

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 1303 (Caballero)
Version: April 18, 2024
Hearing Date: April 23, 2024
Fiscal: Yes
Urgency: No
ID

SUBJECT

Public works

DIGEST

This bill creates a prohibition on a private, third-party labor compliance entity for a public works project from having a conflict of interest, and creates a process for such an entity to disclose any potential conflicts of interest and withhold contract payments when it determines that a contractor has violated the prevailing wage requirements.

EXECUTIVE SUMMARY

When a public agency contracts out to a contractor for the completion of a public works project, the contractor must pay a prevailing wage for work of a similar character in the locality of the project to all workers on the public works project. The agency must ensure that these prevailing wages provisions are followed. In order to do so, some agencies contract for private, third-party labor compliance entities to monitor and enforce compliance. However, few laws regulate these third-party labor compliance entities, and the author reports that some have conflicts of interest with the contractors they are monitoring. Additionally, such entities do not follow any specific guidelines when they determine that a contractor has violated the prevailing wages rules and withholds funds from the contractor that unnecessarily delays the project. To address these issues, this bill provides that private, third-party labor compliance entities must disclose any potential conflicts of interest, and declare under penalty of perjury that they have no conflicts of interest before entering into a contract with an awarding agency for labor compliance. This bill also provides that a third-party compliance entity must, prior to withholding funds from a contractor for an alleged violation, notify the Division of Labor Standards Enforcement and confer with the parties regarding the violation. This bill requires a third-party labor compliance entity to provide a venue for a contractor to review and respond to any alleged violations within 20 days of a request for such review. This bill provides that its provisions may be enforced through a civil action by an aggrieved party, a joint labor-management committee, the Labor

Commissioner, and a public prosecutor, and that a prevailing plaintiff may obtain reasonable attorney's fees, costs, and expert witness fees. Lastly, this bill specifies that a violation of its provisions makes any contract between a private, third-party labor compliance entity and the awarding entity null and void, and subjects the labor compliance entity to a penalty of up to \$1,000. SB 1303 is sponsored by the California Labor Federation and the California-Nevada Conference of Operating Engineers, and is supported by the California Construction and Industrial Association, the California State Council of Sheet Metal Workers, the California State Pipe Trades Council, the Western States Council of Sheet Metal Workers, and the State Building and Construction Trades Council of California. The Committee received no timely opposition. SB 1303 passed out of the Senate Labor, Public Employment, and Retirement Committee by a vote of 4 to 1.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Defines a "public work" as construction, alteration, demolition, installation, or repair work done under contract and paid in part or in whole out of public funds, except for work done directly by a public utility company pursuant to Public Utilities Commission or other public authority. Includes work done for irrigation, utility, reclamation, improvement districts and other similar districts, street, sewer, or other improvement work, laying of carpet in specified circumstances, tree removal work, and public transportation demonstration projects. (Labor Code § 1720.)
- 2) Requires that, when a public agency contracts for a public works project, except for public works projects of \$1,000 or less, all workers on the public works project must be paid at least a prevailing rate of per diem wages for work of a similar character in the locality in which the public project is performed, including the prevailing rate for any holiday or overtime work. (Labor Code § 1771.)
- 3) Requires the Director of the Department of Industrial Relations (DIR) to determine the general prevailing rate of per diem wages, as specified, and specifies that the director's determination shall be final, except as specified. (Labor Code § 1770.)
- 4) Specifies that per diem wages applicable to public works projects includes employer payments for health and welfare, pension, vacation, travel, subsistence, training for apprenticeships, worker protection and assistance programs or committees as specified, administrative fees for industry advancement and collective bargaining agreements, and other similar purposes. (Labor Code § 1773.1.)
- 5) Specifies that an awarding agency undertaking any public work must specify in the call for bids for the contract, and in the bid specifications and in the contract itself,

what the general rate of per diem wages is for each craft, classification, or type of worker needed to execute the contract. (Labor Code § 1773.2.)

