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Public Contract

Closing the Loophole: Termination of State Funding for Some Charter City Construction Projects

Michelle Scheinman

Code Section Affected

Public Contract Code § 2503 (new).
SB 829 (Rubio); 2012 STAT. Ch. 11.

I. INTRODUCTION

San Diego is the third city in its county to prohibit municipal projects from requiring Project Labor Agreements (PLAs).¹ However, it is the first charter city to institute such a restriction after the passage of Chapter 11, which revokes state funding from construction projects in all cities that restrict PLA use.² As a result of this legislation, San Diego and three other charter cities may be in jeopardy of losing state funding for all municipal construction projects.³

PLAs are “pre-hire collective bargaining” arrangements.⁴ The use of such contracts on public projects is controversial and unique to the construction industry.⁵ PLAs allow a project coordinator to avoid negotiating with individual trade unions by binding all contractors and subcontractors to an agreement in

1. Gayle Falkenthal, *Fair and Open Competition Initiative Qualifies for the City of San Diego 2012 Ballot*, LIBERTARIAN LASS SAN DIEGO ROSTRA BLOG (Sept. 21, 2011, 5:23 PM), <http://sdrostra.com/?p=20692> (on file with the *McGeorge Law Review*); see also ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER PROTECTION, COMMITTEE ANALYSIS OF SB 829, at 2 (Mar. 13, 2012) (listing Chula Vista and Oceanside, both located in San Diego County, as charter cities with PLA bans prior to passage of Chapter 11).

2. CAL. PUB. CONT. CODE §§ 2500–02 (West Supp. 2012); Robert Carlsen, *Voters Approve San Diego’s Project Labor Agreements Ban Measure*, ENR CAL. (June 7, 2012), http://california.construction.com/california_construction_news/2012/0607-voters-approve-san-diegos-project-labor-agreement-ban-measure.asp (on file with the *McGeorge Law Review*) (arguing that the motivation behind Chapter 11 was the San Diego Fair and Open Competition Initiative).

3. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 829, at 6 (Apr. 19, 2012).

4. ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER PROTECTION, COMMITTEE ANALYSIS OF SB 829, at 2 (Mar. 13, 2012); Jen Lebron Kuhney, *Prop. A Impact on State Funds in Dispute*, SAN DIEGO UNION TRIB. GOV’T & POL. BLOG (June 6, 2012, 8:10 PM), <http://www.utsandiego.com/news/2012/jun/06/prop-a-impact-on-state-funds-in-dispute/> (on file with the *McGeorge Law Review*); Lan Wang, *Project Labor Agreements: What You Need to Know*, WESTERN CITY MAG., Feb. 2012, at 8, available at <http://www.westerncity.com/Western-City/February-2012/Project-Labor-Agreements-What-You-Need-To-Know/> (on file with the *McGeorge Law Review*) (describing PLAs and noting such contracts are also referred to as “Project Stabilization Agreements,” or PSAs).

5. Wang, *supra* note 4; see also *Bldg. & Constr. Trades Council v. Associated Builders & Contractors*, 507 U.S. 218, 221–23 (1993) (interpreting the National Labor Relations Act (NLRA) as prohibiting employers from binding workers to pre-hire agreements in all industries other than construction).

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advance of bid submission.⁶ This contracting method simplifies management of the highly diverse, skilled labor force required to build any complex structure.⁷ Such contracts are intended to “stabilize” expenses by dictating wages, benefits, and the potential employee pool associated with a specific undertaking.⁸

