

AMENDED IN SENATE JUNE 20, 2016
AMENDED IN ASSEMBLY MAY 31, 2016
AMENDED IN ASSEMBLY APRIL 26, 2016
AMENDED IN ASSEMBLY APRIL 11, 2016
AMENDED IN ASSEMBLY MARCH 28, 2016
AMENDED IN ASSEMBLY MARCH 17, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2844

Introduced by Assembly Member Bloom

(Principal coauthors: Assembly Members Levine, Medina, and Nazarian)

(Principal coauthors: Senators Allen, Block, Glazer, Hertzberg, Jackson, and Wolk)

(Coauthors: Assembly Members Campos, Dababneh, and Olsen)

February 19, 2016

An act to add ~~Chapter 2.6 (commencing with Section 2100) to Part 1 of Division 2 of Section 2010~~ to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2844, as amended, Bloom. Public contracts: ~~Boycott, Divestment, and Sanctions of Recognized Sovereign Nations or Peoples. discrimination.~~

Existing law governs the procurement process for contracts of specified public entities. ~~Existing law prohibits a person that, at the time of bid or proposal for a new contract or renewal of an existing~~

~~contract, engages in investment activities in Iran from bidding on, submitting a proposal for, or entering into, a contract with a public entity for goods or services of \$1,000,000 or more.~~

~~This bill would require the Attorney General to develop, maintain, and post on its Internet Web site, a list of companies that are engaging in discriminatory business practices in furtherance of a boycott of any sovereign nation or peoples recognized by the government of the United States. The bill would also require the Attorney General, on or before January 1, 2018, to provide an assessment to the Legislature of the constitutionality of prohibiting a company on the list from entering into a contract with a public entity.~~

This bill would require a person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a state agency with respect to any contract in the amount of \$100,000 or more to certify, under penalty of perjury, at the time the bid or proposal is submitted or the contract is renewed that they have complied with the Unruh Civil Rights Act and the California Fair Employment and Housing 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 Unruh Civil Rights Act or the California Fair Employment and Housing Act. By requiring a person to certify under penalty of perjury, this bill would expand the definition of a crime, thereby imposing a state-mandated local program. The bill would authorize the Attorney General to receive and investigate complaints regarding violations of, and to bring suit to enforce, these provisions.

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 no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

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

- 1 *SECTION 1. The Legislature hereby finds and declares all of*
- 2 *the following:*

1 (a) California is a leader in protecting civil rights and
2 preventing discrimination.

3 (b) California’s robust nondiscrimination laws include
4 protections on the basis of religion, race, national origin, sex,
5 sexual orientation, gender identity, gender expression, and
6 disability, among other characteristics.

7 (c) California’s strong public policy against discrimination is
8 reflected in numerous statutes. The California Fair Employment
9 and Housing Act (Chapter 7 (commencing with Section 12960) of
10 Part 2.8 of Division 3 of Title 2 of the Government Code) and the
11 Unruh Civil Rights Act (Section 51 of the Civil Code) prohibit
12 discrimination in employment, housing, public accommodation,
13 and services provided by business establishments on the basis of
14 certain personal characteristics, such as sex, race, color, religion,
15 ancestry, national origin, age, disability, medical condition, genetic
16 information, marital status, or sexual orientation. Section 11135
17 of the Government Code specifically prohibits discrimination on
18 the basis of many of these same characteristics in the conduct,
19 operation, or administration of any program or activity that is by
20 the state or by any state agency, funded directly by the state, or
21 receives any financial assistance from the state.

22 (d) California’s Public Contract Code similarly affirms these
23 nondiscrimination policies and prohibits a state agency from
24 entering into certain contracts with any contractor unless the
25 contractor complies with all appropriate state laws concerning
26 wages, workplace safety, rights to association and assembly, and
27 nondiscrimination standards as well as appropriate federal laws.

28 (e) Both freedom of speech and religion are cornerstones of
29 law and public policy in the United States, and the Legislature
30 strongly supports and affirms these important freedoms.

31 (f) The exercise of one’s First Amendment rights is not a
32 justification for engaging in acts of discrimination.

33 (g) California must take action to avoid supporting or financing
34 discrimination against protected classes.

35 (h) It is the policy of the State of California to promote fairness
36 and equality and to combat discrimination and if California hopes
37 to remain a national leader on behalf of these communities, action
38 must be taken to recognize that discriminatory laws and policies
39 are unacceptable for California’s partners in business.

1 (i) California has significant influence in the marketplace. The
2 state at times operates not as a market regulator, but as a market
3 participant, and in this latter role it may determine that companies
4 engaging in discriminatory actions in the conduct and operation
5 of their business adversely affects the state's procurement activities
6 and places the state in a position of supporting activities that could
7 be seen as a violation of the nondiscrimination policies of the State
8 of California.

