AMENDED IN ASSEMBLY AUGUST 30, 2011

AMENDED IN SENATE MARCH 31, 2011

AMENDED IN SENATE MARCH 9, 2011

SENATE BILL No. 134

Introduced by Senator Corbett
(Coauthor: Senator Alquist)
(Coauthors: Assembly Members Beall and Wieckowski)

January 27, 2011

~~An act to amend Section 32121 of the Health and Safety Code, relating to health care districts.~~ *An act to add Article 7 (commencing with Section 10390) to Chapter 2 of Part 2 of Division 2 of the Public Contract Code, relating to public contracts.*

LEGISLATIVE COUNSEL'S DIGEST

SB 134, as amended, Corbett. ~~Health care districts: transfers of assets.~~ *Public contracts: bid preferences: solar photovoltaic system.*

Existing law imposes various requirements with respect to contracting by state agencies.

This bill would require a state agency that accepts bids or proposals for a contract for the purchase or installation of a solar photovoltaic system, as defined, to provide a 5% preference to a business that certifies that all of the solar panels installed as part of the solar photovoltaic system have been manufactured or assembled in California, in accordance with specified criteria.

~~Existing law authorizes a health care district to transfer, for the benefit of the communities served by the district, in the absence of adequate consideration, any part of the assets of the district to one or more nonprofit corporations to operate and maintain the assets. Existing law~~

~~deems a transfer of 50% or more of the district's assets to be for the benefit of the communities served only upon the occurrence of specified conditions.~~

~~This bill would include among the above-described conditions the inclusion within the transfer agreement of the appraised fair market value of any asset transferred to the nonprofit corporation, as specified.~~

~~Existing law requires, prior to the transfer of 50% or more of the district's assets, the board to, by resolution, submit a measure to the voters of the district for approval.~~

~~This bill would require the resolution to include specified information.~~

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

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

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

(a) California faces the most severe economic downturn since the Great Depression. Over two million Californians are out of work and California's unemployment rate is one of the highest in the nation.

(b) At a time of scarce state resources, state purchases should be used to stimulate our state economy and put people back to work.

(c) Former Governor Schwarzenegger's Green Building Executive Order (S-20-04) mandated that state agencies evaluate the merits of using clean and renewable onsite energy generation technologies in all new building or large renovation projects.

(d) California has several companies that manufacture solar panels in the state, employing Californians and helping our economy.

(e) In the manufacturing of solar panels, it is the creation of the solar cells that convert sunlight into electrical power that generates the most value to the economy. Production of solar cells requires the highest percentage of skilled workers, the highest capital investment, and supports the highest amount of collateral infrastructure in the form of additional local businesses and jobs.

(f) California is the nation's largest clean economy. More than 12,000 clean technology companies, including solar manufacturers, call California home and are creating jobs at nearly 10 times the

rate as the state's other industries. A number of these companies have developed novel solar cell technologies and it is in the interest of the state to incentivize these companies to establish and grow manufacturing operations within the state. This will create both construction and permanent manufacturing jobs in California.

(g) It is the intent of the Legislature that whenever a solar photovoltaic system is placed on state buildings or property, there should be a preference for a solar photovoltaic system manufactured in California.

SEC. 2. Article 7 (commencing with Section 10390) is added to Chapter 2 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 7. Preference for California-Manufactured Solar Panels on State Property

10390. For the purposes of this article:

(a) "Assemble," "assembled," or "assembler" means connecting individual solar cells into larger groups whereby the solar panel or module is the end product.

(b) "Manufacture," "manufactured," or "manufacturing" means the transformation of raw materials into a solar panel, including the manufacture of solar wafers, the postprocessing of solar cells, or the manufacture of solar cells.

(c) "Power purchase agreement" means a financial arrangement in which a third-party developer owns, operates, and maintains a solar photovoltaic system, and a state agency agrees to site the system on its roof or elsewhere on its property and purchases the system's electric output, not the system itself, from the third-party developer for a predetermined period of time.

(d) "Solar cells" means the basic building block of photovoltaic (PV) technologies. "Solar cells" are functional semiconductors, made by processing and treating crystalline silicon or other photosensitive materials to create a layered product that generates electricity by absorbing light photons.

(e) "Solar panels" means individual solar cells assembled into larger groups whereby the solar panel or module is the end product, and consists of a series of solar cells to capture and transfer solar-generated electricity, a backing surface, and a covering to protect the cells from weather and other types of

damage, and may include an affixed power quality, product efficiency, power conversion, balance of systems (BOS), and enhancements to the panel.

(f) "Solar photovoltaic system" means a system created by installing multiple solar panels in the same location to increase the electrical generating capacity. In a "solar photovoltaic system" the solar panels and solar cells represent the highest intellectual content and dollar-value items associated with solar photovoltaic energy generation.