PLAs originated with large-scale federal construction projects of the 1930s and ‘40s, such as the Shasta Dam in California.⁹ Generally, the agreements forbid strikes, limit hiring to union halls, and require employees to contribute to union dues, whether or not the construction company awarded the work is a union-affiliated organization.¹⁰ Supporters of PLAs, including major labor unions and President Barack Obama, claim that avoiding strikes and labor disputes results in substantial cost savings.¹¹ Opposition to PLAs, including the Associated Builders and Contractors, Inc., representing 22,000 non-union affiliated, construction-related firms, and former President George W. Bush, claim that such contracts represent unfair hiring practices and increase taxpayer costs by requiring union benefit programs.¹² Although various independent organizations have attempted to determine the actual financial impact of PLAs, their studies yield conflicting results.¹³

6. Kimberly Johnston-Dodds, *Constructing California: A Review of Project Labor Agreements*, CAL. RES. BUREAU, CAL. ST. LIBR. 01-010, at 3 (2001) (“Prepared at the Request of Senator John L. Burton, President pro Tempore.”).

7. *Id.*

8. Wang, *supra* note 4; *see also* Kuhney, *supra* note 4 (defining PLAs as contracts governing “wages, health-care benefits and local hiring for workers”). *But see* Associated Builders & Contractors, Inc. v. S.F. Airports Comm’n, 21 Cal. 4th 352, 368, 981 P.2d 499, 508 (1999) (“[T]he prevailing wage law, not the PSA [or PLA], is the source of the applicable wage rates.”).

9. Wang, *supra* note 4, at 10; 29 U.S.C. § 158(f) (2006) (As codified in 1935, “[i]t shall not be an unfair labor practice . . . for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged . . .”).

10. Wang, *supra* note 4, at 10; Falkenthal, *supra* note 1.

11. *See* SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 829, at 3 (Apr. 19, 2012) (listing California AFL-CIO, Labor Federation, Teamsters Public Trades Council, Cement Masons Local 300, several local Building and Construction Trade Councils, and Painters and Allied Trade District Councils as among the more than seventy-five organizations supporting the passage of Chapter 11); Exec. Order No. 13502, 74 Fed. Reg. 6985 (Feb. 6, 2009) (Use of Project Labor Agreements for Federal Construction Projects) (allowing the use of PLAs on projects that “total cost to the Federal Government is \$25 million or more”); *see also* ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER PROTECTION, COMMITTEE ANALYSIS OF SB 829, at 4 (Mar. 13, 2012) (discussing President Obama’s issuance of “an Executive Order requiring the use of PLAs on [some] Federal projects”); Kuhney, *supra* note 4 (discussing the State Building and Construction Trades Council of California’s opposition to Proposition A).

12. *See* Kuhney, *supra* note 4 (disclosing the Associated Builders and Contractors as a major financial supporter of Proposition A); Exec. Order No. 13202, 66 Fed. Reg. 11225 (Feb. 17, 2001) (Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally Funded Construction Projects); Johnston-Dodds, *supra* note 6, at 1–2 (discussing President Bush’s two executive orders issued in 2001 that “prohibit[ed] PLAs on construction projects with federal funding”). *See generally* THE TRUTH ABOUT PLAS, ASSOCIATED BUILDERS & CONTRACTORS, <http://thetruthaboutplas.com> (last visited Aug. 1, 2012) (on file with the *McGeorge Law Review*) (expressing the organization’s position regarding project labor agreements).

13. Press Release, San Diego Cnty. Taxpayers Ass’n, Proposition G: City of Chula Vista Fair and Open

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Although the California Constitution restricts state control over charter cities,¹⁴ Chapter 11 provides the state with an indirect method of ensuring PLAs are not banned.¹⁵ Yet, the threat of losing all state funding for municipal construction did not stop San Diego from constructively prohibiting PLAs.¹⁶ It remains to be seen whether Chapter 11 will have the intended effect on the independent contractors who bankrolled the San Diego initiative, or on charter cities consideration of PLA use.¹⁷

II. LEGAL BACKGROUND

State and federal courts have upheld PLAs as constitutional, and proponents of PLAs have successfully defended against numerous legal challenges.¹⁸ For the

