

Assembly Bill No. 1093

Passed the Assembly September 10, 2003

Chief Clerk of the Assembly

Passed the Senate September 9, 2003

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2003, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to add Section 19830.5 to the Government Code, and to add Article 13 (commencing with Section 10480) to Chapter 2 of Part 2 of the Public Contract Code, relating to living wages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1093, Lieber. Living wage.

Existing law prescribes requirements relating to health care coverage provided by employers subject to local living wage laws, and prescribes requirements relative to payment of prevailing wages on public works.

This bill would enact provisions known as the California Living Wage Act. This bill would require the state, and any qualified contractor and qualified subcontractor, as defined, that performs work under a qualified contract, as defined, for a state agency, to pay not less than a living wage, as defined, to each of its employees, as defined, performing work under that contract, as provided. This bill would also authorize an employee to sue to recover unpaid wages, costs, and attorney's fees from a qualified contractor or qualified subcontractor, as specified. This bill would also require certain provisions to appear in a qualified contract and any subcontract to that qualified contract.

This bill would also require a contractor or a subcontractor that is performing work under a qualified contract to provide access to certain records to the Director of Industrial Relations or his or her designee upon request, as specified, and would authorize the Department of Industrial Relations to conduct audits of employee payroll records of these contractors and subcontractors. This bill would also impose monetary penalties and bar a contractor or a subcontractor from contracting with a state agency if that contractor or subcontractor is required to pay a living wage and intentionally fails to do so, as provided. This bill would create a state-mandated local program by requiring a contractor or a subcontractor that is performing work on a qualified contract to certify under penalty of perjury, among other items, whether the contractor or subcontractor is a qualified contractor or qualified subcontractor.



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.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Wages for the bottom 10 percent of wage earners fell dramatically by 9.3 percent between 1979 and 1999.

(b) Underpaying employees tends to inhibit the quality and quantity of services by fostering high turnover, absenteeism, and lackluster performance.

(c) Local governments throughout the country have adopted living wage ordinances, including the counties of Santa Clara and Los Angeles, and the Cities of San Jose, Oakland, Hayward, and Los Angeles.

(d) Higher wages may actually help firms reduce turnover and fill vacancies and can also lead to greater worker productivity by improving morale and overall job satisfaction.

(e) Studies on existing living wage ordinances have found early evidence that relatively little of the extra cost in labor has been passed on to consumers or the cities with whom they contract.

(f) The state should promote an employment environment where wages are adequate to avoid the need for social services to be provided by the state.

SEC. 2. This act shall be known and may be cited as the California Living Wage Act.

SEC. 3. Section 19830.5 is added to the Government Code, to read:

19830.5. (a) As used in this section, “living wage” means ten dollars (\$10) per hour if the employee receives health insurance coverage, or twelve dollars (\$12) per hour if the employee does not receive health insurance coverage. These amounts shall be adjusted annually by the Department of Finance to reflect any increase in the California Consumer Price Index, or by an amount that may be determined annually as an adequate



living wage standard by the Division of Labor Statistics and Research of the Department of Industrial Relations.

(b) (1) The state shall pay not less than a living wage to each of its employees.

(2) For purposes of this section, “employee” means a person that is employed by the state on a full-time, part-time, temporary, or seasonal basis.

(c) All or any part of the provisions of this section may be waived in a bonafide collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of any provision of this section.

SEC. 4. Article 13 (commencing with Section 10480) is added to Chapter 2 of Part 2 of the Public Contract Code, to read:

Article 13. Living Wage

10480. As used in this article:

(a) (1) “Employee” means a person that is employed on a full-time, part-time, temporary, or seasonal basis by a qualified contractor or qualified subcontractor to perform work under a qualified contract.

(2) Notwithstanding paragraph (1), an “employee” does not include a person employed under or pursuant to any of the following:

(A) A special license issued pursuant to Section 1191.5 of the Labor Code.

(B) A special certificate issued pursuant to Section 214 of Title 29 of the United States Code.

(C) A community rehabilitation plan described in Sections 19152 and 19404 of the Welfare and Institutions Code.

(D) A habilitation services program described in Sections 19352 and 19356.6 of the Welfare and Institutions Code.

(E) A program or project of the California Conservation Corps or local conservation corps described in Sections 14406 and 14507.5 of the Public Resources Code.

(b) “Living wage” means ten dollars (\$10) per hour if the qualified contractor or qualified subcontractor provides health



insurance coverage to each of its employees performing the qualified contract or twelve dollars (\$12) per hour if the qualified contractor or qualified subcontractor does not provide health insurance coverage to each of its employees performing the qualified contract. These amounts shall be adjusted annually by the Department of Finance to reflect any increase in the California Consumer Price Index, or by an amount that may be determined annually as an adequate living wage standard by the Division of Labor Statistics and Research of the Department of Industrial Relations.

