

ASSEMBLY BILL

No. 350

Introduced by Assembly Member Solorio

February 10, 2011

An act to amend Sections 1060, 1061, and 1064 of, and to amend the heading of Chapter 4.5 (commencing with Section 1060) of Part 3 of Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 350, as introduced, Solorio. Displaced Janitor Opportunity Act.

Existing law, the Displaced Janitor Opportunity Act, requires contractors and subcontractors, that are awarded contracts or subcontracts by an awarding authority to provide janitorial or building maintenance services at a particular job site or sites, to retain, for a period of 60 days, certain employees who were employed at that site by the previous contractor or subcontractor. The act requires the successor contractors and subcontractors to offer continued employment to those employees retained for the 60-day period if their performance during that 60-day period is satisfactory. The act authorizes an employee who was not offered employment or who has been discharged in violation of these provisions by a successor contractor or successor subcontractor, or an agent of the employee, to bring an action against a successor contractor or successor subcontractor in any superior court of the state having jurisdiction over the successor contractor or successor subcontractor, as specified.

This bill would rename the act the Displaced Property Service Employee Opportunity Act and make the provisions of the act applicable to property services, which would include licensed security, as defined, landscape, window cleaning, and food cafeteria services in addition to

janitorial and building maintenance services. The bill would extend the 60-day period in the act to 90 days. The bill also would make conforming changes.

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

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

SECTION 1. The heading of Chapter 4.5 (commencing with Section 1060) of Part 3 of Division 2 of the Labor Code is amended to read:

CHAPTER 4.5. DISPLACED-JANITOR PROPERTY SERVICE
EMPLOYEE OPPORTUNITY ACT

SEC. 2. Section 1060 of the Labor Code is amended to read:

1060. The following definitions shall apply throughout this chapter:

(a) "Awarding authority" means any person that awards or otherwise enters into contracts for ~~janitorial or building maintenance~~ *property* services performed within the State of California, including any subcontracts for ~~janitorial or building maintenance~~ *those* services.

(b) "Contractor" means any person that employs 25 or more individuals and that enters into a *property* service contract with the awarding authority.

(c) "Employee" means any person employed as a *property* service employee of a contractor or subcontractor who works at least 15 hours per week and whose primary place of employment is in the State of California under a contract to provide ~~janitorial or building maintenance~~ *property* services. "Employee" does not include a person who is a managerial, supervisory, or confidential employee, including those employees who would be so defined under the federal Fair Labor Standards Act.

(d) "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(e) "*Property service*" means *janitorial, building maintenance, licensed security, landscape, window cleaning, or food cafeteria*

1 *services. For purposes of this subdivision, “licensed security*
2 *service” means service rendered by a person who is registered as*
3 *a security guard pursuant to Chapter 11.5 (commencing with*
4 *Section 7580) of Division 3 of the Business and Professions Code.*

5 ~~(e) “Service~~

6 (f) “*Property service contract*” means any contract that has the
7 principal purpose of providing *property* services through the use
8 of *property* service employees.

9 (g) “Subcontractor” means any person who is not an employee
10 who enters into a contract with a contractor to assist the contractor
11 in performing a *property* service contract.

12 ~~(g)~~

13 (h) “Successor *property* service contract” means a *property*
14 service contract for the performance of essentially the same services
15 as were previously performed pursuant to a different *property*
16 service contract at the same facility that terminated within the
17 previous 30 days. A *property* service contract entered into more
18 than 30 days after the termination of a predecessor *property* service
19 contract shall be considered a “successor *property* service contract”
20 if its execution was delayed for the purpose of avoiding application
21 of this chapter.

22 SEC. 3. Section 1061 of the Labor Code is amended to read:

23 1061. (a) (1) If an awarding authority notifies a contractor
24 that the *property* service contract between the awarding authority
25 and the contractor has been terminated or will be terminated, the
26 awarding authority shall indicate in that notification whether a
27 successor *property* service contract has been or will be awarded
28 in its place and, if so, shall identify the name and address of the
29 successor contractor. The terminated contractor shall, within three
30 working days after receiving that notification, provide to the
31 successor contractor identified by the awarding authority, the name,
32 date of hire, and job classification of each employee employed at
33 the site or sites covered by the terminated *property* service contract
34 at the time of the contract termination.

