

AMENDED IN ASSEMBLY AUGUST 1, 2016

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE APRIL 6, 2016

**SENATE BILL**

**No. 1170**

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**Introduced by Senator Wieckowski**  
**(Coauthor: Senator Hill)**  
~~(Coauthor: Assembly Member Alejo)~~  
*(Coauthors: Assembly Members Alejo and Frazier)*

February 18, 2016

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An act to add Section 7107.5 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1170, as amended, Wieckowski. Public contracts: water pollution prevention plans: delegation.

Existing law prohibits a local public entity, charter city, or charter county from requiring a bidder on a public works contract to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications on public works projects, except as specified.

Existing law requires the State Water Resources Control Board and the 9 California regional water quality control boards to prescribe waste discharge requirements in accordance with the National Pollutant Discharge Elimination System (NPDES) permit program established by the federal Clean Water Act and the Porter-Cologne Water Quality Control Act. Existing law regulates the discharge of pollutants in stormwater associated with construction activity to waters of the United States from construction sites that disturbs one or more acres of land

surface, or that is part of a common plan of development or sale that disturbs more than one acre of land surface.

This bill, except as specified, would prohibit a public entity, charter city, or charter county from delegating to a contractor the development of a plan, as defined, used to prevent or reduce water pollution or runoff on a public works contract. The bill would also prohibit a public entity, charter city, or charter county from requiring a contractor on a public works contract that includes compliance with a plan to assume responsibility for the completeness and accuracy of a plan developed by that entity. The bill would provide that these prohibitions do not apply to contracts that use specified procurement methods if the contractor or construction manager at risk is required by the bid or procurement documents to retain a plan developer for the project owners. The bill would also declare that this is a matter of statewide concern. The bill would state that its provisions are declaratory of existing law, as specified.

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 the Legislature finds there is no mandate contained in the bill that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to these constitutional and statutory provisions.

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. Section 7107.5 is added to the Public Contract
- 2 Code, to read:
- 3 7107.5. (a) As used in this section, the following definitions
- 4 shall apply:
- 5 (1) "Plan" means a stormwater pollution prevention plan, water
- 6 pollution control program, or any other plan required by a regional
- 7 water quality control board to prevent or reduce water pollution
- 8 or runoff on a public works project, pursuant to State Water
- 9 Resources Control Board Order No. 2009-0009-DWQ.
- 10 (2) "Plan developer" means a qualified stormwater pollution
- 11 prevention plan developer or a qualified stormwater pollution

1 prevention plan practitioner as those terms are defined in Appendix  
2 5 of State Water Resources Control Board Order No.  
3 2009-0009-DWQ.

4 (b) (1) (A) A public entity, charter city, or charter county shall  
5 not delegate to a contractor the development of a plan on a public  
6 works contract.

7 (B) Subparagraph (A) shall not apply to any of the following:

8 (i) A department or agency of this state.

9 (ii) A facility under the ownership, control, management,  
10 maintenance, or jurisdiction of a department or agency of this  
11 state.

12 (iii) A public works contract that implements a project, or a  
13 portion of a project, on any facility under the ownership, control,  
14 management, maintenance, or jurisdiction of any department or  
15 agency of this state.

16 (C) Subparagraph (A) shall not apply to a contract for  
17 architectural or engineering services relating to the development  
18 of a plan on a public works contract.

19 (D) This section does not restrict a public entity, charter city,  
20 or charter county from contracting with a ~~duly licensed architect~~  
21 ~~or engineer for the design of a plan.~~ *plan developer, the employer*  
22 *of a plan developer, or an architect or engineer that subcontracts*  
23 *with a plan developer for the purpose of developing a plan.*

24 (2) A public entity, charter city, or charter county shall not  
25 require a contractor on a public works contract that includes  
26 compliance with a plan to assume responsibility for the  
27 completeness and accuracy of the plan developed by that entity.

28 (c) Subdivision (b) shall apply to all public works contracts  
29 except contracts that use the following statutorily authorized  
30 procurement methods, if the contractor or construction manager  
31 at risk is required by the bid or procurement documents to retain  
32 a plan developer for the project owners:

33 (1) Design-build.

34 (2) Best value.

35 (3) Construction manager at risk.

36 (d) Nothing in this section shall be construed to prohibit a ~~local~~  
37 public entity, charter city, or charter county from requiring a bidder  
38 or contractor on a public works contract to review any applicable  
39 plan and report any errors or omissions noted to the public entity  
40 or its plan developer. The review by the contractor shall be limited

1 to the contractor’s capacity as a contractor and not as a licensed  
2 design professional or plan developer.  
3 SEC. 2. The Legislature finds and declares that it is of statewide  
4 concern to require a public entity, charter city, or charter county  
5 to be responsible for the development of, and completeness and  
6 accuracy of, a plan to prevent or reduce water pollution or runoff  
7 on a public works project.  
8 SEC. 3. The addition of Section 7107.5 to the Public Contract  
9 Code made by this act does not constitute a change in, but is  
10 declaratory of, existing law, including, but not limited to, Chapter  
11 7 (commencing with Section 6700) of Division 3 of the Business  
12 and Professions Code, Title 12 (commencing with Section 2772)  
13 of Part 4 of Division 3 of the Civil Code, and Section 1104 of the  
14 Public Contract Code.  
15 SEC. 4. The Legislature finds that there is no mandate  
16 contained in this act that will result in costs incurred by a local  
17 agency or school district for a new program or higher level of  
18 service which require reimbursement pursuant to Section 6 of  
19 Article XIII B of the California Constitution and Part 7  
20 (commencing with Section 17500) of Division 4 of Title 2 of the  
21 Government Code.