

SUBJECT: CONSIDER RESOLUTION OF OPPOSITION TO SB 7 (STEINBERG) REGARDING PUBLIC WORKS: CHARTER CITIES

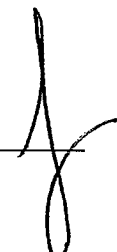
SOURCE: City Manager

COMMENT: As was reported to the City Council by staff in "Other Matters" at its meeting on March 5, 2013, SB 7 (Steinberg) was to be considered by the Senate Industrial Relations Committee on Wednesday, March 13th. Unfortunately, SB 7 was passed by the Committee and was then sent to the Senate Appropriations Committee for consideration. On Monday, April 8th, the Committee voted to send SB 7 to its "Suspense File" due to identified State costs. SB 7 must be removed from the "Suspense File" by Friday, May 24th, which is the final day the Committee has to hear and report bills to the Senate floor for consideration.

As the Council is aware, SB 7 would prohibit a charter city from receiving or using State funding or financial assistance for a construction project if the city has a charter provision or ordinance that authorizes a contractor to not comply with prevailing wage requirements on local public works contracts funded by (non-State) city funds. As a Charter city (as opposed to a General Law city), the City of Porterville does not require a contractor to comply with prevailing wage provisions on local public works projects that are locally-funded. Essentially, SB 7 seeks to compel charter cities to require prevailing wages on local projects that are constructed with local funds by withholding all State construction funds from non-compliant cities.

SB 7, authored by Senator Steinberg and sponsored by the State Building and Construction Trades Council of California, AFL-CIO, has been introduced as a direct result of a recent State Supreme Court, which ruled in favor for the charter city of Vista over the State Building and Construction Trades Council of California. The Court found that charter cities are not required to pay prevailing wage on local projects that are constructed with local funds.

The California League of Cities has taken a position of strong opposition to SB 7 based on protecting the flexibility of local agencies to govern their community's affairs, with SB 7 violating the principle of local control and the charter city doctrine of municipal affairs. At the request of the League, the City has previously provided a Letter of Opposition to SB 7, with a Resolution of Opposition also desired.

C/M 

RECOMMENDATION: That the City Council consider the adoption of a Resolution of Opposition to SB 7 (Steinberg).

ATTACHMENT:

1. Draft Resolution of Opposition
2. SB 7 Bill Text
3. Letter of Opposition

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE,
COUNTY OF TULARE, STATE OF CALIFORNIA, OPPOSING SB 7 (STEINBERG)
REGARDING PUBLIC WORKS: CHARTER CITIES

WHEREAS, the City of Porterville was incorporated in 1902 and became a charter city by adoption of a City Charter in 1926;

WHEREAS, in accordance with the State Constitution, charter cities are provided authority of "Home Rule" whereby the City is given the power to make and enforce within its own boundaries any law which does not conflict with the State or Federal Government;

WHEREAS, the California Supreme Court recently decided in *State Building and Construction Trades Council, AFL-CIO v. City of Vista (2012)* that charter cities reserve the right to determine whether they should pay prevailing wage when contracting for local public works projects funded by local funds;

WHEREAS, as a charter city, the City of Porterville does not require prevailing wage when contracting for local public works projects funded by local funds;

WHEREAS, SB 7 (Steinberg) is in direct conflict with the State Constitution and seeks to undermine the California Supreme Court decision affirming charter cities "Home Rule" authority;

NOW, THEREFORE, it is hereby DECLARED and ORDERED, as follows:

The City Council of the City of Porterville opposes SB 7 (Steinberg), affirming the State Constitution and supporting a charter city's "Home Rule" doctrine that provides independence and authority to make and enforce laws within its boundaries.

This Resolution shall take effect from and after the date of its passage and adoption by this Council.

APPROVED AND ADOPTED this 16th day of April, 2013.

Virginia R. Gurrola, Mayor

ATTEST:
John D. Lollis, City Clerk

By: _____
Patrice Hildreth, Chief Deputy City Clerk

Introduced by ~~Senator~~ *Senators Steinberg and Cannella*

December 3, 2012

An act to ~~amend~~ *add* Section ~~1724~~ *of 1782* to the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 7, as amended, Steinberg. Public works: ~~where performed.~~ *charter cities.*

Existing law requires that, except as specified, not less than the general prevailing rate of per diem wages, determined by the Director of Industrial Relations, be paid to workers employed on public works projects. Existing law defines "public works" to include, among other things, construction, alteration, demolition, installation, or repair work done under contract and paid for, in whole or in part, out of public funds, and street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not.

