

Date of Hearing: September 13, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1290 (Gloria) – As Amended September 6, 2019

**SUBJECT:** Water projects: financial assistance and construction financing: Pure Water San Diego Program.

**SUMMARY:** Requires the use of project labor agreements (PLAs) as a condition of receiving construction financing under the Safe Drinking Water State Revolving Fund Law (Drinking Water Fund) or financial assistance from the State Water Pollution Control Revolving Fund (Water Pollution Fund) for work performed for any portion of the Pure Water San Diego Program (Pure Water Program). Specifically, **this bill:**

- 1) Requires, as a condition of receiving construction financing from the Drinking Water Fund for work performed at the City of San Diego's North City Water Reclamation Plant (Reclamation Plant), North City Pure Water Facility (Pure Water Facility), or any other portion of the Pure Water Program, an applicant to ensure that any construction contract awarded on or after January 1, 2020, for any phase of the Pure Water Program, including, but not limited to, expanding or modifying wastewater conveyance, detention, or treatment processes at the Reclamation Plant, work on the Pure Water Facility or the adjacent Pure Water Pump Station, or work on any other portion of the Pure Water Program, requires the contractor to enter into a PLA that meets the requirements of existing law governing public entities' use of PLAs.
- 2) Requires, as a condition of receiving financial assistance from the Water Pollution Fund for work performed at the Reclamation Plant, Pure Water Facility, or any other portion of the Pure Water Program, an applicant to ensure that any construction contract awarded on or after January 1, 2020, for any phase of the Pure Water San Diego Program, including, but not limited to, expanding or modifying wastewater conveyance, detention, or treatment processes at the Reclamation Plant, work on the Pure Water Facility or the adjacent Pure Water Pump Station, or work on any other portion of the Pure Water Program, requires the contractor to enter into a PLA that meets the requirements of existing law governing public entities' use of PLAs.
- 3) Requires the condition on receiving construction financing and financial assistance imposed pursuant to this bill to remain in effect only until completion of all phases of the Pure Water Program.
- 4) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique conditions in the City of San Diego that make it necessary to expeditiously develop and construct the Pure Water Program water facilities described in this measure.

**EXISTING LAW:**

- 1) Defines public works contracts as any construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part from public funds.
- 2) Establishes the Local Agency Public Construction Act, which sets forth the procedures local agencies are required to use when soliciting and evaluating bids or proposals for the construction of a public work or improvement.
- 3) Authorizes public entities to use, enter into, or require contractors to enter into a PLA for a construction project only if the agreement includes all of the following taxpayer protection provisions:
  - a) The agreement prohibits discrimination based on race, national origin, religion, sex, sexual orientation, political affiliation, or membership in a labor organization in hiring and dispatching workers for the project;
  - b) The agreement permits all qualified contractors and subcontractors to bid for and be awarded work on the project without regard to whether they are otherwise parties to collective bargaining agreements;
  - c) The agreement contains an agreed-upon protocol concerning drug testing for workers who will be employed on the project;
  - d) The agreement contains guarantees against work stoppages, strikes, lockouts, and similar disruptions of the project; and,
  - e) The agreement provides that disputes arising from the agreement shall be resolved by a neutral arbitrator.
- 4) Provides that the members of the governing board of a local public entity may choose by majority vote whether to use, enter into, or require contractors to enter into a PLA that includes all the taxpayer protection provisions specified in 3), above, for a specific project or projects awarded by that entity and whether to allocate funding to a specific project covered by such an agreement. A charter provision, initiative, or ordinance shall not prevent the governing board of a local public entity, other than a charter city, from exercising this authority on a project-specific basis.
- 5) Provides that, if a charter provision, initiative, or ordinance of a charter city prohibits the governing board's consideration of a PLA that includes all the taxpayer protection provisions described in 3), above, for a project to be awarded by the city, or prohibits the governing board from considering whether to allocate funds to a city-funded project covered by such an agreement, then state funding or financial assistance shall not be used to support that project.
- 6) Provides that, if a charter provision, initiative, or ordinance of a charter city prohibits, limits, or constrains in any way the governing board's authority or discretion to adopt, require, or utilize a PLA that includes all the taxpayer protection provisions described in 3), above, for some or all of the construction projects to be awarded by the city, then state funding or

financial assistance shall not be used to support any construction projects awarded by the city.