Competition Ordinance 5 (Mar. 19, 2010), available at http://www.sdcta.org/Uploads/Documents/Bd%20Approved%20Chula%20Vista%20Fair%20and%20Open%20Competition%20Initiative,%20rv%20language%203-19-2010,%20JG_0.pdf (on file with the *McGeorge Law Review*) (discussing conflicting findings of various studies: 2001 Ernst & Young, 2006 Beacon Hill Institute 2008 UCLA, and 2009 Dale Belmen and Matthew Bodah); see also VINCE VASQUEZ ET AL., NAT'L UNIV. SYS. INST. FOR POL'Y RES., MEASURING THE COST OF PROJECT LABOR AGREEMENTS ON SCHOOL CONSTRUCTION IN CALIFORNIA 1–4, 15 (2010), available at <http://www.nusinstitute.org/assets/resources/pageResources/Measuring-the-Cost-of-Project-Labor-Agreements-on-School-Construction-in-California.pdf> (on file with the *McGeorge Law Review*) (discussing findings of several studies and primary research conducted related to PLA financial impact on California school construction).

14. CAL. CONST. art XI, § 5; 45 CAL. JUR. 3D, *Municipalities* § 180 (2008).

15. SENATE GOVERNANCE & FINANCE COMMITTEE, COMMITTEE ANALYSIS OF SB 829, at 3 (Apr. 18, 2012) (“[C]ity contracting processes are generally considered to be a municipal affair, state law can’t directly eliminate charter cities’ PLA bans.”).

16. See *Proposition A: Prohibits the City from Requiring Project Labor Agreements on City Construction Projects*, LEAGUE OF WOMEN VOTERS OF CAL. EDUC. FUND (June 5, 2012, 10:57 AM), <http://www.smartvoter.org/2012/06/05/ca/sd/prop/A/> [hereinafter *Proposition A*] (on file with the *McGeorge Law Review*). But see *Election 2012: Project Labor Agreement Ban Approved*, KPBS NEWS (June 6, 2012), <http://www.kpbs.org/news/2012/jun/05/proposition-project-labor-agreements/> [hereinafter *Election 2012*] (on file with the *McGeorge Law Review*) (“Leorena Gonzalez, head of the San Diego and Imperial counties labor council, said she believes voters did not understand the consequences of Proposition A.”).

17. See Kuhney, *supra* note 4 (disclosing the Associated Builders and Contractors as a major financial backer of Proposition A); see also ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER PROTECTION, COMMITTEE ANALYSIS OF SB 829, at 2 (Mar. 13, 2012) (discussing the Associated Builders and Contractors, Inc. “anti-union” attacks to ban PLAs).

18. Wang, *supra* note 4; see also *Bldg. & Constr. Trades Council v. Associated Builders & Contractors*, 507 U.S. 218, 231 (1993) (holding inclusion of pre-hire agreements in the public bidding process is a legal method for dealing with conditions specific to the construction industry that make “posthire collective bargaining difficult”); *Associated Builders & Contractors, Inc. v. S.F. Airports Comm’n*, 21 Cal. 4th 352, 358–60, 377–80, 981 P.2d 499, 502–03, 514–17 (1999) (holding the PLA instituted to govern construction of a \$2.4 billion airport expansion was not an abrogation of an employee’s right of freedom of association provided by Section 923 of the Labor Code, a violation of the competitive bidding process, or an infringement on the First Amendment rights to freedom to associate and freedom of speech). The court, upholding the agreement as constitutional, stated it “in no way prevents [Associated Builders and Contractors, Inc.] or its members from freely expressing their ‘merit shop philosophy’” and that workers “do not have a constitutional right to operate ‘nonunion’ shops or ‘associate’ only with unorganized employees.” *Id.* at 380–82, 981 P.2d at 516–17; see also *Fitch Ratings Says Passage of Prop. A Could Cost San Diego Millions*, KPBS NEWS (June 1, 2012), <http://www.kpbs.org/news/2012/jun/01/fitch-ratings-says-prop-could-adversely-impact-san/> (last visited July 26, 2012) (on