This bill would prohibit a charter city from receiving or using state funding or financial assistance for a construction project if the city has a charter provision or ordinance that authorizes a contractor to not comply with prevailing wage provisions on any public works contract. The bill would, except as specified, prohibit a charter city from receiving or using state funding or financial assistance for a construction project for up to 2 calendar years if the city has, after January 1, 2014, awarded a public works contract without requiring the contractor to comply with

prevailing wage provisions. This bill would authorize charter cities to receive or use state funding or financial assistance if the city has adopted a local prevailing wage ordinance that includes requirements that are equal to or greater than the state's prevailing wage requirements, as specified. This bill would exclude contracts for projects of \$25,000 or less for construction work, or projects of \$15,000 or less for alteration, demolition, repair, or maintenance work. This bill would require the Director of Industrial Relations to maintain a list of charter cities that may receive and use state funding and financial assistance for their construction projects.

~~Existing law requires that, except as specified, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, determined by the Director of Industrial Relations, as specified, be paid to workers employed on public works projects. Existing law defines the locality in which a public work is performed as the county in which the public work is done, in cases in which the contract is awarded by the state, and as the limits of the political subdivision on whose behalf the contract is awarded, in other cases.~~

~~This bill would instead define the locality in which a public work is performed as the county in which the public work is done.~~

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

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

- 1 SECTION 1. *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (a) *It is a matter of statewide concern that California has an*
- 4 *available workforce of skilled construction workers to efficiently*
- 5 *complete both public and private infrastructure projects, and*
- 6 *maintaining that workforce requires the continual training of new*
- 7 *workers to replace the aging workforce. An in-state workforce of*
- 8 *skilled construction workers who can complete projects in a*
- 9 *streamlined manner benefits the state's economy.*
- 10 (b) *The state's prevailing wage law promotes the creation of a*
- 11 *skilled construction workforce. The requirement that contractors*
- 12 *on public work pay prevailing wages to their employees encourages*
- 13 *contractors to hire the most skilled workers and to invest in their*
- 14 *training. The incentives provided in the prevailing wage law for*

1 *formal apprenticeship training in state-approved programs provide*
2 *the financial support and on-the-job training opportunities*
3 *necessary to train the next generation of skilled construction*
4 *workers.*

5 *(c) The majority of California workers do not have four-year*
6 *college degrees, and maintaining construction work as an*
7 *occupation that can provide good jobs to California workers is*
8 *important to the future of the state.*

9 *(d) The state's prevailing wage law helps to maintain*
10 *construction work as an occupation that provides middle-class*
11 *jobs to hundreds of thousands of California workers, enabling the*
12 *workers to support families and contribute to their communities.*
13 *The prevailing wage law also provides necessary on-the-job*
14 *training opportunities for the more than 50,000 apprentices*
15 *enrolled in state-approved apprenticeship programs in the building*
16 *and construction trades, enabling the apprentices to graduate from*
17 *the programs and pursue careers as journey-level workers.*

18 *(e) The state's prevailing wage law applies to construction*
19 *projects paid for in whole or in part out of public funds, including*
20 *projects awarded by any county, city, district, public housing*
21 *authority, public agency of the state, and assessment or*
22 *improvement districts.*

23 *(f) The California Supreme Court has held that charter cities*
24 *need not require contractors to comply with the state's prevailing*
25 *wage law on purely municipal projects. Many charter cities require*
26 *contractors to comply with the state's prevailing wage law on their*
27 *municipal projects, but some charter cities do not.*

28 *(g) Charter cities that require compliance with the prevailing*
29 *wage law on their municipal projects are furthering a state policy*
30 *that has substantial benefits that go beyond the limits of the city.*
31 *Many of the workers employed on a municipal project will not live*
32 *in the city where the project is located, and many apprentices*
33 *receiving training on municipal projects will pursue careers outside*
34 *the city.*

35 *(h) The state has limited financial resources to support local*
36 *construction projects, and it would further state policy to provide*
37 *financial assistance only to those charter cities that require*
38 *compliance with the prevailing wage law on all their municipal*
39 *construction projects. To the extent that requiring compliance with*
40 *the state's prevailing wage law may raise the cost of municipal*

1 projects for these cities, these cities also would be more in need
2 of state financial support for their other construction projects.

3 (i) The intent of Section 1782 of the Labor Code is to provide
4 a financial incentive for charter cities to require contractors on
5 their municipal construction projects to comply with the state's
6 prevailing wage law by making these charter cities eligible to
7 receive and use state funding and financial assistance for their
8 construction projects.

9 SEC. 2. Section 1782 is added to the Labor Code, to read:

10 1782. (a) A charter city shall not receive or use state funding
11 or financial assistance for a construction project if the city has a
12 charter provision or ordinance that authorizes a contractor to not
13 comply with the provisions of this article on any public works
14 contract.

15 (b) A charter city shall not receive or use state funding or
16 financial assistance for a construction project if the city has
17 awarded, within the current or prior two calendar years, a public
18 works contract without requiring the contractor to comply with
19 all of the provisions of this article. This subdivision shall not apply
20 to contracts awarded prior to January 1, 2014. This subdivision
21 shall not apply if the charter city's failure to include the prevailing
22 wage or apprenticeship requirement in a particular contract was
23 inadvertent and contrary to a city charter provision or ordinance
24 that otherwise requires compliance with this article.

