

AMENDED IN SENATE MARCH 30, 2011

SENATE BILL

No. 725

Introduced by Senator Berryhill
(Principal coauthor: Assembly Member Grove)

February 18, 2011

An act to amend ~~Section 22032 of the Public Contract Code, relating to public contracts.~~ Sections 1773, 1773.1, 1773.9, and 1776 of the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 725, as amended, Berryhill. ~~Public contracts.~~ Prevailing wages.

Existing law defines the term “public works” for purposes of requirements regarding the payment of prevailing wages, the regulation of working hours, and the securing of workers’ compensation for public works projects. Existing law further requires that, except as specified, not less than the general prevailing rate of per diem wages, determined by the Director of Industrial Relations as specified, be paid to workers employed on public works projects, and imposes misdemeanor penalties for certain violations of this requirement.

This bill would revise the manner in which the director determines the rate of general prevailing wages, including deleting the requirement that he or she consider the applicable wage rates established by collective bargaining agreements and the rates that may have been predetermined for federal public works, and deleting the requirement that the director consider further data from labor organizations and employers or employer associations and concerns where the rates do not constitute the rates actually paid in the locality. The bill would also revise the methodology that the director is required to use in determining the general prevailing rate of per diem wages in the locality in which

the public work is to be performed, including deleting certain requirements, and requiring the director to conduct a survey of the wages paid for work performed in each locality in which the public work is to be performed.

Existing law requires the body awarding a contract for public work or undertaking a public work to pay holiday rates for all specified holidays or all holidays recognized in the applicable collective bargaining agreement, and provides that awarding bodies are not required to specify the holidays upon which holiday rates are paid in the contract for public work.

This bill would require the holiday rates to be paid on all specified holidays, and would delete the authorization that they be paid instead on those dates recognized in a collective bargaining agreement. The bill would delete the provision stating that awarding bodies are not required to specify holidays in the contract for public work.

Existing law provides that per diem wages for purposes of public works include employer payments for, among other things, specified worker protection and assistance programs or committees, industry advancement, collective bargaining agreements, administrative fees, and any purposes similar to the other purposes specified for employer payments.

This bill would delete these categories of employer payments from per diem wages for purposes of public works.

Existing law requires, for purposes of per diem wage payments, that the credit for employer payments be computed on an annualized basis where the employer seeks credit for payments that are higher for public works projects than for private construction by that employer, except as specified. Existing law also requires a representative of any craft, classification, or type of worker needed to execute public works contracts to file with the Department of Industrial Relations copies of collective bargaining agreements and all modifications and extensions affecting per diem wages or holidays.

This bill would delete these requirements.

This bill would make related technical, nonsubstantive changes.

~~The Public Contract Code provides procedures that local agencies are required to follow when they build public works projects. When local agencies voluntarily use the Uniform Public Construction Cost Accounting Act, they may use their own employees for projects of \$30,000 or less, while projects of \$125,000 or less require informal procedures and those in excess of \$125,000 require formal bids.~~

~~This bill would make a technical, nonsubstantive change to this provision.~~

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

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

1 SECTION 1. Section 1773 of the Labor Code is amended to
2 read:

3 1773. The body awarding any contract for public work, or
4 otherwise undertaking any public work, shall obtain the general
5 prevailing rate of per diem wages and the general prevailing rate
6 for holiday and overtime work in the locality in which the public
7 work is to be performed for each craft, classification, or type of
8 worker needed to execute the contract from the Director of
9 Industrial Relations. ~~The holidays upon which those rates shall be~~
10 ~~paid need not be specified by the awarding body, but shall be all~~
11 ~~holidays recognized in the applicable collective bargaining~~
12 ~~agreement. If the prevailing rate is not based on a collectively~~
13 ~~bargained rate, the holidays upon which the prevailing rate shall~~
14 ~~be paid shall be as provided in Section 6700 of the Government~~
15 ~~Code.~~

16 ~~In determining the rates, the Director of Industrial Relations~~
17 ~~shall ascertain and consider the applicable wage rates established~~
18 ~~by collective bargaining agreements and the rates that may have~~
19 ~~been predetermined for federal public works, within the locality~~
20 ~~and in the nearest labor market area. Where the rates do not~~
21 ~~constitute the rates actually prevailing in the locality, the director~~
22 ~~shall obtain and consider further data from the labor organizations~~
23 ~~and employers or employer associations concerned, including the~~
24 ~~recognized collective bargaining representatives for the particular~~
25 ~~craft, classification, or type of work involved. The rate fixed for~~
26 ~~each craft, classification, or type of work shall be not less than the~~
27 ~~prevailing rate paid in the craft, classification, or type of work.~~

28 ~~If the director determines that the rate of prevailing wage for~~
29 ~~any craft, classification, or type of worker is the rate established~~
30 ~~by a collective bargaining agreement, the director may adopt that~~
31 ~~rate by reference as provided for in the collective bargaining~~
32 ~~agreement and that determination shall be effective for the life of~~

1 ~~the agreement or until the director determines that another rate~~
2 ~~should be adopted.~~

3 *SEC. 2. Section 1773.1 of the Labor Code is amended to read:*

4 1773.1. (a) Per diem wages, when the term is used in this
5 chapter or in any other statute applicable to public works, shall be
6 deemed to include employer payments for the following:

7 (1) Health and welfare.