- 6) Requires that an awarding agency awarding a contract for a public works project must take cognizance of violations of the requirements by a contractor, and shall promptly report any suspected violations to the Labor Commissioner. (Labor Code § 1726.)
- 7) Specifies that, before making payments to the contractor of money due under the contract for a public work, the awarding body withhold and retain all amounts required to satisfy any civil wage and penalty assessed by the Labor Commissioner pursuant to a final order that is no longer subject to judicial review. (Labor Code § 1727.)
- 8) An awarding agency, if upon its own investigation determines that a violation has occurred by a contractor on the public works project, may withhold contract payments. (Labor Code § 1771.6.)
- 9) When an awarding agency withholds contract payments for a violation of these provisions, it must provide written notice of the withholding of contract payments to the contractor or subcontractor, any bonding company issuing a bond that secures the payment of wages, and to any surety on the bond, as specified. (Labor Code § 1771.6.)
- 10) An affected contractor or subcontractor may request a review of a civil wage and penalty assessment and withholding to the Labor Commissioner, if requested within 60 days after they are served with the notice of the assessment. Upon the contractor's request, a hearing before an impartial hearing officer within 90 days, at which the contractor will have the burden of proving that the basis for the civil wage and penalty assessment was incorrect. Within 45 days of the conclusion of the hearing, the director must issue a written decision regarding the assessment. An affected contractor or subcontractor may obtain review of this decision by filing a petition for a writ of mandate to the appropriate superior court. (Labor Code § 1742.)
- 11) A joint labor-management committee, established pursuant to the federal Labor Management Cooperation Act of 1978, may bring a civil action against an employer that fails to pay the prevailing wage to its employees for a public works project within 18 months of the later of the filing of a valid notice of completion in the office of the county recorder or the acceptance of the public work. A court must award restitution to an employee for unpaid wages, plus interest, and liquidated damages equal to the amount of the unpaid wages owed, and may impose civil penalties, injunctive relief, or any other appropriate form of equitable relief. (Labor Code § 1771.2.)

This bill:

- 1) Defines, for the purposes of its provisions, a “private labor compliance entity” to be a third-party company that is hired by an awarding agency to perform labor compliance and enforcement activities on public works projects on the agency’s behalf.
- 2) Prohibits a private labor compliance entity from providing labor compliance and enforcement activities on behalf of an awarding agency if it has a conflict of interest.
- 3) Requires that private labor compliance entities disclose a potential conflict of interest to the awarding agency and the DLSE, including if a client of the entity bids on, or has been awarded, a public works project over which the entity will provide labor compliance monitoring and enforcement.
- 4) Requires that private labor compliance entity, prior to entering into a contract for labor compliance and enforcement with an awarding agency, provide the awarding agency and the DLSE a signed declaration under penalty of perjury that it has no conflicts of interest.
- 5) Requires an awarding body or its agent, prior to withholding funds for an alleged violation of prevailing wages from a public works contractor, notify the Division of Labor Standards Enforcement (DLSE) and confer with the parties of the agreement to review relevant public works law. Requires that an awarding body or its agent withhold an amount that does not exceed the alleged underpayment and penalty assessments.
- 6) Requires, within 20 days of a written request for review by the contractor or subcontractor, that an awarding agency or its agency provide a venue for a public works contractor or subcontractor to review and respond to the alleged violations.
- 7) Requires that an awarding agency or its agent forward any unremedied alleged violations to DLSE for formal investigation within 45 days of withholding funds.
- 8) Provides that a violation of the bill’s provisions makes a contract between a private labor compliance entity and an awarding agency null and void, and subjects a violating private labor compliance entity to a penalty of at least \$1,000, including reasonable attorney’s fees, subject matter expert costs, and expenses.
- 9) Allows an aggrieved party, including a joint labor-management committee established pursuant to the Labor Management Cooperation Act of 1978, to bring a civil cause of action for a violation of the bill’s provisions, and requires that the court award reasonable attorney’s fees and costs, including expert witness fees, to a prevailing plaintiff.

- 10) Allows that the bill's provisions may be enforced by the Labor Commissioner or a public prosecutor, as defined in Labor Code Section 180.
- 11) Specifies that its provisions do not apply to specified awarding agencies that operate labor compliance programs approved by the DIR pursuant to Labor Code Section 1771.5:
 - a) the Department of Transportation;
 - b) the City of Los Angeles;
 - c) the Los Angeles Unified School District; and
 - d) the County of Sacramento.