- 7) Provides the following definitions:
- a) “PLA” means a prehire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in the United States Code governing unfair labor practices and allowable labor agreements in the building and construction industry; and,
  - b) “Public Entity” means a state, county, city, city and county, district, public authority, public agency, municipal corporation, or any other political subdivision or public corporation in the state.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

**COMMENTS:**

- 1) **Bill Summary and Author’s Statement.** This bill requires the use of PLAs as a condition of receiving construction financing from the Drinking Water Fund or financial assistance from the Water Pollution Fund for work performed for any portion of the Pure Water Program.

According to the author, “Pure Water is a critically important project for the San Diego region. In the midst of climate change and seemingly endless droughts, Pure Water is critical to our water supply reliability and conservation goals. Right now, this major investment is in jeopardy with millions of taxpayer dollars at stake. This bill will save this project from almost certain failure and get it back on track. Since late June, Pure Water San Diego has been stalled due to frivolous litigation claiming that the project violates Proposition A – a 2012 ballot measure that prevents the City from mandating project labor agreements on construction except when required by state or federal law. AB 1290 would remedy the legal dispute of the Pure Water program, as a condition of receiving state funds, to permit a project labor agreement. According to the City of San Diego’s court filings, costs are projected to increase \$4 million for each month of delay beyond August 2019. Additionally, without legal certainty, the City could lose \$646.6 million from the State Water Resources Control Board and could receive significant fines if it does not meet key milestones set by regulators.”

This bill is sponsored by the author.

- 2) **Background.** A PLA is a pre-hire agreement that establishes the terms and conditions of employment for a specific construction project. PLAs are completed before any workers are hired to determine the wage rates and benefits of all employees working on the project and to agree to prevent any strikes, lockouts, or other work stoppages for the length of the project. The terms of the agreement apply to all contractors and subcontractors who successfully bid on the project, union or non-union, and supersede any existing collective bargaining agreements.

PLAs are used on both public and private projects, and their specific provisions are tailored by the contracting parties to meet the needs of a particular project. By governing and establishing work rules, pay rates, and dispute resolution processes for every worker on the project, PLAs can maximize project stability, efficiency and productivity. PLAs can also help minimize the risks and inconvenience to the public that can accompany public work projects, helping ensure that projects are completed on time and on or under budget.

PLAs are not mandated under California law. However, if a state or local agency chooses to use a PLA for a public construction project, the PLA must include minimum taxpayer-protection criteria. Governing boards of local agencies can choose by majority vote whether or not to use a PLA that includes these taxpayer-protection criteria. Governing boards of local agencies can also decide by majority vote whether or not to fund a project covered by such a PLA. Because of the home-rule provision of the California Constitution, these provisions do not apply to charter cities.

Local agencies, except charter cities, are also prohibited from adopting blanket prohibitions against using PLAs. Local governing boards have the authority to decide on a case-by-case basis whether to use PLAs. If a charter city has banned PLAs for a project to be awarded by the city, state financial assistance must not be used for that project. In addition, if a charter city has an ordinance that prevents the city's governing body from considering the use of PLAs, state funding cannot be used to support *any* projects awarded by the city.

- 3) **Proposition A.** Voters in the City of San Diego approved Proposition A in 2012 to prohibit the City from requiring a PLA on City construction projects. The text of Proposition A reads (in part):

“Except as required by state or federal law as a contracting or procurement obligation, or as a condition of the receipt of state or federal funds, the City shall not require a Contractor on a Construction Project to execute or otherwise become a party to a Project Labor Agreement as a condition of bidding, negotiating, awarding or the performing of a contract.”

- 4) **Pure Water Program.** According to the City of San Diego's Public Utilities department, “Pure Water San Diego is the City of San Diego's phased, multi-year program that will provide one-third of San Diego's water supply locally by 2035. The Pure Water San Diego Program will use proven water purification technology to clean recycled water to produce safe, high-quality drinking water. The Program offers a cost-effective investment for San Diego's water needs and will provide a reliable, sustainable water supply. Phase 1 includes several projects that will clean recycled water to produce 30 million gallons per day of high-quality purified water starting in 2023, reducing the City of San Diego's dependence on imported water.”