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past several years, independent contractors and other construction-related firms successfully lobbied some California cities and counties to establish local regulations discouraging PLAs on public contracts.¹⁹ In response, California Democrats passed legislation, Chapter 431, preventing general law cities from instituting an outright ban on PLAs and withholding state funds for charter city projects that failed to consider a PLA.²⁰

Chapter 431, enacted in October 2011, prohibits general law cities from banning PLA use if the pre-hire agreement incorporates five “taxpayer protection” clauses.²¹ Chapter 431 requires governing boards of general law municipalities to institute PLAs on any project, if application garners a fifty percent approval of the board’s vote.²² The legislation specifically prohibits state funding of any particular project in a charter city that restricted its governing board’s consideration of PLA use on that project.²³ Opponents to Chapter 431 criticized its implantation as anti-democratic,²⁴ because a city’s decisions regarding PLA use may be the result of voter initiative.²⁵

The California Constitution’s Home Rule provision blocks the legislature from directly regulating charter city PLA use.²⁶ Article XI, Section 5 of the California Constitution authorizes charter cities to make and enforce all

file with the *McGeorge Law Review*) (referencing California Legislative Counsel’s opinion, stated in a letter to Governor Brown, that Chapter 11 is constitutional).

19. ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER PROTECTION, COMMITTEE ANALYSIS OF SB 829, at 2 (Mar. 13, 2012). *See generally* THE TRUTH ABOUT PLAs, *supra* note 12 (lobbying nationwide against the use of PLAs).

20. CAL. PUB. CONT. CODE § 2501–02 (West 2012); Carlsen, *supra* note 2 (citing Democratic Senator Darrel Steinberg, Senate President pro tem, and Assembly Speaker John Pérez as co-authors of Chapter 431, adding Sections 2500–02 of the California Public Contract Code); Press Release, Darrell Steinberg, Senate President pro tem, Joint Statement: pro tem Steinberg and Speaker John A. Pérez set the Record Straight on SB 922 (Oct. 12, 2011), available at <http://www.asmdc.org/speaker/news-room/press-releases/item/2695-joint-statement-pro-tem-steinberg-and-speaker-john-a-p%C3%A9rez-set-the-record-straight-on-sb-922> [hereinafter Senate President pro tem Steinberg Press Release] (on file with the *McGeorge Law Review*) (defending SB 922); *see also* ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER PROTECTION, COMMITTEE ANALYSIS OF SB 829, at 4 (Mar. 13, 2012) (defining general law cities as those where local concerns are regulated by “general laws passed by the legislature” and characterizing charter cities as “separate creatures under state law”).

21. PUB. CONT. § 2500 (elucidating the five “taxpayer protection” clauses: (1) prohibition of employment discrimination; (2) permission for all non-union contractors to participate in the bidding process; (3) inclusion of an employee drug testing protocol; (4) a guarantee of continuous work on the project without “stoppages, strikes, [or] lockouts”; and (5) resolution of agreement disputes through arbitration).

22. *Id.* § 2501.

23. *Id.* § 2502; ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER PROTECTION, COMMITTEE ANALYSIS OF SB 829, at 3 (Mar. 13, 2012).

24. *See 2011 Issue #108: Governor Signs SB 922, Calls It “Fair” and “Democratic”*, LEAGUE OF CAL. CITIES (Oct. 3, 2011), http://newsletter.cacities.org/e_article002227917.cfm (on file with the *McGeorge Law Review*) (“[Chapter 431] attempts to sidestep the will of local voters.”).

25. Falkenthal, *supra* note 1.

26. CAL. CONST. art XI, § 5 (discussing city charters and provisions); ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER PROTECTION, COMMITTEE ANALYSIS OF SB 829, at 4 (Mar. 13, 2012) (distinguishing charter cities from general law cities).