(c) (1) “Qualified contract” means a contract with a state agency that meets all of the following criteria:

(A) The contract is for services.

(B) The cost of the contract to the state agency is fifty thousand dollars (\$50,000) or more.

(C) Work under the contract will be performed by the employees of a qualified contractor, a qualified subcontractor, or both.

(2) Notwithstanding paragraph (1), a “qualified contract” does not include any of the following:

(A) A contract entered into before January 1, 2004.

(B) A contract entered into on or after January 1, 2004, for which a request for a proposal or bid on the contract was advertised before January 1, 2004.

(C) A contract for which a request for a proposal or bid on the contract is prepared to be advertised on or before April 1, 2004.

(D) A contract entered into before January 1, 2004, that has an option to be renewed on or after that date, unless the terms of the contract are renegotiated on or after January 1, 2004.

(E) A contract described in Section 19134 of the Government Code.

(F) A contract with a health facility, as defined in Section 1250 of the Health and Safety Code, that provides services to Medi-Cal patients.

(G) A contract with a provider, as defined in Section 14043.1 of the Welfare and Institutions Code, that is enrolled in the Medi-Cal program pursuant to Article 1.3 (commencing with Section 14043) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code.



(H) A contract entered into by the managed risk medical insurance board pursuant to Part 6.2 (commencing with Section 12693), Part 6.3 (commencing with Section 12695), Part 6.4 (commencing with Section 12699.50) or Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code.

(d) “Qualified contractor” means a contractor that employs 100 or more employees.

(e) “Qualified subcontractor” means a subcontractor that employs 100 or more employees.

(f) “Department” means the Department of Industrial Relations.

(g) “Director” means the Director of Industrial Relations.

10481. (a) A qualified contractor and a qualified subcontractor that are performing work under a qualified contract shall pay each of its employees performing work under that contract not less than a living wage while the employees are performing work under that contract.

(b) (1) A qualified contract shall contain all of the following provisions:

(A) If the contractor is a qualified contractor, a provision that requires the qualified contractor to pay to each of his or her employees performing work under the contract a living wage, as defined in this article, for work performed under that contract.

(B) A provision that requires the contractor to provide to the department and any state agency that is a party to the qualified contract a list of the subcontractors that will be performing work under the contract and whether these subcontractors are qualified subcontractors, as defined in this article.

(C) A provision that requires the contractor to provide to each of his or her employees performing work under the contract a notice of the wages and benefits that the employee will receive in exchange for performing work under that contract.

(D) A provision that prohibits the contractor from terminating, reducing the wages or benefits, or retaliating in any other manner against an employee that reports an alleged violation of this article.

(2) A subcontract to a qualified contract shall contain all of the following provisions:

(A) If the subcontractor is a qualified subcontractor, a provision that requires the qualified subcontractor to pay to each of his or her employees performing work under the contract a



living wage, as defined in this article, for work performed under that contract.

(B) A provision that requires the subcontractor to provide to each of his or her employees performing work under the contract a notice of the wages and benefits that the employee will receive in exchange for performing work under that contract.

(C) A provision that prohibits the subcontractor from terminating, reducing the wages or benefits, or retaliating in any other manner against an employee that reports an alleged violation of this article.

(c) Each contractor and subcontractor that is performing under a qualified contract shall submit to the department a declaration, under penalty of perjury, that certifies that the contractor or subcontractor:

(1) Has not created an entity for the purpose of avoiding the requirements of this article.

(2) (A) In the case of a contractor, that the contractor is or is not a qualified contractor.

(B) In the case of a subcontractor, that the subcontractor is or is not a qualified subcontractor.

(3) (A) If a contractor is a qualified contractor, that the qualified contractor will pay to each of his or her employees performing work under the contract a living wage, as defined in this article, for work performed under that contract.

(B) If the subcontractor is a qualified subcontractor, that the qualified subcontractor will pay to each of his or her employees performing work under the contract a living wage, as defined in this article, for work performed under that contract.

(d) (1) This section does not apply to any child care or child development contract with the State Department of Education or the State Department of Social Services until a determination is made that a living wage can be paid by the contractors without negatively impacting the quality of services to low-income children and families and the availability of child care for CalWORKs families and low-income families on subvention waiting lists.

(2) (A) The Legislative Analyst shall conduct a review to determine whether child care and child development contractors can reasonably pay a living wage without jeopardizing the quality of services to low-income children and families and the



availability of child care for CalWORKs for families and low-income families on subvention waiting lists.

(B) The Legislative Analyst shall determine what adjustments to the standard reimbursement rate, pursuant to Section 8265 of the Education Code, and other child care and development contracts will be necessary to accommodate the living wage requirement.

(C) The Legislative Analyst shall report its findings and recommendations to the Legislature by July 1, 2006.