9 (j) It is the intent of the Legislature to ensure that taxpayer funds
10 are not used to do business with or otherwise support any state or
11 private entity that engages in discriminatory actions against
12 individuals under the pretext of exercising First Amendment rights.
13 This includes, but is not limited to, discriminatory actions taken
14 against individuals of the Jewish faith under the pretext of a
15 constitutionally protected boycott or protest of the State of Israel.

16 (k) It is the intent of the Legislature to ensure that taxpayer
17 funds are not used to do business with or support discriminatory
18 actions against any individuals.

19 SEC. 2. Section 2010 is added to the Public Contract Code, to
20 read:

21 2010. (a) A person that submits a bid or proposal to, or
22 otherwise proposes to enter into or renew a contract with, a state
23 agency with respect to any contract in the amount of one hundred
24 thousand dollars (\$100,000) or more shall certify, under penalty
25 of perjury, at the time the bid or proposal is submitted or the
26 contract is renewed, all of the following:

27 (1) That they have complied with the Unruh Civil Rights Act
28 (Section 51 of the Civil Code).

29 (2) That they have complied with the California Fair
30 Employment and Housing Act (Chapter 7 (commencing with
31 Section 12960) of Part 2.8 of Division 3 of Title 2 of the
32 Government Code).

33 (3) That any policy that they have against any sovereign nation
34 or peoples recognized by the government of the United States,
35 including, but not limited to, the nation and people of Israel, is
36 not used as a pretext for discrimination in violation of the Unruh
37 Civil Rights Act (Section 51 of the Civil Code) or the California
38 Fair Employment and Housing Act (Chapter 7 (commencing with
39 Section 12960) of Part 2.8 of Division 3 of Title 2 of the
40 Government Code).

1 (b) *The Attorney General may receive and investigate complaints*
2 *regarding violations of, and may bring suit to enforce the*
3 *provisions of, subdivision (a).*

4 *SEC. 3. No reimbursement is required by this act pursuant to*
5 *Section 6 of Article XIII B of the California Constitution because*
6 *the only costs that may be incurred by a local agency or school*
7 *district will be incurred because this act creates a new crime or*
8 *infraction, eliminates a crime or infraction, or changes the penalty*
9 *for a crime or infraction, within the meaning of Section 17556 of*
10 *the Government Code, or changes the definition of a crime within*
11 *the meaning of Section 6 of Article XIII B of the California*
12 *Constitution.*

13 ~~SECTION 1. Chapter 2.6 (commencing with Section 2100) is~~
14 ~~added to Part 1 of Division 2 of the Public Contract Code, to read:~~

15
16 ~~CHAPTER 2.6. BOYCOTT, DIVESTMENT, AND SANCTIONS OF~~
17 ~~RECOGNIZED SOVEREIGN NATIONS OR PEOPLES~~

18
19 ~~2100. (a) The Attorney General shall develop, maintain, and~~
20 ~~post on the Internet Web site of the Office of the Attorney General~~
21 ~~a list of companies that have engaged in discriminatory business~~
22 ~~practices in furtherance of a boycott of any sovereign nation or~~
23 ~~peoples recognized by the government of the United States.~~

24 ~~(b) (1) On or before January 1, 2018, the Attorney General~~
25 ~~shall provide an assessment to the Legislature of the~~
26 ~~constitutionality of prohibiting a company on the list developed~~
27 ~~pursuant to subdivision (a) from entering into a contract with a~~
28 ~~public entity.~~

29 ~~(2) (A) The requirement for submitting a report imposed under~~
30 ~~paragraph (1) is inoperative on January 1, 2022, pursuant to Section~~
31 ~~10231.5 of the Government Code.~~

32 ~~(B) A report to be submitted pursuant to paragraph (1) shall be~~
33 ~~submitted in compliance with Section 9795 of the Government~~
34 ~~Code.~~

35 ~~(c) For the purposes of this section, the following definitions~~
36 ~~shall apply:~~

37 ~~(1) (A) "Boycott" means refusing to deal with, terminating~~
38 ~~business activities with, or taking other actions that are intended~~
39 ~~to penalize, inflict economic harm, or otherwise limit commercial~~

- 1 relations with the boycotted entity for reasons other than business,
- 2 investment, or commercial reasons.
- 3 (B) “Boycott” does not include any of the following:
- 4 (i) A decision based on business or economic reasons.
- 5 (ii) Termination or prohibition of commercial activity within a
- 6 particular jurisdiction that is required by federal or state law.
- 7 (2) “Company” means a sole proprietorship, organization,
- 8 association, corporation, partnership, joint venture, limited
- 9 partnership, limited liability partnership, limited liability company,
- 10 or other entity or business association, including all wholly owned
- 11 subsidiaries, majority-owned subsidiaries, and parent companies,
- 12 that exists for the purpose of making profit.
- 13 (3) “Discriminatory business practices” means business
- 14 arrangements that are prohibited by Sections 16721 and 16721.5
- 15 of the Business and Professions Code.
- 16 (4) “Public entity” shall have the same meaning as defined in
- 17 subdivision (a) of Section 5100.