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ordinances and regulations with respect to municipal affairs.²⁷ A charter city has final authority—superior to that of the state legislature—regarding regulation of local issues.²⁸ The California Court of Appeal has held that “[w]hatever the subject matter of a municipal contract, it is manifest that the mode in which a city chooses to contract is a municipal affair”²⁹ The California Supreme Court, however, declined to rule on whether any specific construction project (or mode of contracting) could be deemed important or expensive enough to constitute a statewide concern.³⁰

III. CHAPTER 11

Chapter 11 prohibits state financial support³¹ of all construction projects awarded by a city in any charter city that restricts its governing board’s ability to use PLAs containing the “taxpayer protection provisions” codified by Chapter 431.³² Chapter 11 does not take effect until January 1, 2015 in cities with restrictions created before November 1, 2011.³³ Currently funded projects in such cities are not barred from receiving continued financial support until after the effective date.³⁴

27. CAL. CONST. art XI, § 5; ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER PROTECTION, COMMITTEE ANALYSIS OF SB 829, at 4 (Mar. 13, 2012); *see also* 45 CAL. JUR. 3D, *supra* note 14, § 180 (explaining a charter city’s right to regulate local affairs is restricted only by charter provision).

28. 45 CAL. JUR. 3D, *supra* note 14, § 180.

29. *Associated Builders & Contractors, Inc. v. S.F. Airports Comm’n*, 21 Cal. 4th 352, 364, 981 P.2d 499, 506 (1999) (internal quotation marks omitted) (citing *Smith v. City of Riverside*, 34 Cal. App. 3d 529, 110 Cal. Rptr. 67 (4th Dist. 1973)).

30. *Id.* at 364, 981 P.2d at 505–06. “In resolving whether state or local law applies, the court must first determine whether a genuine conflict between those laws in fact exists. Only if the court concludes an actual conflict exists should it go on to analyze whether the state law addresses a matter of statewide concern.” *Id.* (citations omitted).

31. *See* Donna Frye, *What the City of San Diego Is Telling Wall Street About Prop A . . . and Other Things You May Not Know*, SAN DIEGO ROSTRA BLOG (May 21, 2012, 1:46 PM), <http://sdrostra.com/?p=28215> (on file with the *McGeorge Law Review*) (“Frye is a former city council member in the City of San Diego. She signed the ballot argument against Proposition A.”) (describing low interest loans and government grants as among the “financial assistance” that will be lost under Chapter 11).

32. CAL. PUB. CONT. CODE § 2503 (enacted by Chapter 11) (removing state funding and “financial assistance,” but applying the requirement only to PLAs that include section 2500, “taxpayer protection provisions”).

33. *Id.*; *see also* ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 829, at 1 (Mar. 28, 2012) (listing Oceanside, Fresno, and Chula Vista as charter cities with PLA restrictions created before November 1, 2011).

34. PUB. CONT. § 2503 (enacted by Chapter 11).

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IV. ANALYSIS

After the legislature enacted Chapter 432, “[s]ome creative lawyers . . . claimed there is a loophole . . . which would allow a [charter] city to institute or continue a blanket ban on PLAs while maintaining access to state taxpayer dollars.”³⁵ Chapter 11 closes that loophole by withholding state funding on *all* present and future construction projects—not just the construction project under consideration—in charter cities that ban PLA use.³⁶

San Diego is the only charter city to pass a regulation regarding PLAs since November 1, 2011.³⁷ Thus, it is the only city in jeopardy of losing state funding, as Chapter 11 became effective on January 1, 2013.³⁸ While Oceanside, Chula Vista, and Fresno passed similar bans,³⁹ these charter cities have until January 1, 2015 to comply with new code requirements before state funding of any public project is affected.⁴⁰ These are the only four cities Chapter 11 currently impacts.⁴¹ Legal challenges to Chapter 11 are expected to ensue.⁴²

