# 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 amended, 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 and dietary 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 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 property services performed within the State of California, including any subcontracts for 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, has been employed by the contractor for at least four months prior to receiving notification of a contract termination, as described in paragraph (1) of subdivision (a) of Section 1061, and whose primary place of employment is in the State of California under a contract to provide property services. A person who provides landscape services is an employee only if he or she provides those services for at least 15 hours per week at a single worksite. "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 and dietary services. For purposes of this subdivision, "licensed security service" means service rendered by a person covered under a valid collective bargaining agreement who is registered as a security guard pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code.
(f) "Property service contract" means any contract that has the principal purpose of providing property services through the use of property service employees.
(g) "Subcontractor" means any person who is not an employee who enters into a contract with a contractor to assist the contractor in performing a property service contract.
(h) "Successor property service contract" means a property service contract for the performance of essentially the same services as were previously performed pursuant to a different property service contract at the same facility that terminated within the previous 30 days. A property service contract entered into more than 30 days after the termination of a predecessor property service contract shall be considered a "successor property service contract" if its execution was delayed for the purpose of avoiding application of this chapter.

SEC. 3. Section 1061 of the Labor Code is amended to read:
1061. (a) (1) If an awarding authority notifies a contractor that the property service contract between the awarding authority and the contractor has been terminated or will be terminated, the awarding authority shall indicate in that notification whether a successor property service contract has been or will be awarded in its place and, if so, shall identify the name and address of the successor contractor. The terminated contractor shall, within three working days after receiving that notification, provide to the successor contractor identified by the awarding authority, the name, date of hire, and job classification of each employee employed at the site or sites covered by the terminated property service contract at the time of the contract termination.
(2) If the terminated contractor has not learned the identity of the successor contractor, if any, the terminated contractor shall provide that information to the awarding authority, which shall be responsible for providing that information to the successor contractor as soon as that contractor has been selected.
(3) The requirements of this section shall be equally applicable to all subcontractors of a terminated contractor.
(b) (1) A successor contractor or successor subcontractor shall retain, for a 90 -day transition employment period, employees who have been employed by the terminated contractor or its subcontractors, if any, for the preceding four months or longer at the site or sites covered by the successor service contract unless the successor contractor or successor subcontractor has reasonable and substantiated cause not to hire a particular employee based on that employee's performance or conduct while working under the terminated contract. This requirement shall be stated by awarding authorities in all initial bid packages that are governed by this chapter.
(2) The successor contractor or successor subcontractor shall make a written offer of employment to each employee, as required by this section, in the employee's primary language or another language in which the employee is literate. That offer shall state the time within which the employee must accept that offer, but in no case may that time be less than 10 days. Nothing in this section requires the successor contractor or successor subcontractor to pay the same wages or offer the same benefits as were provided by the prior contractor or prior subcontractor.
(3) If at any time the successor contractor or successor subcontractor determines that fewer employees are needed to perform services under the successor property service contract or successor subcontract than were required by the terminated contractor under the terminated contract or terminated subcontract, the successor contractor or successor subcontractor shall retain employees by seniority within the job classification.
(c) The successor contractor or successor subcontractor, upon commencing service under the successor property service contract, shall provide a list of its employees and a list of employees of its subcontractors providing property services at the site or sites covered under that contract to the awarding authority. These lists shall indicate which of these employees were employed at the site
or sites by the terminated contractor or terminated subcontractor. The successor contractor or successor subcontractor shall also provide a list of any of the terminated contractor's employees who were not retained either by the successor contractor or successor subcontractor, stating the reason these employees were not retained.
(d) During the 90-day transition employment period, the successor contractor or successor subcontractor shall maintain a preferential hiring list of eligible covered employees not retained by the successor contractor or successor subcontractor from which the successor contractor or successor subcontractor shall hire additional employees until such time as all of the terminated contractor's or terminated subcontractor's employees have been offered employment with the successor contractor or successor subcontractor.
(e) During the initial 90-day transition employment period, the successor contractor or successor subcontractor shall not discharge without cause an employee retained pursuant to this chapter. Cause shall be based only on the performance or conduct of the particular employee.
(f) At the end of the 90-day transition employment period, a successor contractor or successor subcontractor shall provide a written performance evaluation to each employee retained pursuant to this chapter. If the employee's performance during that 90-day period is satisfactory, the successor contractor or successor subcontractor shall offer the employee continued employment. Any employment after the 90-day transition employment period shall be at-will employment under which the employee may be terminated without cause.

SEC. 4. Section 1064 of the Labor Code is amended to read:
1064. Nothing in this chapter shall prohibit a local government agency from enacting ordinances relating to displaced property service employees that impose greater standards than, or establish enforcement provisions in addition to, those prescribed by this chapter.