10482. (a) When requested by the director or his or her designee, a contractor or a subcontractor that performs work under a qualified contract shall, during normal business hours, provide access to any of the contractor's or subcontractor's records that are pertinent for the director or his or her designee to determine whether the contractor or subcontractor has complied with the requirements of this article.

(b) The department may, during normal business hours, conduct random audits of the employee payroll records of a qualified contractor or qualified subcontractor that performs work under a qualified contract.

(c) (1) If an employee submits a written complaint to the department that a contractor or a subcontractor that performs under a qualified contract is not complying with the requirements of a qualified contract or the requirements of this article, the department shall investigate the complaint within 10 working days of the receipt of the complaint.

(2) A written complaint described in paragraph (1) is not a public record and, to the extent that disclosure of that written complaint may be otherwise required by law, the department shall keep confidential any information in the complaint that may identify the employee who submitted the complaint.

10483. (a) If the director or the department finds that a qualified contractor or qualified subcontractor violated the requirements of subdivision (a) of Section 10481, the Labor Commissioner shall determine if the violation was intentional.

(1) If the Labor Commissioner determines that the violation was intentional, the contractor or subcontractor, or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest, is ineligible for a period of not less than one year or more than five years, as determined by the Labor Commissioner, to do either of the following:



(A) Bid on or be awarded a contract with a state agency.

(B) Perform work as a subcontractor on a contract with a state agency.

(2) Paragraph (1) does not apply if the Labor Commissioner determines that a violation of subdivision (a) of Section 10481 was not intentional.

(3) If the Labor Commissioner determines that a violation was intentional, an employee who was not paid a living wage as required shall recover from a qualified contractor or a qualified subcontractor as follows:

(A) For the first pay period during which the violation occurred, the greater of the following:

(i) The employee's actual damages.

(ii) Fifty dollars (\$50).

(B) For each subsequent pay period during which the violation occurred, the greater of the following:

(i) The employee's actual damages.

(ii) One hundred dollars (\$100), but not to exceed four thousand dollars (\$4,000) in the aggregate for that employee.

(4) If the director or the department finds that a qualified contractor or qualified subcontractor violated the requirements of subdivision (a) of Section 10481 in a manner that was not intentional, the qualified contractor or qualified subcontractor shall, within 30 days of receiving notice of the violation, fully remunerate each employee that was not paid a living wage as required. An employee may bring an action in a court of competent jurisdiction to recover unpaid wages, costs, and attorney's fees from a qualified contractor or qualified subcontractor.

(b) Not less than semiannually, the Labor Commissioner shall publish and distribute to state agencies a list of contractors and subcontractors who, as a result of this section, are ineligible to bid on or be awarded a contract with a state agency, or to perform work as a subcontractor on a contract with a state agency. The list shall contain the name of the contractor or subcontractor, the Contractor's State License Board license number of the contractor, and the effective period of debarment of the contractor or subcontractor. The commissioner shall also place advertisements in construction industry publications targeted to the contractors and subcontractors, chosen by the commissioner, that state the effective period of the debarment and the reason for debarment.



The advertisements shall appear one time for each debarment of a contractor or subcontractor in each publication chosen by the commissioner. The debarred contractor or subcontractor shall be liable to the commissioner for the reasonable cost of the advertisements, not to exceed five thousand dollars (\$5,000).

(c) For the purposes of this section, the term “any interest” means an interest in an entity bidding or performing work on a contract with a state agency, whether as an owner, partner, officer, manager, employee, agent, consultant, or representative. “Any interest” includes, but is not limited to, all instances where the debarred contractor or subcontractor receives payments, whether cash or any other form of compensation, from any entity bidding or performing work on the contract with a state agency, or enters into any contracts or agreements with the entity bidding or performing work on the contract with a state agency for services performed or to be performed for contracts that have been or will be assigned or sublet, or for vehicles, tools, equipment, or supplies that have been or will be sold, rented, or leased during the period from the initiation of the debarment proceedings until the end of the term of the debarment period. “Any interest” does not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of debarment from an entity bidding or performing work on a contract with a state agency.

(d) For the purposes of this section, the term “entity” is defined as a company, limited liability company, association, partnership, sole proprietorship, limited liability partnership, corporation, business trust, or organization.

(e) The Labor Commissioner shall adopt rules and regulations for the administration and enforcement of this section.

10484. All or any part of the provisions of this article may be waived in a bonafide collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of any provision of this article.

10485. The department shall adopt rules and regulations for the administration and enforcement of this article.



SEC. 5. This act may not be construed or applied to create any power or duty that is in conflict with the requirements of federal law.

SEC. 6. The provisions of this act are severable. If any provision of this act or application of the provisions of this act is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 7. 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.



Approved _____, 2003

Governor