Opponents of Chapter 11 argue that this law “reach[es] into local charter provisions, initiatives, and ordinances to dictate specific provisions including PLAs.”⁴³ PLA bans in three out of the four charter cities affected by Chapter 11 are a direct result of resident-approved initiatives.⁴⁴ Chapter 11, therefore, may be

35. Senate President pro tem Steinberg Press Release, *supra* note 20.

36. PUB. CONT. § 2502 (West Supp. 2012); ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER PROTECTION, COMMITTEE ANALYSIS OF SB 829, at 3 (Mar. 13, 2012).

37. Carlsen, *supra* note 2. As of this writing, it is unclear whether the city is now in violation of Chapter 11. *Proposition A*, *supra* note 16.

38. *See* Carlsen, *supra* note 2 (“SB 829 [Chapter 11] . . . was focused on San Diego’s Proposition A The city of San Diego received \$36 million in state funding for projects in 2010 and \$158 million last year.”); *see also* SENATE GOVERNANCE & FINANCE COMMITTEE, COMMITTEE ANALYSIS OF SB 829, at 1 (Apr. 18 2012) (discussing San Diego’s June 5, 2012 ballot measure).

39. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 829, at 6 (Apr. 19, 2012); Johnston-Dodds, *supra* note 6, at 74.

40. SENATE GOVERNANCE & FINANCE COMMITTEE, COMMITTEE ANALYSIS OF SB 829, at 2 (Apr. 18 2012) (discussing bans of PLAs in Chula Vista and Oceanside); PUB. CONT. § 2503 (enacted by Chapter 11).

41. *See* SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 829, at 6 (Apr. 19, 2012) (discussing bans on PLAs in Chula Vista and Oceanside); Johnston-Dodds, *supra* note 6, at 74 (discussing Fresno’s ban on PLAs); Carlsen, *supra* note 2 (discussing San Diego’s ban on PLAs).

42. *Election 2012*, *supra* note 16 (“We have laid the foundation for legal cases that are to come,” Head of the San Diego and Imperial counties labor council Lorena Gonzalez stated.). *But cf.* E-mail from Gina Coburn, Communications Director, Off. of San Diego City Att’y Jan Goldsmith (Sept. 7, 2012, 4:11 PM) (on file with the *McGeorge Law Review*) (declining to comment on the Office’s position regarding the new legislation or its legal strategy).

43. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 829, at 6 (Apr. 19, 2012).

44. SENATE GOVERNANCE & FINANCE COMMITTEE, COMMITTEE ANALYSIS OF SB 829, at 1 (Apr. 18 2012); *see also* SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 829, at 6 (Apr. 19, 2012) (“In each of the cities that this bill could impact . . . the charter and ordinances are a result of action by the voters.”); Falkenthal, *supra* note 1 (discussing voter initiatives in San Diego, Chula Vista, and Oceanside).

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construed as a punitive measure designed to subvert “the will of the voters” in direct contradiction to the California charter city Home Rule.⁴⁵

Chapter 11 extends the existing ban on state funding, but does not directly affect a charter city’s right to ban PLA use.⁴⁶ Chapter 11 appears to avoid conflict with the Home Rule by focusing on state funding rather than city regulation.⁴⁷ Senate President pro tem Darrel Steinberg and Assembly Speaker John A. Pérez issued a joint statement confirming the State’s intent: “Charter cities by their nature have the ability to prohibit PLAs. . . . [I]f any entity enacts a blanket ban on . . . PLAs then that entity will not be entitled to receive any state construction dollars while the ban is in place.”⁴⁸

Scott Crosby, president of Associated Builders and Contractors, Inc., stated he “would urge the authors [of Chapter 11] . . . to listen to voters and repeal the law.”⁴⁹ However, this prospect seems unlikely.⁵⁰ An attempt to repeal Chapter 431, the precursor to Chapter 11, died in the Assembly only two months after its introduction.⁵¹