COMMENTS

1. Author's statement

According to the author:

Labor laws protect the rights of workers and ensure that there is a mechanism to enforce compliance if an employer is not following the rules. Local government entities who contract for public works projects must pay prevailing wage and may contract with a private, third-party compliance company to ensure that the public works contractor is compliant with all the rules.

Currently, there are minimal guidelines or requirements that dictate third-party labor compliance entities conduct. This lack of rules can negatively impact public works projects, halting the construction when without notice the compliance entity withholds funds from the public works contractors, with no process in place to resolve the conflict. Without guardrails for how these compliance entities operate, the third party's labor compliance entities can continue to earn public dollars, even if they have problematic conflicts of interest on projects they are tasked with overseeing. Additionally, third-party labor compliance organizations are not required to have policies that mandate that they meet with awarding agencies to seek clarification and to negotiate possible violations prior to withholding funds.

SB 1303 will ensure that if a public agency contracts with a contractor to complete a public works project, and delegates the enforcement of labor compliance to a private, for profit third-party, that there are safeguards to protect the integrity of the process; Mandating accountability for third-party compliance companies and ensuring effective enforcement of labor laws consistent with state laws.

2. California's labor requirements for public works projects

Many of California's labor laws aim to protect the state's workers and ensure they are paid fairly and adequately for their work. These laws are of significant importance, as they ensure that workers can meet their basic needs and protect their right to just compensation for their labor. California leads the country in its protections of workers' rights and fair wages. However, wage theft, in which an employer does not pay a worker the amount the worker is due, or does not pay the worker for all of their working hours, is the largest form of theft in the nation.¹ Reports state that workers lost at least 338 million dollars to wage theft in 2021, and one of the top industries for wage theft was construction.² Thus, equally important to California's labor standards is the enforcement and ensuring compliance.

When a state or local agency completes any construction, demolition, installation, alteration, or repair work, or work on any irrigation, utility, or street, sewer, public transportation, or other infrastructure project through the use of public funds, it is considered a "public works" project. (Labor Code § 1720.) When a California state or local agency initiates a public works project, the agency often lacks the staff and expertise to carry out the project itself. Instead, it turns to contractors to which it awards funds and a contract to complete the project for the agency. Under state law, when a public agency contracts for a public works project, all workers employed on the public works project must be paid a prevailing wage for the locality, as determined by the Director of the Department of Industrial Relations (DIR). (Labor Code § 1771.) Furthermore, in any call for bids for a public works contract, as well as in the final contract for the contracted-for work, the agency must specify the prevailing wage rate for each type of worker needed for the project, or otherwise make the rate available upon request. (Labor Code § 1773.2.) The prevailing wage is based on the standard wages for a particular work or position, and is often based on the rate in local collective bargaining agreements. The function of prevailing wage laws is to ensure that a contractor's ability to obtain a public works contract is not based on paying lower wage rates than competing bidders. Thus, all bidders on a public works project are required to use the same wage rates when bidding for a public works project, and contractors cannot squeeze their employees or rely on nonunionized workers in order to outbid another contractor for the project.

¹ Brady Meixell & Ross Eisenbrey, Wage theft is a much bigger problem than other forms of theft – but workers remain mostly unprotected, Economic Policy Institute (Sept. 18, 2014), available at <https://www.epi.org/publication/wage-theft-bigger-problem-forms-theft-workers/>.

² Alejandro Lazo et al, When employers steal wages from workers, CalMatters (Jul. 25, 2022), available at <https://calmatters.org/explainers/when-employers-steal-wages-from-workers/?series=unpaid-wages-california-workers>.