10391. (a) A state agency that accepts bids or proposals for a contract for the purchase or installation of a solar photovoltaic system through a power purchase agreement, or through a direct purchase, shall provide a preference of 5 percent to a business that certifies that all of the solar panels installed as part of such a solar photovoltaic system have been manufactured or assembled in this state. The preference shall be provided as follows:

(1) For solicitations to be awarded to the lowest responsible bidder meeting specifications, the preference to a business that certifies that all of the solar panels installed as part of the solar photovoltaic system have been manufactured or assembled in this state shall be 5 percent of the bid price of the lowest responsible bidder meeting specifications.

(2) For solicitations to be awarded to the highest scored bidder based on evaluation factors in addition to price, the preference to a business that certifies that all of the solar panels installed as part of the solar photovoltaic system have been manufactured or assembled in this state shall be 5 percent of the total score of the highest scored bidder.

(3) A preference awarded pursuant to paragraph (1) or (2) shall not be awarded to a noncompliant bidder and shall not be used to satisfy any applicable minimum requirements.

(4) In order to be eligible for the 5-percent preference authorized pursuant to this section, a business shall submit all required substantiating documentation and information needed by the state agency to determine if the business is eligible for the preference, including, but not limited to, documentation regarding who the manufacturer or assembler of the solar photovoltaic system will be and the location or locations where the solar photovoltaic system will be manufactured or assembled.

(5) If, after application of the preferences set forth in this section, the bids are tied as the lowest responsible bid or the highest scored bid, then the tie shall be resolved in favor of the entity that has the higher number of full-time assembly or manufacturing employees in California at the time of the tie.

(b) The Department of General Services shall establish a process to verify that a business meets the criteria for the 5-percent preference.

~~SECTION 1. Section 32121 of the Health and Safety Code, as amended by Section 25.4 of Chapter 699 of the Statutes of 2010, is amended to read:~~

~~32121. Each local district shall have and may exercise the following powers:~~

~~(a) To have and use a corporate seal and alter it at its pleasure.~~

~~(b) To sue and be sued in all courts and places and in all actions and proceedings whatever.~~

~~(c) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district, and to control, dispose of, convey, and encumber the same and create a leasehold interest in the same for the benefit of the district.~~

~~(d) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district.~~

~~(e) To establish one or more trusts for the benefit of the district, to administer any trust declared or created for the benefit of the district, to designate one or more trustees for trusts created by the district, to receive by gift, devise, or bequest, and hold in trust or otherwise, property, including corporate securities of all kinds, situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of the district.~~

~~(f) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district, to perform the functions in respect to the legal affairs of the district as the board may direct, and to call upon the district attorney of the county in which the greater part of the land in the district is situated for legal advice and assistance in all matters concerning the district, except that if that county has a county counsel, the directors may call upon the county counsel for legal advice and assistance.~~

~~(g) To employ any officers and employees, including architects and consultants, the board of directors deems necessary to carry on properly the business of the district.~~

~~(h) To prescribe the duties and powers of the health care facility administrator, secretary, and other officers and employees of any health care facilities of the district, to establish offices as may be appropriate and to appoint board members or employees to those offices, and to determine the number of, and appoint, all officers and employees and to fix their compensation. The officers and employees shall hold their offices or positions at the pleasure of the boards of directors.~~

~~(i) To do any and all things that an individual might do that are necessary for, and to the advantage of, a health care facility and a nurses' training school, or a child care facility for the benefit of employees of the health care facility or residents of the district.~~

~~(j) To establish, maintain, and operate, or provide assistance in the operation of, one or more health facilities or health services, including, but not limited to, outpatient programs, services, and facilities; retirement programs, services, and facilities; chemical dependency programs, services, and facilities; or other health care programs, services, and facilities and activities at any location within or without the district for the benefit of the district and the people served by the district.~~

~~"Health care facilities," as used in this subdivision, means those facilities defined in subdivision (b) of Section 32000.1 and specifically includes freestanding chemical dependency recovery units. "Health facilities," as used in this subdivision, may also include those facilities defined in subdivision (d) of Section 15432 of the Government Code.~~

~~(k) To do any and all other acts and things necessary to carry out this division.~~

~~(*l*) To acquire, maintain, and operate ambulances or ambulance services within and without the district.~~

~~(m) To establish, maintain, and operate, or provide assistance in the operation of, free clinics, diagnostic and testing centers, health education programs, wellness and prevention programs, rehabilitation, aftercare, and any other health care services provider, groups, and organizations that are necessary for the maintenance of good physical and mental health in the communities served by the district.~~

(n) To establish and operate in cooperation with its medical staff a coinsurance plan between the hospital district and the members of its attending medical staff.