25 (c) Notwithstanding subdivision (a), a charter city may receive
26 or use state funding or financial assistance for its construction
27 projects if the charter city has adopted a local prevailing wage
28 ordinance that includes requirements that in all respects are equal
29 to or greater than the requirements imposed by the provisions of
30 this article and that do not authorize a contractor to not comply
31 with this article.

32 (d) For purposes of this section, the following shall apply:

33 (1) A public works contract does not include contracts for
34 projects of twenty-five thousand (\$25,000) dollars or less when
35 the project is for construction work, or projects of fifteen thousand
36 (\$15,000) dollars or less when the project is for alteration,
37 demolition, repair, or maintenance work.

38 (2) A charter city includes any agency of a charter city and any
39 entity controlled by a charter city whose contracts would be subject
40 to this article.

1 (3) *State funding and financial assistance includes direct state*
2 *funding, state loans and loan guarantees, state tax credits, and*
3 *any other type of state financial support for a construction project.*
4 *State funding and financial assistance does not include tax*
5 *revenues that charter cities are entitled to receive without*
6 *conditions under the California Constitution.*

7 (e) *The Director of Industrial Relations shall maintain a list of*
8 *charter cities that may receive and use state funding and financial*
9 *assistance for their construction projects.*

10 ~~SECTION 1. Section 1724 of the Labor Code is amended to~~
11 ~~read:~~

12 ~~1724. "Locality in which public work is performed" means the~~
13 ~~county in which the public work is done.~~

March 7, 2013



The Honorable Darrell Steinberg
President Pro Tempore
California State Senate
State Capitol, Room 205
Sacramento, California 95814

SUBJECT: SB 7 (STEINBERG) CHARTER CITIES: PUBLIC WORKS: LOCAL DETERMINATION OF WAGE RATES-OPPOSE

Dear Senator Steinberg:

Porterville regrets that we must OPPOSE your SB 7 (Steinberg/Canella), as amended February 21, 2013, due to the unconstitutional infringement on the "Home Rule" independence of California's 121 charter cities.

As written, SB 7 would prohibit a charter city from receiving or using state funding for any construction project if the charter city elects not to pay state determined prevailing wages. This bill is in direct conflict with the California Supreme Court's decision in State Building and Construction Trades Council v. City of Vista. 54 Cal.4th 547 (2012). Porterville does not believe our common commitment to defend the California Constitution justifies this "head on" challenge to the integrity of the California Supreme Court.

Charter Cities have been exempt from state prevailing wage laws since 1932. Therefore, it was not a novel idea in 2007 for 67 percent of Vista voters to choose to become a charter city to reap the taxpayer savings that comes with a prevailing wage exemption. After the election, the Vista City Council then passed an ordinance exercising its right to build its municipal projects without prevailing wage. Seeking an opportunity to change 80 years of constitutional precedents, the State Building Trades filed suit to stop Vista's ordinance. The State Building Trades lost this argument at the trial court, the appellate court, and at the California Supreme Court.

In Vista, the California Supreme Court firmly upheld the right of charter cities to determine whether they should pay prevailing wages when contracting for public works projects paid for with local funds. Essentially, the Court made a legal determination that the constitutional protections afforded to charter cities were still viable and that local projects built with local funds are not subject to prevailing wage. Whether a charter city pays prevailing wage with local funds is up to each city and not the Legislature.

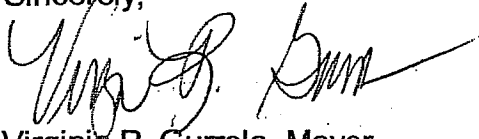
SB 7 is also based on the constitutionally rejected theory that the state can "punish" a charter city for exercising its independent right. In short this theory says, "we admit a charter city has this right, but we will punish that city if it exercises that right." That theory was rejected by the

California Supreme Court in Sonoma County Organization of Public Employees v. County of Sonoma 23 Cal. 3d 296 (1979) because the Court said the Legislature cannot cut off funds to a charter city for a constitutionally permitted action. It is axiomatic that the power to punish is the power to regulate. Put more simply, if the state cannot regulate a constitutionally permitted action, it cannot "de-fund" a city for taking that that action.

We oppose SB7 because under our state Constitution each charter city has the authority to determine what is in the best interests of its citizens. This authority extends to a wide variety of local issues, including whether to reform, amend or repeal the prevailing wages under a city's jurisdiction based on the local economics of its community. It is the city's right to do so. SB7 is an attack on the ability of local elected officials and voters to decide issues of local importance, especially those involving local finances.

If you have any questions or require clarification, please contact me at 559-782-7466.

Sincerely,



Virginia R. Gurrola, Mayor
City of Porterville

