

AMENDED IN SENATE MARCH 16, 2009

SENATE BILL

No. 45

Introduced by Senator Padilla

January 7, 2009

An act to ~~add Sections 1771.3 and 1771.44 to amend Section 1777.1~~ of the Labor Code, relating to ~~public works prevailing wage~~.

LEGISLATIVE COUNSEL'S DIGEST

SB 45, as amended, Padilla. Public works: ~~State Public Works Enforcement Fund~~. *payment of prevailing wage: violations.*

Existing law generally requires the payment of the general prevailing rate of per diem wages to workers employed on public works projects. *Under existing law, whenever a contractor or subcontractor performing a public works project is found by the Labor Commissioner to be either in violation of certain provisions of law, with intent to defraud, or in willful violation of those provisions of law, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest is ineligible to bid on or to receive a public works contract for specified periods of time.*

This bill would ~~require the Director of Industrial Relations, with the approval of the Director of Finance, to assess a fee, not to exceed a specified rate, on all bonds issued by the state to fund public works projects, to cover administrative expenses for the enforcement of prevailing wage and apprenticeship requirements on public works projects funded by the bonds~~ *instead provide that a contractor or subcontractor performing a public works project who is found by the Labor Commissioner to be in willful violation of the public works law, or to be in violation of this law with intent to defraud, with a prescribed*

exception related to apprenticeship requirements, shall be ineligible to bid on or to receive a public works contract.

~~This bill would require all fees collected to be deposited into the State Public Works Enforcement Fund, a special fund this bill would create, and from which moneys would, upon appropriation by the Legislature, be used by the department for those specified purposes.~~

~~This bill would become operative on January 1, 2010.~~

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

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

1 SECTION 1. Section 1777.1 of the Labor Code is amended to
2 read:

3 1777.1. (a) Whenever a contractor or subcontractor performing
4 a public works project pursuant to this chapter is found by the
5 Labor Commissioner to be in violation of this chapter with intent
6 to defraud, except Section 1777.5, the contractor or subcontractor
7 or a firm, corporation, partnership, or association in which the
8 contractor or subcontractor has any interest is ineligible for a period
9 of not less than one year or more than three years to do either of
10 the following:

- 11 (1) Bid on or be awarded a contract for a public works project.
- 12 (2) Perform work as a subcontractor on a public works project.

13 (b) Whenever a contractor or subcontractor performing a public
14 works project pursuant to this chapter is found by the Labor
15 Commissioner to be in willful violation of this chapter, except
16 Section 1777.5, the contractor or subcontractor or a firm,
17 corporation, partnership, or association in which the contractor or
18 subcontractor has any interest is ineligible for a period up to three
19 years for each second and subsequent violation occurring within
20 three years of a separate and previous willful violation of this
21 chapter to do either of the following:

- 22 (1) Bid on or be awarded a contract for a public works project.
- 23 (2) Perform work as a subcontractor on a public works project.

24 (c) A willful violation occurs when the contractor or
25 subcontractor knew or reasonably should have known of his or
26 her obligations under the public works law and deliberately fails
27 or refuses to comply with its provisions.

1 (d) Not less than semiannually, the Labor Commissioner shall
2 publish and distribute to awarding bodies a list of contractors who
3 are ineligible to bid on or be awarded a public works contract, or
4 to perform work as a subcontractor on a public works project
5 pursuant to this chapter. The list shall contain the name of the
6 contractor; *and* the Contractor's State License Board license
7 number of the contractor, ~~and the effective period of debarment~~
8 ~~of the contractor~~. The commissioner shall also place advertisements
9 in construction industry publications targeted to the contractors
10 and subcontractors, chosen by the commissioner, that state ~~the~~
11 ~~effective period of the debarment~~ and the reason for debarment.
12 The advertisements shall appear one time for each debarment of
13 a contractor in each publication chosen by the commissioner. The
14 debarred contractor or subcontractor shall be liable to the
15 commissioner for the reasonable cost of the advertisements, not
16 to exceed five thousand dollars (\$5,000). The amount paid to the
17 commissioner for the advertisements shall be credited against the
18 contractor's or subcontractor's obligation to pay civil fines or
19 penalties for the same willful violation of this chapter.

20 (e) For purposes of this section, "contractor or subcontractor"
21 means a firm, corporation, partnership, or association and its
22 responsible managing officer, as well as any supervisors, managers,
23 and officers found by the Labor Commissioner to be personally
24 and substantially responsible for the willful violation of this
25 chapter.

26 (f) For the purposes of this section, the term "any interest" means
27 an interest in the entity bidding or performing work on the public
28 works project, whether as an owner, partner, officer, manager,
29 employee, agent, consultant, or representative. "Any interest"
30 includes, but is not limited to, all instances where the debarred
31 contractor or subcontractor receives payments, whether cash or
32 any other form of compensation, from any entity bidding or
33 performing work on the public works project, or enters into any
34 contracts or agreements with the entity bidding or performing work
35 on the public works project for services performed or to be
36 performed for contracts that have been or will be assigned or sublet,
37 or for vehicles, tools, equipment, or supplies that have been or will
38 be sold, rented, or leased during the period from the initiation of
39 the debarment proceedings until the end of the term of the
40 debarment period. "Any interest" does not include shares held in

1 a publicly traded corporation if the shares were not received as
2 compensation after the initiation of debarment from an entity
3 bidding or performing work on a public works project.

4 (g) For the purposes of this section, the term “entity” is defined
5 as a company, limited liability company, association, partnership,
6 sole proprietorship, limited liability partnership, corporation,
7 business trust, or *other* organization.

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

10 SECTION 1. ~~Section 1771.3 is added to the Labor Code, to~~
11 ~~read:~~

12 ~~1771.3. The State Public Works Enforcement Fund is hereby~~
13 ~~created as a special fund in the State Treasury. Moneys in the fund~~
14 ~~shall, upon appropriation by the Legislature, be used by the~~
15 ~~Department of Industrial Relations for the purposes of~~
16 ~~administering and enforcing the prevailing wage and apprenticeship~~
17 ~~requirements applicable to public works pursuant to this chapter~~
18 ~~and Chapter 4 (commencing with Section 3070) of Division 3, and~~
19 ~~may not be used or borrowed for any other purpose.~~

20 SEC. 2. ~~Section 1771.44 is added to the Labor Code, to read:~~

21 ~~1771.44. (a) The Director of Industrial Relations, with the~~
22 ~~approval of the Director of Finance, shall determine and assess a~~
23 ~~fee on all bonds issued by the state to fund public works projects,~~
24 ~~in an amount not to exceed one-quarter of 1 percent of the bond~~
25 ~~proceeds. The fee shall be set to cover the expenses of the~~
26 ~~Department of Industrial Relations for administering the prevailing~~
27 ~~wage and apprenticeship requirements on public works projects~~
28 ~~using those bond funds. All fees collected pursuant to this~~
29 ~~subdivision shall be deposited in the State Public Works~~
30 ~~Enforcement Fund created by Section 1771.3, and shall be used~~
31 ~~only for enforcement of prevailing wage and apprenticeship~~
32 ~~requirements on projects using bond funds.~~

33 ~~(b) The administration and enforcement of prevailing wages~~
34 ~~and apprenticeship requirements is an administrative expense~~
35 ~~associated with public works construction.~~

36 SEC. 3. ~~This act shall become operative on January 1, 2010.~~