3. Awarding agencies often rely on third-party entities to ensure contractors' compliance with the prevailing wage requirements

When a contract for a public works project has been awarded, the awarding agency must ensure that a prevailing wage is paid by the contractor or subcontractor. An awarding agency is supposed to “take cognizance” of a violation of the prevailing wage and public works laws and promptly report any suspected violations to the Labor Commissioner. (Labor Code § 1726.) If the contractor has not paid a prevailing wage, the awarding agency is empowered to withhold contract payments until the violations are resolved. (Labor Code §§ 1726, 1771.6.) When it does so, the agency must provide the contractor with a written notice of the withholding, describing the violation and the amount of wages, penalties, and forfeitures withheld. A contractor may request review of the withholding and any assessment of penalties within 60 days after receiving the notice, and such review would then be conducted within 90 days at a hearing before an impartial hearing officer. (Labor Code § 1742.) The contractor has the burden to prove the assessment of a violation and penalty is incorrect. A decision by the hearing officer may also be appealed through a petition for a writ of mandate to a local superior court. (*Id.*) A joint labor-management committee, which is an organization jointly organized by management and labor organizations representing employees in the area for the purpose of improving labor-management relationships, job security, organizational effectiveness, and economic opportunity pursuant to Title 29 of the United States Code, Section 175a, also may enforce the prevailing wage requirements for public projects by bringing a civil action against the contractor that failed to pay the required prevailing wage. (Labor Code § 1771.2.)

However, ensuring compliance may be a resource-demanding task that a smaller agency may not have the capacity to perform. Thus, the agency may instead also contract out the task of ensuring that the contractors for the public works project are complying with the prevailing wage rules. These third-parties are considered labor compliance entities. Some statutes also require awarding bodies to utilize labor compliance programs that are DIR approved for the purpose of labor compliance, and four remaining DIR-approved labor compliance programs exist for Caltrans, the City of Los Angeles, Los Angeles Unified School District, and the County of Sacramento, pursuant to Labor Code Section 1771.5.³

4. SB 1303 attempts to establish rules for private, third-party labor compliance entities

Yet few guidelines currently apply for private labor compliance entities that contract with public agencies for labor compliance. According to the author, this lack of rules is resulting in circumstances in which the private labor compliance entities are halting construction on a project without notice or process for resolving a claim of a prevailing

³ See, Department of Industrial Relations, LCP Statutes (Apr. 1, 2020), available at <https://www.dir.ca.gov/lcp/StatutesRequiringLCPs.htm>.

wage violation. The author further claims that some private third-party labor contractors have relationships with the contractors they oversee, resulting in problematic conflicts of interest and inconsistent enforcement of the prevailing wages rules on different contractors.

In order to address this issue, SB 1303 proposes creating a regulatory scheme for private labor compliance entities that involves both rules about potential conflicts of interest and for a third party labor compliance entity's withholding of project funds. SB 1303 first prohibits any private labor compliance entity from providing labor compliance and enforcement services to an awarding agency if the entity has a conflict of interest. In order to help the awarding agency and DIR determine if such a conflict of interest exists, SB 1303 requires a private labor compliance entity to disclose all potential conflicts of interests to the awarding body and the Division of Labor Standards Enforcement (DLSE). Such potential conflicts of interest include when a client of the private labor compliance entity bids on, or has been awarded, a public works project that will be covered by the labor compliance activities of the private labor compliance entity. In addition to disclosing any potential conflict of interest, private labor compliance entities are required by SB 1303 to submit to the awarding agency and DLSE a signed declaration under penalty of perjury that it has no conflicts of interest prior to entering into a contract for labor compliance and enforcement.

SB 1303 also includes various provisions outlining a process that an awarding agency or the agent must follow in order to withhold funds from a public works contractor. Those provisions specify that, prior to withholding funds for an alleged violation of various labor standards, the awarding agency or its agent must: confer with the parties of the applicable agreements to review relevant public works law; notify DLSE; and not withhold an amount of project funds from the violating contractor that exceeds the alleged underpayments and penalty assessments. SB 1303 provides that a public works contractor or subcontractor may make a written request to review and respond to the evidence of alleged violations, and that the agency must provide a venue for this review and response within 20 days of receiving the written request. The agency or its agent must also forward any unremedied alleged violations to DLSE for formal investigation within 45 days of withholding funds.

Through this process, SB 1303 creates an additional procedure for the review of any alleged violation by a contractor than what currently exists in the law. Under Labor Code Section 1742, a public works project contractor is afforded the opportunity to bring a challenge before the Labor Commissioner about any withholding and alleged prevailing wage violation within 60 days, and is afforded a hearing with an impartial hearing officer of DIR. SB 1303 provides a separate process by which an affected contractor can request to meet with the awarding agency or its agent that is alleging a violation first, before requesting review by the Labor Commissioner. This process must, by its deadlines, take place before the 60-day deadline for when a contractor can request review by the Labor Commissioner expires. Thus, SB 1303's provisions act to create an

opportunity for a contractor to seek a conference and review with the agency or its agent that is alleging the violation first, before the contractor need request a hearing before an impartial hearing officer.