V. CONCLUSION

Chapter 11 closes the loophole left by Chapter 431 by prohibiting state funding for all municipal construction projects awarded by a charter city that restricts its governing board from considering PLAs.⁵² As this article goes to press, it is unclear whether San Diego, the only charter city to regulate PLAs after enactment of the new legislation, is in violation of Chapter 11.⁵³ It is also

45. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 829, at 6–7 (Apr. 19, 2012); Carlsen, *supra* note 2 (quoting Jim Ryan of the San Diego Associated General Contractors, “No punitive law that punishes the citizens of one city in the state for something they voted in favor of has ever been enforced . . .”).

46. CAL. PUB. CONT. CODE §§ 2500–02 (West Supp. 2012); *id.* § 2503 (enacted by Chapter 11); ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER PROTECTION, COMMITTEE ANALYSIS OF SB 829, at 4 (Mar. 13, 2012).

47. *See* SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 829, at 3 (Apr. 19, 2012) (noting the Home Rule provision preventing application of majority vote regarding governing board decision to adopt PLA).

48. Senate President pro tem Steinberg Press Release, *supra* note 20.

49. Kuhney, *supra* note 4.

50. *See* ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT, COMMITTEE ANALYSIS OF AB 1804 (Apr. 11, 2012) (proposing repeal of Chapter 431).

51. Complete Bill History of AB 1804, http://leginfo.ca.gov/pub/11-12/bill/asm/ab_1801-1850/ab_1804_bill_20120521_history.html (last visited Aug. 1, 2012) (on file with the *McGeorge Law Review*); David Valadao, *David Valadao: We Need to Protect Local Control of Local Projects*, BAKERSFIELD CALIFORNIAN LOCAL NEWS (Apr. 28, 2012, 02:00 PM), <http://www.bakersfieldcalifornian.com/local/x1088758533/DAVID-VALADAO-We-need-to-protect-local-control-of-local-projects> (on file with the *McGeorge Law Review*) (“[T]hose who benefit from PLAs convinced their allies in the Legislature to kill it,” said the bill’s author.).

52. CAL. PUB. CONT. CODE § 2502 (West Supp. 2012); ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER PROTECTION, COMMITTEE ANALYSIS OF SB 829, at 3 (Mar. 13, 2012).

53. *Proposition A*, *supra* note 16 (reviewing two possible exceptions contained in the Proposition: “One exception would allow the City to require a PLA on a given project if required by state or federal law” and

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uncertain whether California will continue to fund current or proposed San Diego construction projects.⁵⁴ Oceanside, Chula Vista, and Fresno have until January 1, 2015 to comply with the new requirements and safeguard state funding.⁵⁵

Chapter 11 may not increase the use of PLAs in charter cities, but it will likely stop constructive bans on PLAs in charter cities.⁵⁶ Whether this type of state control over charter cities is a violation of the California Constitution's Home Rule remains to be determined.⁵⁷

“[a]nother exception would allow the City to require a PLA on a given project if a PLA is required as a condition of the project's receipt of state or federal funds.”)

54. *Id.*

55. PUB. CONT. § 2503 (enacted by Chapter 11); SENATE GOVERNANCE & FINANCE COMMITTEE, COMMITTEE ANALYSIS OF SB 829, at 2 (Apr. 18 2012) (discussing bans of PLAs in Chula Vista and Oceanside).

56. *See cf.* Letter from Richard Ochoa, to El Cajon Mayor and City Councilmembers (Nov. 7, 2011) (on file with the *McGeorge Law Review*) (suggesting the general city abandon its effort to institute regulations restricting PLA usage after passage of Chapter 431 because of the potential loss of state funding).

57. CAL. CONST. art XI, § 5; *see* SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 829, at 6–7 (Apr. 19, 2012) (presenting arguments in opposition of Chapter 11).