

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: 06/20/2016
POSITION: Oppose

BILL NUMBER: AB 2844
AUTHOR: Bloom, Richard

BILL SUMMARY: Public contracts: discrimination.

This bill requires a person who submits a bid or proposal to a state agency, or who otherwise proposes to enter into or renew a contract with a state agency, to certify that they have complied with the California Fair Employment and Housing Act (FEHA) and the Unruh Civil Rights (Unruh) Act.

FISCAL SUMMARY

The Department of Justice (DOJ) estimates costs of approximately \$1 million and four additional permanent staff positions to receive and investigate complaints, and to litigate as necessary. Costs would depend on the number of noncompliance claims initiated.

The Department of General Services (DGS) indicates this bill would result in unknown, potentially significant costs to the extent that there are contractors who would be unable to make the required certification. In general, exclusion of bidders from contracts can result in higher contract prices, and thus higher costs to the state and local governments.

COMMENTS

The Department of Finance opposes this bill because it would result in additional costs without providing additional protections against discrimination beyond existing state law. This bill merely requires self-certification of compliance with existing law, yet incurs costs to the General Fund, which is inconsistent with the current budget.

Existing law under FEHA and the Unruh Act prohibits discrimination in employment, housing, public accommodation, and services provided by business establishments on the basis of certain personal characteristics. Specified Government Code sections explicitly prohibit discrimination on the basis of many of these same characteristics in the conduct, operation, or administration of any program or activity that is by the state or by any state agency, funded directly by the state, or receives any financial assistance from the state. The Public Contract Code similarly affirms these nondiscrimination policies and prohibits a state agency from entering into certain contracts with any contractor unless the contractor complies with all appropriate state laws concerning wages, workplace safety, rights to association and assembly, and nondiscrimination standards as well as appropriate federal laws.

This bill would require certain contractors to self-certify, under penalty of perjury, that they have complied with the FEHA and the Unruh Act; and that any policy that they have adopted against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, is not used as a pretext for discrimination in violation of the FEHA or the Unruh Act. Further, this bill would authorize the Attorney General to receive and investigate complaints regarding violations of, and to bring suit to enforce, these provisions.

Analyst/Principal (0211) J.Fitzpatrick	Date	Program Budget Manager Chris Ryan	Date
Department Deputy Director		Date	
Governor's Office:	By:	Date:	Position Approved _____ Position Disapproved _____
BILL ANALYSIS			Form DF-43 (Rev 03/95 Buff)

Bloom, Richard

06/20/2016

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COMMENTS (continued)

According to the DOJ, the Civil Rights Enforcement Section (CRES) and the False Claims (FC) Unit would experience a significant increase in workload as a result of this measure.

The enforcement of the provisions of this measure would be a new area of law for the CRES. The CRES would be responsible for investigating companies that have obtained a government contract, that are alleged to be engaged in discriminatory business practices. The staff would receive, investigate, and respond to complaints regarding businesses that are in potential violation of the Unruh Civil Rights Act and the California Fair Employment and Housing Act, as specified.

This bill could also result in an increase in demand for investigating and prosecuting companies, that have obtained a government contract, that have allegedly committed perjury by giving false certifications that the company has complied with the Unruh Civil Rights Act, the California Fair Employment and Housing Act, as specified. The FC estimates it would investigate and litigate a significant number of false certification cases in response to the provisions of this measure.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)						Fund Code
	LA	(Dollars in Thousands)						
	CO	PROP						
	RV	98	FC	2016-2017	FC	2017-2018	FC	2018-2019
0820/Justice	SO	No	C	184	C	313	C	313 0001
0820/Justice	SO	No	C	184	C	313	C	313 0378
7760/Dept Gen Svc	SO	No		----	See Fiscal Analysis	----		0666
9990/Misc Accts	SO	No		----	See Fiscal Analysis	----		0001
9990/Misc Accts	SO	No		----	See Fiscal Analysis	----		0494
9990/Misc Accts	SO	No		----	See Fiscal Analysis	----		0988
9990/Misc Accts	SO	No		----	See Fiscal Analysis	----		0994
<u>Fund Code</u>	<u>Title</u>							
0001	General Fund							
0378	False Claims Act Fund							
0494	Other - Unallocated Special Funds							
0666	Service Revolving Fund							
0988	Other - Unallocated NGC Funds							
0994	Other Unclassified Funds							