

AMENDED IN ASSEMBLY AUGUST 27, 2009

AMENDED IN ASSEMBLY JUNE 3, 2009

AMENDED IN SENATE MARCH 16, 2009

SENATE BILL

No. 45

Introduced by Senator Padilla
(Coauthor: Senator Strickland)

January 7, 2009

An act to amend Section 1777.1 of the Labor Code, relating to prevailing wage.

LEGISLATIVE COUNSEL'S DIGEST

SB 45, as amended, Padilla. Public works: 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 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 ~~a second and subsequent time, or to be in violation of this law with intent to defraud a second and subsequent time~~, with intent to defraud, for the first time, is

ineligible to bid on or be awarded a contract for a public works project for specified periods of time, with a prescribed exception related to apprenticeship requirements, *but would provide that for a 2nd violation of the public works law, with intent to defraud, the contractor or subcontractor shall be ineligible to bid on or to receive be awarded a public works contract.*

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) (1) Whenever a contractor or subcontractor
4 performing a public works project pursuant to this chapter is found
5 by the Labor Commissioner to be in violation of this chapter with
6 intent to defraud, except Section 1777.5, *for the first time*, the
7 contractor or subcontractor or a firm, corporation, partnership, or
8 association in which the contractor or subcontractor has any interest
9 is ineligible for a period of not less than one year or more than
10 three years to do either of the following:
- 11 (A) Bid on or be awarded a contract for a public works project.
12 (B) Perform work as a subcontractor on a public works project.
- 13 (2) 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 violation of this chapter with intent to
16 defraud, except Section 1777.5, for a second and subsequent time,
17 the contractor or subcontractor or a firm, corporation, partnership,
18 or association in which the contractor or subcontractor has any
19 interest is ineligible to do either of the following:
- 20 (A) Bid on or be awarded a contract for a public works project.
21 (B) Perform work as a subcontractor on a public works project.
- 22 ~~(b) (1) Whenever a contractor or subcontractor performing a~~
23 ~~public works project pursuant to this chapter is found by the Labor~~
24 ~~Commissioner to be in willful violation of this chapter, except~~
25 ~~Section 1777.5, the contractor or subcontractor or a firm,~~
26 ~~corporation, partnership, or association in which the contractor or~~
27 ~~subcontractor has any interest is ineligible for a period of not less~~
28 ~~than one year or more than three years to do either of the following:~~
29 (A) Bid on or be awarded a contract for a public works project.

1 ~~(B) Perform work as a subcontractor on a public works project.~~

2 ~~(2) Whenever a contractor or subcontractor performing a public~~
3 ~~works project pursuant to this chapter is found by the Labor~~
4 ~~Commissioner to be in willful violation of this chapter, except~~
5 ~~Section 1777.5, for a second and subsequent violation, the~~
6 ~~contractor or subcontractor or a firm, corporation, partnership, or~~
7 ~~association in which the contractor or subcontractor has any interest~~
8 ~~is ineligible to do either of the following:~~

9 ~~(A) Bid on or be awarded a contract for a public works project.~~

10 ~~(B) Perform work as a subcontractor on a public works project.~~

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

20 ~~(1) Bid on or be awarded a contract for a public works project.~~

21 ~~(2) Perform work as a subcontractor on a public works project.~~

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

26 ~~(d) Not less than semiannually, the Labor Commissioner shall~~
27 ~~publish and distribute to awarding bodies a list of contractors who~~
28 ~~are ineligible to bid on or be awarded a public works contract, or~~
29 ~~to perform work as a subcontractor on a public works project~~
30 ~~pursuant to this chapter. The list shall contain the name of the~~
31 ~~contractor, the Contractor's State License Board license number~~
32 ~~of the contractor, and the effective period of debarment of the~~
33 ~~contractor. The commissioner shall also place advertisements in~~
34 ~~construction industry publications targeted to the contractors and~~
35 ~~subcontractors, chosen by the commissioner, that state the effective~~
36 ~~period of the debarment and the reason for debarment. The~~
37 ~~advertisements shall appear one time for each debarment of a~~
38 ~~contractor in each publication chosen by the commissioner. The~~
39 ~~debarred contractor or subcontractor shall be liable to the~~
40 ~~commissioner for the reasonable cost of the advertisements, not~~

1 to exceed five thousand dollars (\$5,000). The amount paid to the
2 commissioner for the advertisements shall be credited against the
3 contractor's or subcontractor's obligation to pay civil fines or
4 penalties for the same willful violation of this chapter.

5 (e) For purposes of this section, "contractor or subcontractor"
6 means a firm, corporation, partnership, or association and its
7 responsible managing officer, as well as any supervisors, managers,
8 and officers found by the Labor Commissioner to be personally
9 and substantially responsible for the willful violation of this
10 chapter.

11 (f) For the purposes of this section, the term "any interest" means
12 an interest in the entity bidding or performing work on the public
13 works project, whether as an owner, partner, officer, manager,
14 employee, agent, consultant, or representative. "Any interest"
15 includes, but is not limited to, all instances where the debarred
16 contractor or subcontractor receives payments, whether cash or
17 any other form of compensation, from any entity bidding or
18 performing work on the public works project, or enters into any
19 contracts or agreements with the entity bidding or performing work
20 on the public works project for services performed or to be
21 performed for contracts that have been or will be assigned or sublet,
22 or for vehicles, tools, equipment, or supplies that have been or will
23 be sold, rented, or leased during the period from the initiation of
24 the debarment proceedings until the end of the term of the
25 debarment period. "Any interest" does not include shares held in
26 a publicly traded corporation if the shares were not received as
27 compensation after the initiation of debarment from an entity
28 bidding or performing work on a public works project.

29 (g) For the purposes of this section, the term "entity" is defined
30 as a company, limited liability company, association, partnership,
31 sole proprietorship, limited liability partnership, corporation,
32 business trust, or other organization.

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

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2 CORRECTIONS:
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