SB 1303 also includes provisions for its enforcement. It specifies that a violation of its provisions makes the contract between a private labor compliance entity and an awarding agency null and void, and that a violating private labor compliance entity is subject to a penalty of not less than \$1,000, including reasonable attorney's fees, subject matter expert costs, and other expenses. Furthermore, SB 1303 provides that its provisions can be enforced independently through a civil cause of action by a variety of parties. It allows an aggrieved party, including a labor-management committee, to bring a civil cause of action, in which a court shall award reasonable attorney's fees and costs, including expert witness fees, to a prevailing plaintiff. It also allows the Labor Commissioner or a public prosecutor (the Attorney General, a district attorney, city attorney, county counsel, or any other city or county prosecutor) to enforce its provisions through a civil cause of action.

SB 1303 does not apply to every agency in the state; it includes an exception for specified awarding agencies that operate DIR-approved labor compliance programs pursuant to Labor Code Section 1771.5. As previously mentioned, these programs are the Department of Transportation, the City of Los Angeles, the Los Angeles Unified School District, and the County of Sacramento.

5. Amendments to SB 1303

The author has accepted amendments that will provide an applicable definition of a conflict of interest, and clarify the requirements for a third-party labor compliance entity regarding disclosure of potential conflicts of interest. The amendments provide that a conflict of interest exists when a third-party labor compliance entity is providing labor compliance for an awarding agency at the same time that it is also providing contract labor compliance work to the contractor that is bidding for construction services on the public works project to the awarding agency. The amendments also clarify that a third-party labor compliance entity must disclose to an awarding agency any potential conflicts of interest it may have prior to entering into a contract for labor compliance services with the agency, and that, if it does not have any potential conflicts of interest, it must declare so under penalty of perjury. A mock-up of the amendments are attached to the end of this analysis.

6. Arguments in support

According to the California Labor Federation AFL-CIO, which is the sponsor of SB 1303:

Public works projects include publicly funded construction projects and other construction-related tasks, including maintenance work. Existing law requires

that all workers who are employed on public works projects be paid the prevailing wage on the project as determined by the Director of the Department of Industrial Relations (DIR).

The Labor Commissioner is tasked with enforcing prevailing wage requirements on public works projects. Public agencies awarding funds must ensure that all contractors comply with labor standards on projects. The Labor Code also authorizes a joint labor-management committee established pursuant to the federal Labor-Management Cooperation Act of 1978 to bring a civil action against an employer that fails to pay prevailing wages to its employees.

Recently, more public agencies have started contracting out enforcement on public works projects to for-profit third-party companies who claim to specialize in labor compliance. Although increased labor compliance is positive, there are very minimal guidelines or standards for these third parties creating inconsistencies in enforcement. Third parties can create unnecessary delays on projects when they are unfamiliar with existing labor agreements and misinterpret them. These misinterpretations can lead to withholding of funds that stall projects, with little recourse or procedure for contractors to clarify misunderstandings.

Third party compliance groups can act to withhold funds or demand alleged penalties in a completely subjective manner. They can also operate even if they have conflicts of interest on projects they are tasked with overseeing. A third party with a conflict of interest on a project may enforce to their advantage, resulting in labor law not being enforced fairly or uniformly. This causes unnecessary delays of payment to workers and slows completion of projects, wasting taxpayer dollars in the process.

SB 1303 will increase enforcement of labor law by requiring third party compliance companies to disclose any potential conflicts of interest when hired to perform labor compliance on public works projects. It will additionally prohibit companies from doing this work if any conflicts of interest exist. By mandating these companies give full disclosure of their professional relationships, SB 1303 can ensure that these companies, and the agencies who contract work to them, are fully accountable and effectively enforcing labor law without prejudice.