The San Diego City Council decided in November of 2018 to require contractors to use union apprentices on two of the project's 11 contracts. Bidders were provided four options for complying with this requirement, one of which was the submission of a PLA in their bid documents. The City began soliciting construction contract proposals in February of this year. The San Diego chapter of the Associated General Contractors of America sought a preliminary injunction in May to enjoin the City from requiring bidding contractors to use

union apprentices, arguing that this contract requirement violated Proposition A. In granting the injunction in June, Judge John S. Meyer wrote (in part, citations omitted):

“According to the City, the City of San Diego has been allocated \$30 million in state grants to various Pure Water San Diego Phase 1 projects, including the North Bay Pure Water Facility. The City also applied to the California State Water Resources Control Board for a Clean Water State Revolving Fund (“SRF”) loan...Although there is evidence of state funding (for the project), there is no evidence that the State has conditioned receipt of these funds by requiring a Contractor (to) execute or be a party to a PLA. The exception set forth (in Proposition A) applies in cases when there is a State requirement as a condition to receiving state funds.”

- 5) **Drinking Water Fund and Water Pollution Fund.** The Drinking Water Fund was established by an amendment to the federal Safe Drinking Water Act in 1996, and provides low-interest loans, additional subsidy (principal forgiveness), and technical assistance to public water systems for infrastructure improvements that correct system deficiencies and improve drinking water quality.

The Water Pollution Fund was established by 1987 amendments to the Clean Water Act as a financial assistance program for a wide range of water infrastructure projects. The fund provides loans and other types of financial assistance to eligible recipients to construct municipal wastewater facilities, control nonpoint sources of pollution, build decentralized wastewater treatment systems, create green infrastructure projects, protect estuaries, and fund other water quality projects.

Both funds are administered by the State Water Resources Control Board.

- 6) **Arguments in Support.** The State Building and Construction Trades Council, in support, writes, “Although the City of San Diego has led the way on water conservation, a frivolous lawsuit places the project’s future at risk. AB 1290 will provide the Pure Water Project with legal certainty by requiring this project to be completed using a project labor agreement (PLA). Without AB 1290, the City could lose nearly \$200 million in State Revolving Loan Funds, jeopardizing the viability of the project. Additionally, each month of delay is estimated to cost the City of San Diego \$4 million unnecessarily.

“AB 1290 represents an urgent need to move forward with Pure Water – not only to increase water reliability, but to maintain important financial controls on this critical infrastructure investment. We believe this project would greatly benefit the City of San Diego by incorporating a project labor agreement to ensure it employs local workers, veterans, women, foster youth and justice-involved individuals that deserve a second chance.”

- 7) **Arguments in Opposition.** The California Chapters of the Associated General Contractors of America, in opposition, state, “AB 1290 was adopted to resolve a legal dispute over the City of San Diego’s contract requirements on the ‘Pure Water’ Wastewater Treatment Project. Setting aside the merits of that legal dispute, and the legislation’s potential effect to ongoing settlement efforts, AB 1290 is a violation of local control...”

“If enacted into law, AB 1290 would immediately be challenged in court over the long-standing legal precedent of ‘home rule,’ which allows local governments control of their own

Municipal affairs under the California Constitution. This legislation is also likely to be preempted by federal labor law. In summary, AB 1290, if passed, would compound the legal issues at stake, create uncertainty in the construction industry, and invite additional federal interference into state and local affairs.”

- 8) **Previous Legislation.** SB 829 (Rubio), Chapter 11, Statutes of 2012, prohibited the use of state funds for any charter city construction projects if the charter city has banned the consideration of the use of PLAs.

SB 922 (Steinberg), Chapter 431, Statutes of 2011, established parameters for the use of PLAs in public contracting, and prohibited state funding or financial assistance from supporting specified non-PLA projects.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California State Association of Electrical Workers  
California State Pipe Trades Council  
International Brotherhood of Electrical Workers, Local Union 569  
San Diego Audubon Society  
San Diego 350  
San Diego Coastkeeper  
San Diego County Supervisor Nathan Fletcher  
San Diego County Water Authority  
Sierra Club California  
State Building and Construction Trades Council  
United Association of Plumbers and Steamfitters, Local Union #230  
Western States Council of Sheet Metal Workers

### **Opposition**

Associated General Contractors of America, San Diego Chapter  
Independent Roofing Contractors of California  
Western Electrical Contractors Association

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