(o) To establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the health care district.

(p) (1) To transfer, at fair market value, any part of its assets to one or more corporations to operate and maintain the assets. A transfer pursuant to this paragraph shall be deemed to be at fair market value if an independent consultant, with expertise in methods of appraisal and valuation and in accordance with applicable governmental and industry standards for appraisal and valuation, determines that fair and reasonable consideration is to be received by the district for the transferred district assets. Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(2) To transfer, for the benefit of the communities served by the district, in the absence of adequate consideration, any part of the assets of the district, including, without limitation, real property, equipment, and other fixed assets, current assets, and cash, relating to the operation of the district's health care facilities to one or more nonprofit corporations to operate and maintain the assets.

(A) A transfer of 50 percent or more of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if all of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least five properly noticed open and public meetings in compliance with Section 32106 and

~~the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).~~

~~(ii) The transfer agreement provides that the hospital district shall approve all initial board members of the nonprofit corporation and any subsequent board members as may be specified in the transfer agreement.~~

~~(iii) The transfer agreement provides that all assets transferred to the nonprofit corporation, and all assets accumulated by the corporation during the term of the transfer agreement arising out of, or from, the operation of the transferred assets, are to be transferred back to the district upon termination of the transfer agreement, including any extension of the transfer agreement.~~

~~(iv) The transfer agreement commits the nonprofit corporation to operate and maintain the district's health care facilities and its assets for the benefit of the communities served by the district.~~

~~(v) The transfer agreement requires that any funds received from the district at the outset of the agreement or any time thereafter during the term of the agreement be used only to reduce district indebtedness, to acquire needed equipment for the district health care facilities, to operate, maintain, and make needed capital improvements to the district's health care facilities, to provide supplemental health care services or facilities for the communities served by the district, or to conduct other activities that would further a valid public purpose if undertaken directly by the district.~~

~~(vi) The transfer agreement includes the appraised fair market value, from an independent consultant with expertise in methods of appraisal and valuation and in accordance with applicable governmental and industry standards for appraisal and valuation, of any asset transferred pursuant to this paragraph.~~

~~(vii) The appraisal that is used to determine the fair market value that is included within the transfer agreement is performed within the six months preceding the date on which the district approves the transfer agreement.~~

~~(B) A transfer of 10 percent or more but less than 50 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:~~

~~(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed~~

~~open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).~~

~~(ii) The transfer agreement meets all of the requirements of clauses (iii) to (v), inclusive, of subparagraph (A).~~

~~(C) Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The resolution shall identify the asset proposed to be transferred, its appraised fair market value, and the amount of consideration that the district is to receive in exchange for the transfer. The appraisal shall be performed by an independent consultant with expertise in methods of appraisal and valuation and in accordance with applicable governmental and industry standards for appraisal and valuation within the six months preceding the date on which the district approves the resolution. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.~~

~~(D) Notwithstanding the other provisions of this paragraph, a hospital district shall not transfer any portion of its assets to a private nonprofit organization that is owned or controlled by a religious creed, church, or sectarian denomination in the absence of adequate consideration.~~

~~(3) If the district board has previously transferred less than 50 percent of the district's assets pursuant to this subdivision, before any additional assets are transferred, the board shall hold a public hearing and shall make a public determination that the additional assets to be transferred will not, in combination with any assets previously transferred, equal 50 percent or more of the total assets of the district.~~

~~(4) The amendments to this subdivision made during the 1991–92 Regular Session, the amendments made to this subdivision and to Section 32126 made during the 1993–94 Regular Session,~~

~~and the amendments made to this subdivision during the 2011–12 Regular Session, shall only apply to transfers made on or after the effective dates of the acts amending this subdivision. The amendments to this subdivision made during those sessions shall not apply to either of the following:~~

~~(A) A district that has discussed and adopted a board resolution prior to September 1, 1992, that authorizes the development of a business plan for an integrated delivery system.~~

~~(B) A lease agreement, transfer agreement, or both between a district and a nonprofit corporation that were in full force and effect as of September 1, 1992, for as long as that lease agreement, transfer agreement, or both remain in full force and effect.~~

~~(5) Notwithstanding paragraph (4), if substantial amendments are proposed to be made to a transfer agreement described in subparagraph (A) or (B) of paragraph (4), the amendments shall be fully discussed in advance of the district board's decision to adopt the amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).~~

~~(6) Notwithstanding paragraphs (4) and (5), a transfer agreement described in subparagraph (A) or (B) of paragraph (4) that provided for the transfer of less than 50 percent of a district's assets shall be subject to the requirements of this subdivision when subsequent amendments to that transfer agreement would result in the transfer, in sum or by increment, of 50 percent or more of a district's assets to the nonprofit corporation.~~