SUPPORT

California Labor Federation, AFL-CIO (sponsor)
California-Nevada Conference of Operating Engineers (sponsor)
California Construction and Industrial Materials Association
California State Association of Electrical Workers,

California State Pipe Trades Council
State Building and Construction Trades Council of California
Western States Council of Sheet Metal Workers

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 1023 (Kalra, Ch. 326, Stats. 2021) revised the requirement that a public works contractor provide the Labor Commissioner with payroll records at least monthly, and specified that a contractor or subcontractor who fails to provide the records is liable for a penalty, as specified.

AB 1926 (Cooper, Ch. 746, Stats. 2016) extended the requirement that employees of a public works project be paid a prevailing wage to apprentices, as specified.

PRIOR VOTES:

Senate Labor, Public Employment, and Retirement Committee (Ayes 4, Noes 1)

MOCK-UP OF PROPOSED AMENDMENTS TO SB 1303

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 1771.8 is added to the Labor Code, to read:

1771.8.

(a) For the purposes of this section, a "private labor compliance entity" is defined as a third-party company that is hired by an awarding body to perform labor compliance and enforcement activities on public works projects on its behalf.

(b) For the purposes of this section, "conflict of interest" is defined as a situation in which a private labor compliance entity performs labor compliance work under contract for both an awarding body, and a contractor who is bidding a public works project for the same awarding body.

~~(b)~~ **(c)** (1) A private labor compliance entity shall be prohibited from providing labor compliance and enforcement activities on behalf of an awarding body if it has a conflict of interest.

(2) Prior to an awarding agency entering a contract for a public works project, A private labor compliance entity shall disclose a potential conflict of interest to the awarding body and the Division of Labor Standards Enforcement related to any clients of the private labor compliance entity who have bid on the proposed public works project. If no conflict exists, a private labor compliance entity shall submit to the awarding body and the Division of Labor Standards Enforcement a signed declaration under penalty of perjury verifying that it has no conflicts of interest.

~~(2) A private labor compliance entity shall disclose a potential conflict of interest to the awarding body and the Division of Labor Standards Enforcement, including whether a client of the private labor compliance entity bids on, or has been awarded, a public works project that the labor compliance program has or will contract.~~

~~(3) Prior to entering into a contract for labor compliance and enforcement on a public works project of an awarding body, a private labor compliance entity shall submit to the awarding body and the Division of Labor Standards Enforcement a signed declaration under penalty of perjury verifying that it has no conflicts of interest.~~

~~(c)~~ **(d)** An awarding body or its agent, prior to withholding funds from a public works contractor for an alleged violation, including, but not limited to, worker classification, scope of work, travel and subsistence apprenticeship standards, shall do all of the following:

(1) Confer with the negotiating parties of the applicable agreements to review relevant public works law.

(2) Notify the Division of Labor Standards Enforcement.

(3) Not withhold an amount that exceeds the alleged underpayments and penalty assessments.

~~(d)~~ **(e)** An awarding body or its agent withholding funds from a public works contractor or subcontractor shall do both of the following:

(1) Within 20 days of a written request for review by the contractor or subcontractor, provide a venue for a public works contractor or subcontractor to review and respond to evidence of alleged violations.

(2) Forward any unremedied alleged violations to the Division of Labor Standards Enforcement for formal investigation within 45 days of withholding of funds.

~~(e)~~ **(f)** A violation of this section shall make a contract between a private labor compliance entity and an awarding agency null and void, and the private labor compliance entity would be subject to a penalty of not less than one thousand dollars (\$1,000), including reasonable attorney's fees, subject matter expert costs, and expenses.

~~(f)~~ **(g)** In the event of a violation of this section, an aggrieved party, including a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175(a)), shall have the right to initiate a private right of action. The court shall award reasonable attorney's fees and costs incurred in maintaining the action, including expert witness fees to a prevailing plaintiff.

~~(g)~~ **(h)** In addition, the provisions of this section may be enforced by the Labor Commissioner or a public prosecutor as defined in Section 180.

~~(h)~~ **(i)** This section does not apply to the following awarding bodies operating labor compliance programs approved and monitored by the Department of Industrial Relations pursuant to Section 1771.5:

(1) The Department of Transportation.

(2) The City of Los Angeles.

(3) The Los Angeles Unified School District.

(4) The County of Sacramento.

SEC. 2.

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