified contexts on the basis~~

~~of the person’s race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. FEHA makes an employer who is, or wishes to become, a contractor with the state for public works or for goods or services subject to the provisions of FEHA relating to discrimination, and requires every state contract and subcontract for public works or for goods or services to contain a nondiscrimination clause prohibiting discrimination on the bases enumerated in FEHA by contractors or subcontractors.~~

~~This bill would specify that those provisions apply to subcontractors, and would require each state agency with an active contract or subcontract that contains the nondiscrimination clause to negotiate amendments to the nondiscrimination clause as necessary to ensure that the wording of the clause is consistent with the current statutory nondiscrimination provisions.~~

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

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

1 SECTION 1. Section 65858 of the Government Code is
 2 amended to read:
 3 65858. (a) Without following the procedures otherwise
 4 required prior to the adoption of a zoning ordinance, the legislative
 5 body of a county, city, including a charter city, or city and county,
 6 to protect the public safety, health, and welfare, may adopt as an
 7 urgency measure an interim ordinance prohibiting any uses that
 8 may be in conflict with a contemplated general plan, specific plan,
 9 or zoning proposal that the legislative body, planning commission
 10 or the planning department is considering or studying or intends
 11 to study within a reasonable time. That urgency measure shall
 12 require a four-fifths vote of the legislative body for adoption. The
 13 interim ordinance shall be of no further force and effect 45 days
 14 from its date of adoption. After notice pursuant to Section 65090
 15 and public hearing, the legislative body may extend the interim
 16 ordinance for 10 months and 15 days and subsequently extend the
 17 interim ordinance for one year. Any extension shall also require
 18 a four-fifths vote for adoption. Not more than two extensions may
 19 be adopted.

1 (b) Alternatively, an interim ordinance may be adopted by a
2 four-fifths vote following notice pursuant to Section 65090 and
3 public hearing, in which case it shall be of no further force and
4 effect 45 days from its date of adoption. After notice pursuant to
5 Section 65090 and public hearing, the legislative body may by a
6 four-fifths vote extend the interim ordinance for 22 months and
7 15 days.

8 (c) The legislative body shall not adopt or extend any interim
9 ordinance pursuant to this section unless the ordinance contains
10 legislative findings that there is a current and immediate threat to
11 the public health, safety, or welfare, and that the approval of
12 additional subdivisions, use permits, variances, building permits,
13 or any other applicable entitlement for use which is required in
14 order to comply with a zoning ordinance would result in that threat
15 to public health, safety, or welfare. ~~In addition, any~~ *An* interim
16 ordinance adopted pursuant to this section ~~that has~~ *shall not have*
17 the effect of denying approvals needed for the development of
18 projects with a significant component of multifamily ~~housing may~~
19 ~~not be extended except upon written findings adopted by the~~
20 ~~legislative body, supported by substantial evidence on the record,~~
21 ~~that all of the following conditions exist:~~ *housing.*

22 ~~(1) The continued approval of the development of multifamily~~
23 ~~housing projects would have a specific, adverse impact upon the~~
24 ~~public health or safety. As used in this paragraph, a “specific,~~
25 ~~adverse impact” means a significant, quantifiable, direct, and~~
26 ~~unavoidable impact, based on objective, identified written public~~
27 ~~health or safety standards, policies, or conditions as they existed~~
28 ~~on the date that the ordinance is adopted by the legislative body.~~

29 ~~(2) The interim ordinance is necessary to mitigate or avoid the~~
30 ~~specific, adverse impact identified pursuant to paragraph (1).~~

31 ~~(3) There is no feasible alternative to satisfactorily mitigate or~~
32 ~~avoid the specific, adverse impact identified pursuant to paragraph~~
33 ~~(1) as well or better, with a less burdensome or restrictive effect,~~
34 ~~than the adoption of the proposed interim ordinance.~~

35 (d) Ten days prior to the expiration of that interim ordinance or
36 any extension, the legislative body shall issue a written report
37 describing the measures taken to alleviate the condition which led
38 to the adoption of the ordinance.

39 (e) When an interim ordinance has been adopted, every
40 subsequent ordinance adopted pursuant to this section, covering

1 the whole or a part of the same property, shall automatically
2 terminate and be of no further force or effect upon the termination
3 of the first interim ordinance or any extension of the ordinance as
4 provided in this section.

5 (f) Notwithstanding subdivision (e), upon termination of a prior
6 interim ordinance, the legislative body may adopt another interim
7 ordinance pursuant to this section provided that the new interim
8 ordinance is adopted to protect the public safety, health, and
9 welfare from an event, occurrence, or set of circumstances different
10 from the event, occurrence, or set of circumstances that led to the
11 adoption of the prior interim ordinance.

12 (g) For purposes of this section, “development of multifamily
13 housing projects” does not include the demolition, conversion,
14 redevelopment, or rehabilitation of multifamily housing that is
15 affordable to lower income households, as defined in Section
16 50079.5 of the Health and Safety Code, or that will result in an
17 increase in the price or reduction of the number of affordable units
18 in a multifamily housing project.