~~(7) For purposes of this subdivision, a "transfer" means the transfer of ownership of the assets of a district. A lease of the real property or the tangible personal property of a district shall not be subject to this subdivision except as specified in Section 32121.4 and as required under Section 32126.~~

~~(8) Districts that request a special election pursuant to paragraph (1) or (2) shall reimburse counties for the costs of that special election as prescribed pursuant to Section 10520 of the Elections Code.~~

~~(9) (A) Nothing in this section, including subdivision (j), shall be construed to permit a local district to obtain or be issued a single consolidated license to operate a separate physical plant as a skilled~~

~~nursing facility or an intermediate care facility that is not located within the boundaries of the district.~~

~~(B) Notwithstanding subparagraph (A), Eastern Plumas Health Care District may obtain and be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility that is located on the campus of the Sierra Valley District Hospital. This subparagraph shall have no application to any other district and is intended only to address the urgent need to preserve skilled nursing or intermediate care services within the rural County of Sierra.~~

~~(C) Subparagraph (B) shall only remain operative until the Sierra Valley District Hospital is annexed by the Eastern Plumas Health Care District. In no event shall the Eastern Plumas Health Care District increase the number of licensed beds at the Sierra Valley District Hospital during the operative period of subparagraph (B).~~

~~(10) A transfer of any of the assets of a district to one or more nonprofit corporations to operate and maintain the assets shall not be required to meet paragraphs (1) to (9), inclusive, of this subdivision if all of the following conditions apply at the time of the transfer:~~

~~(A) The district has entered into a loan that is insured by the State of California under Chapter 1 (commencing with Section 129000) of Part 6 of Division 107.~~

~~(B) The district is in default of its loan obligations, as determined by the Office of Statewide Health Planning and Development.~~

~~(C) The Office of Statewide Health Planning and Development and the district, in their best judgment, agree that the transfer of some or all of the assets of the district to a nonprofit corporation or corporations is necessary to cure the default, and will obviate the need for foreclosure. This cure of default provision shall be applicable prior to the office foreclosing on district hospital assets. After the office has foreclosed on district hospital assets, or otherwise taken possession in accordance with law, the office may exercise all of its powers to deal with and dispose of hospital property.~~

~~(D) The transfer and all arrangements necessary thereto are discussed in advance of the transfer in at least one properly noticed open and public meeting in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).~~

~~The meeting referred to in this paragraph shall be noticed and held within 90 days of notice in writing to the district by the office of an event of default. If the meeting is not held within this 90-day period, the district shall be deemed to have waived this requirement to have a meeting.~~

~~(11) If a transfer under paragraph (10) is a lease, the lease shall provide that the assets shall revert to the district at the conclusion of the leasehold interest. If the transfer is a sale, the proceeds shall be used first to retire the obligation insured by the office, then to retire any other debts of the district. After providing for debts, any remaining funds shall revert to the district.~~

~~(12) A health care district shall report to the Attorney General, within 30 days of any transfer of district assets to one or more nonprofit or for-profit corporations, the type of transaction and the entity to whom the assets were transferred or leased.~~

~~(q) To contract for bond insurance, letters of credit, remarketing services, and other forms of credit enhancement and liquidity support for its bonds, notes, and other indebtedness and to enter into reimbursement agreements, monitoring agreements, remarketing agreements, and similar ancillary contracts in connection therewith.~~

~~(r) To establish, maintain, operate, participate in, or manage capitated health care service plans, health maintenance organizations, preferred provider organizations, and other managed health care systems and programs properly licensed by the Department of Insurance or the Department of Managed Care, at any location within or without the district for the benefit of residents of communities served by the district. However, that activity shall not be deemed to result in, or constitute, the giving or lending of the district's credit, assets, surpluses, cash, or tangible goods to, or in aid of, any person, association, or corporation in violation of Section 6 of Article XVI of the California Constitution.~~

~~Nothing in this section shall be construed to authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions Code.~~

~~Any agreement to provide health care coverage that is a health care service plan, as defined in subdivision (f) of Section 1345, shall be subject to Chapter 2.2 (commencing with Section 1340) of Division 2, unless exempted pursuant to Section 1343 or 1349.2.~~

~~A district shall not provide health care coverage for any employee of an employer operating within the communities served by the district, unless the Legislature specifically authorizes, or has authorized in this section or elsewhere, the coverage.~~

~~Nothing in this section shall be construed to authorize any district to contribute its facilities to any joint venture that could result in transfer of the facilities from district ownership.~~

~~(s) To provide health care coverage to members of the district's medical staff, employees of the medical staff members, and the dependents of both groups, on a self-pay basis.~~

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