

AMENDED IN ASSEMBLY APRIL 27, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 514

Introduced by Assembly Member Roger Hernández

February 15, 2011

An act to amend Section 1720.3 of the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 514, as amended, Roger Hernández. Public works: *prevailing wage*: hauling refuse.

Existing law includes, for the purposes of public works contracts, in the definition of “public works” the hauling of refuse from a public works site to an outside disposal location, as specified. Existing law generally requires all workers employed on public works to be paid not less than the prevailing rate of per diem wages.

This bill would include in the definition of “hauling of refuse” the hauling of materials ~~that are neither~~ *other than* bona fide commodities ~~nor sold for at fair market value~~, thereby expanding the definition of “public works” and thus requiring the payment of prevailing wages for that activity. *This bill would define “bona fide commodity” to mean a commodity for which a publicly traded commodity market exists, such as for copper, steel, or aluminum.*

Because this bill would expand the application of prevailing wage requirements, the violation of which is a crime, it would impose a state-mandated local program.

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.

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

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

1 SECTION 1. Section 1720.3 of the Labor Code is amended to
2 read:

3 1720.3. (a) For the limited purposes of Article 2 (commencing
4 with Section 1770), “public works” also means the hauling of
5 refuse from a public works site to an outside disposal location,
6 with respect to contracts involving any state agency, including the
7 California State University and the University of California, or
8 any political subdivision of the state.

9 (b) For the purposes of this section, “hauling section:

10 (1) “Bona fide commodity” means a commodity for which a
11 publicly traded commodity market exists, such as for copper, steel,
12 or aluminum.

13 (2) “Hauling of refuse” includes, but is not limited to, hauling
14 materials ~~that are neither~~ other than bona fide commodities ~~nor~~
15 ~~sold for~~ sold at fair market value from a public works site.

16 SEC. 2. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.

25 ~~SECTION 1. Section 98 of the Labor Code is amended to read:~~

26 ~~98. (a) The Labor Commissioner shall have the authority to~~
27 ~~investigate employee complaints. The Labor Commissioner may~~
28 ~~provide for a hearing in any action to recover wages, penalties,~~
29 ~~and other demands for compensation properly before the division~~
30 ~~or the Labor Commissioner, including orders of the Industrial~~

1 Welfare Commission, and shall determine all matters arising under
2 his or her jurisdiction. It shall be within the jurisdiction of the
3 Labor Commissioner to accept and determine claims from holders
4 of payroll checks or payroll drafts returned unpaid because of
5 insufficient funds, if, after a diligent search, the holder is unable
6 to return the dishonored check or draft to the payee and recover
7 the sums paid out. Within 30 days of the filing of the complaint,
8 the Labor Commissioner shall notify the parties as to whether a
9 hearing will be held, whether action will be taken in accordance
10 with Section 98.3, or whether no further action will be taken on
11 the complaint. If the determination is made by the Labor
12 Commissioner to hold a hearing, the hearing shall be held within
13 90 days of the date of that determination. However, the Labor
14 Commissioner may postpone or grant additional time before setting
15 a hearing if the Labor Commissioner finds that it would lead to an
16 equitable and just resolution of the dispute.

17 It is the intent of the Legislature that hearings held pursuant to
18 this section be conducted in an informal setting preserving the
19 rights of the parties.

20 (b) When a hearing is set, a copy of the complaint, which shall
21 include the amount of compensation requested, together with a
22 notice of time and place of the hearing, shall be served on all
23 parties, personally or by certified mail, or in the manner specified
24 in Section 415.20 of the Code of Civil Procedure.

25 (c) Within 10 days after service of the notice and the complaint,
26 a defendant may file an answer with the Labor Commissioner in
27 any form as the Labor Commissioner may prescribe, setting forth
28 the particulars in which the complaint is inaccurate or incomplete
29 and the facts upon which the defendant intends to rely.

30 (d) No pleading other than the complaint and answer of the
31 defendant or defendants shall be required. Both shall be in writing
32 and shall conform to the form and the rules of practice and
33 procedure adopted by the Labor Commissioner.

34 (e) Evidence on matters not pleaded in the answer shall be
35 allowed only on terms and conditions the Labor Commissioner
36 shall impose. In all these cases, the claimant shall be entitled to a
37 continuance for purposes of review of the new evidence.

38 (f) If the defendant fails to appear or answer within the time
39 allowed under this chapter, no default shall be taken against him
40 or her, but the Labor Commissioner shall hear the evidence offered

1 and shall issue an order, decision, or award in accordance with the
2 evidence. A defendant failing to appear or answer, or subsequently
3 contending to be aggrieved in any manner by want of notice of the
4 pendency of the proceedings, may apply to the Labor
5 Commissioner for relief in accordance with Section 473 of the
6 Code of Civil Procedure. The Labor Commissioner may afford
7 this relief. No right to relief, including the claim that the findings
8 or award of the Labor Commissioner or judgment entered thereon
9 are void upon their face, shall accrue to the defendant in any court
10 unless prior application is made to the Labor Commissioner in
11 accordance with this chapter.

12 ~~(g) All hearings conducted pursuant to this chapter are governed~~
13 ~~by the division and by the rules of practice and procedure adopted~~
14 ~~by the Labor Commissioner.~~

15 ~~(h) (1) Whenever a claim is filed under this chapter against a~~
16 ~~person operating or doing business under a fictitious business~~
17 ~~name, as defined in Section 17900 of the Business and Professions~~
18 ~~Code, which relates to the person's business, the division shall~~
19 ~~inquire at the time of the hearing whether the name of the person~~
20 ~~is the legal name under which the business or person has been~~
21 ~~licensed, registered, incorporated, or otherwise authorized to do~~
22 ~~business.~~

23 ~~(2) The division may amend an order, decision, or award to~~
24 ~~conform to the legal name of the business or the person who is the~~
25 ~~defendant to a wage claim, if it can be shown that proper service~~
26 ~~was made on the defendant or his or her agent, unless a judgment~~
27 ~~had been entered on the order, decision, or award pursuant to~~
28 ~~subdivision (d) of Section 98.2. The Labor Commissioner may~~
29 ~~apply to the clerk of the superior court to amend a judgment that~~
30 ~~has been issued pursuant to a final order, decision, or award to~~
31 ~~conform to the legal name of the defendant, if it can be shown that~~
32 ~~proper service was made on the defendant or his or her agent.~~