19 (h) For purposes of this section, “projects with a significant
20 component of multifamily housing” means projects in which
21 multifamily housing consists of at least one-third of the total square
22 footage of the project.

23 ~~SECTION 1. Section 12990 of the Government Code is~~
24 ~~amended to read:~~

25 ~~12990. (a) Any employer who is, or wishes to become, a~~
26 ~~contractor or subcontractor with the state for public works or for~~
27 ~~goods or services is subject to the provisions of this part relating~~
28 ~~to discrimination in employment and to the nondiscrimination~~
29 ~~requirements of this section and any rules and regulations that~~
30 ~~implement it.~~

31 ~~(b) Prior to becoming a contractor or subcontractor with the~~
32 ~~state, an employer may be required to submit a nondiscrimination~~
33 ~~program to the department for approval and certification and may~~
34 ~~be required to submit periodic reports of its compliance with that~~
35 ~~program.~~

36 ~~(c) (1) Every state contract and subcontract for public works~~
37 ~~or for goods or services shall contain a nondiscrimination clause~~
38 ~~prohibiting discrimination on the bases enumerated in this part by~~
39 ~~contractors or subcontractors. The nondiscrimination clause shall~~
40 ~~contain a provision requiring contractors and subcontractors to~~

1 give written notice of their obligations under that clause to labor
2 organizations with which they have a collective bargaining or other
3 agreement. These contractual provisions shall be fully and
4 effectively enforced. This subdivision does not apply to a credit
5 card purchase of goods of two thousand five hundred dollars
6 (\$2,500) or less. The total amount of exemption authorized herein
7 shall not exceed seven thousand five hundred dollars (\$7,500) per
8 year for each company from which a state agency is purchasing
9 goods by credit card. It shall be the responsibility of each state
10 agency to monitor the use of this exemption and adhere to these
11 restrictions on these purchases:

12 (2) (A) Each state agency with an active contract or subcontract
13 that contains a nondiscrimination clause pursuant to this
14 subdivision shall negotiate amendments to the nondiscrimination
15 clause or necessary to ensure that the wording of the clause is
16 consistent with the current statutory nondiscrimination provisions
17 of this part.

18 (B) This paragraph applies to all active contracts or subcontracts,
19 regardless of the date the contract or subcontract was entered into.

20 (d) The department shall periodically develop rules and
21 regulations for the application and implementation of this section,
22 and submit them to the council for consideration and adoption in
23 accordance with the provisions of Chapter 3.5 (commencing with
24 Section 11340) of Part 1. Those rules and regulations shall describe
25 and include, but not be limited to, all of the following:

26 (1) Procedures for the investigation, approval, certification,
27 decertification, monitoring, and enforcement of nondiscrimination
28 programs.

29 (2) The size of contracts or subcontracts below which any
30 particular provision of this section shall not apply.

31 (3) The circumstances, if any, under which a contractor or
32 subcontractor is not subject to this section.

33 (4) Criteria for determining the appropriate plant, region,
34 division, or other unit of a contractor's or subcontractor's operation
35 for which a nondiscrimination program is required.

36 (5) Procedures for coordinating the nondiscrimination
37 requirements of this section and its implementing rules and
38 regulations with the California Plan for Equal Opportunity in
39 Apprenticeship, with the provisions and implementing regulations
40 of Article 9.5 (commencing with Section 11135) of Chapter 1 of

1 ~~Part 1, and with comparable federal laws and regulations~~
2 ~~concerning nondiscrimination, equal employment opportunity,~~
3 ~~and affirmative action by those who contract with the United States.~~
4 ~~(6) The basic principles and standards to guide the department~~
5 ~~in administering and implementing this section.~~
6 ~~(e) Where a contractor or subcontractor is required to prepare~~
7 ~~an affirmative action, equal employment, or nondiscrimination~~
8 ~~program subject to review and approval by a federal compliance~~
9 ~~agency, that program may be filed with the department, instead of~~
10 ~~any nondiscrimination program regularly required by this section~~
11 ~~or its implementing rules and regulations. Such a program shall~~
12 ~~constitute a prima facie demonstration of compliance with this~~
13 ~~section. Where the department or a federal compliance agency has~~
14 ~~required the preparation of an affirmative action, equal~~
15 ~~employment, or nondiscrimination program subject to review and~~
16 ~~approval by the department or a federal compliance agency,~~
17 ~~evidence of such a program shall also constitute prima facie~~
18 ~~compliance with an ordinance or regulation of any city, city and~~
19 ~~county, or county that requires an employer to submit such a~~
20 ~~program to a local awarding agency for its approval prior to~~
21 ~~becoming a contractor or subcontractor with that agency.~~
22 ~~(f) Where the department determines and certifies that the~~
23 ~~provisions of this section or its implementing rules and regulations~~
24 ~~are violated or determines a contractor or subcontractor is engaging~~
25 ~~in practices made unlawful under this part, the department may~~
26 ~~recommend appropriate sanctions to the awarding agency. Any~~
27 ~~such recommendation shall take into account the severity of the~~
28 ~~violation or violations and any other penalties, sanctions, or~~
29 ~~remedies previously imposed.~~