35 (2) If the terminated contractor has not learned the identity of
36 the successor contractor, if any, the terminated contractor shall
37 provide that information to the awarding authority, which shall be
38 responsible for providing that information to the successor
39 contractor as soon as that contractor has been selected.

1 (3) The requirements of this section shall be equally applicable
2 to all subcontractors of a terminated contractor.

3 (b) (1) A successor contractor or successor subcontractor shall
4 retain, for a ~~60-day~~ 90-day transition employment period,
5 employees who have been employed by the terminated contractor
6 or its subcontractors, if any, for the preceding four months or longer
7 at the site or sites covered by the successor service contract unless
8 the successor contractor or successor subcontractor has reasonable
9 and substantiated cause not to hire a particular employee based on
10 that employee's performance or conduct while working under the
11 terminated contract. This requirement shall be stated by awarding
12 authorities in all initial bid packages that are governed by this
13 chapter.

14 (2) The successor contractor or successor subcontractor shall
15 make a written offer of employment to each employee, as required
16 by this section, in the employee's primary language or another
17 language in which the employee is literate. That offer shall state
18 the time within which the employee must accept that offer, but in
19 no case may that time be less than 10 days. Nothing in this section
20 requires the successor contractor or successor subcontractor to pay
21 the same wages or offer the same benefits as were provided by the
22 prior contractor or prior subcontractor.

23 (3) If at any time the successor contractor or successor
24 subcontractor determines that fewer employees are needed to
25 perform services under the successor *property* service contract or
26 successor subcontract than were required by the terminated
27 contractor under the terminated contract or terminated subcontract,
28 the successor contractor or successor subcontractor shall retain
29 employees by seniority within the job classification.

30 (c) The successor contractor or successor subcontractor, upon
31 commencing service under the successor *property* service contract,
32 shall provide a list of its employees and a list of employees of its
33 subcontractors providing *property* services at the site or sites
34 covered under that contract to the awarding authority. These lists
35 shall indicate which of these employees were employed at the site
36 or sites by the terminated contractor or terminated subcontractor.
37 The successor contractor or successor subcontractor shall also
38 provide a list of any of the terminated contractor's employees who
39 were not retained either by the successor contractor or successor
40 subcontractor, stating the reason these employees were not retained.

1 (d) During the ~~60-day~~ 90-day transition employment period,
2 the successor contractor or successor subcontractor shall maintain
3 a preferential hiring list of eligible covered employees not retained
4 by the successor contractor or successor subcontractor from which
5 the successor contractor or successor subcontractor shall hire
6 additional employees until such time as all of the terminated
7 contractor's or terminated subcontractor's employees have been
8 offered employment with the successor contractor or successor
9 subcontractor.

10 (e) During the initial ~~60-day~~ 90-day transition employment
11 period, the successor contractor or successor subcontractor shall
12 not discharge without cause an employee retained pursuant to this
13 chapter. Cause shall be based only on the performance or conduct
14 of the particular employee.

15 (f) At the end of the ~~60-day~~ 90-day transition employment
16 period, a successor contractor or successor subcontractor shall
17 provide a written performance evaluation to each employee retained
18 pursuant to this chapter. If the employee's performance during
19 that ~~60-day~~ 90-day period is satisfactory, the successor contractor
20 or successor subcontractor shall offer the employee continued
21 employment. Any employment after the ~~60-day~~ 90-day transition
22 employment period shall be at-will employment under which the
23 employee may be terminated without cause.

24 SEC. 4. Section 1064 of the Labor Code is amended to read:

25 1064. Nothing in this chapter shall prohibit a local government
26 agency from enacting ordinances relating to displaced ~~janitors~~
27 *property service employees* that impose greater standards than, or
28 establish ~~additional~~ enforcement provisions *in addition* to, those
29 prescribed by this chapter.