8 (2) Pension.

9 (3) Vacation.

10 (4) Travel.

11 (5) Subsistence.

12 (6) Apprenticeship or other training programs authorized by
13 Section 3093, so long as the cost of training is reasonably related
14 to the amount of the contributions.

15 ~~(7) Worker protection and assistance programs or committees~~
16 ~~established under the federal Labor Management Cooperation Act~~
17 ~~of 1978 (Section 175a of Title 29 of the United States Code), to~~
18 ~~the extent that the activities of the programs or committees are~~
19 ~~directed to the monitoring and enforcement of laws related to~~
20 ~~public works.~~

21 ~~(8) Industry advancement and collective bargaining agreements~~
22 ~~administrative fees, provided that these payments are required~~
23 ~~under a collective bargaining agreement pertaining to the particular~~
24 ~~craft, classification, or type of work within the locality or the~~
25 ~~nearest labor market area at issue.~~

26 ~~(9) Other purposes similar to those specified in paragraphs (1)~~
27 ~~to (8), inclusive.~~

28 (b) Employer payments include all of the following:

29 (1) The rate of contribution irrevocably made by the employer
30 to a trustee or third person pursuant to a plan, fund, or program.

31 (2) The rate of actual costs to the employer reasonably
32 anticipated in providing benefits to workers pursuant to an
33 enforceable commitment to carry out a financially responsible plan
34 or program communicated in writing to the workers affected.

35 (3) Payments to the California Apprenticeship Council pursuant
36 to Section 1777.5.

37 (c) Employer payments are a credit against the obligation to
38 pay the general prevailing rate of per diem wages. However, no
39 credit shall be granted for benefits required to be provided by other
40 state or federal law. Credits for employer payments also shall not

1 reduce the obligation to pay the hourly straight time or overtime
2 wages found to be prevailing.

3 ~~(d) The credit for employer payments shall be computed on an~~
4 ~~annualized basis where the employer seeks credit for employer~~
5 ~~payments that are higher for public works projects than for private~~
6 ~~construction performed by the same employer, except where one~~
7 ~~or more of the following occur:~~

8 ~~(1) The employer has an enforceable obligation to make the~~
9 ~~higher rate of payments on future private construction performed~~
10 ~~by the employer.~~

11 ~~(2) The higher rate of payments is required by a project labor~~
12 ~~agreement.~~

13 ~~(3) The payments are made to the California Apprenticeship~~
14 ~~Council pursuant to Section 1777.5.~~

15 ~~(4) The director determines that annualization would not serve~~
16 ~~the purposes of this chapter.~~

17 ~~(e) (1) For the purpose of determining those per diem wages~~
18 ~~for contracts, the representative of any craft, classification, or type~~
19 ~~of worker needed to execute contracts shall file with the~~
20 ~~Department of Industrial Relations fully executed copies of the~~
21 ~~collective bargaining agreements for the particular craft,~~
22 ~~classification, or type of work involved. The collective bargaining~~
23 ~~agreements shall be filed after their execution and thereafter may~~
24 ~~be taken into consideration pursuant to Section 1773 whenever~~
25 ~~filed 30 days prior to the call for bids. If the collective bargaining~~
26 ~~agreement has not been formalized, a typescript of the final draft~~
27 ~~may be filed temporarily, accompanied by a statement under~~
28 ~~penalty of perjury as to its effective date.~~

29 ~~(2) Where a copy of the collective bargaining agreement has~~
30 ~~previously been filed, fully executed copies of all modifications~~
31 ~~and extensions of the agreement that affect per diem wages or~~
32 ~~holidays shall be filed.~~

33 ~~(3) The failure to comply with filing requirements of this~~
34 ~~subdivision shall not be grounds for setting aside a prevailing wage~~
35 ~~determination if the information taken into consideration is correct.~~

36 *SEC. 3. Section 1773.9 of the Labor Code is amended to read:*

37 1773.9. (a) The Director of Industrial Relations shall use the
38 methodology set forth in subdivision (b) to determine the general
39 prevailing rate of per diem wages in the locality in which the public
40 work is to be performed.

(b) The general prevailing rate of per diem wages includes all of the following:

(1) The basic hourly wage rate being paid to a majority of workers engaged in the particular craft, classification, or type of work within the locality and in the nearest labor market area, if a majority of the workers is paid at a single rate. If no single rate is being paid to a majority of the workers, then the single rate being paid to the greatest number of workers, or modal rate, is prevailing. If a modal rate cannot be determined, then the director shall establish an alternative rate, consistent with the methodology for determining the modal rate, by considering the appropriate collective bargaining agreements, federal rates, rates in the nearest labor market area, or other data such as wage survey data.

(2) Other employer payments included in per diem wages pursuant to Section 1773.1 and as included as part of the total hourly wage rate from which the basic hourly wage rate was derived. In the event the total hourly wage rate does not include any employer payments, the director shall establish a prevailing employer payment rate by the same procedure set forth in paragraph (1):

(3) The rate for holiday and overtime work shall be those rates specified in the collective bargaining agreement when the basic hourly rate is based on a collective bargaining agreement rate. In the event the basic hourly rate is not based on a collective bargaining agreement, the rate for holidays and overtime work, if any, included with the prevailing basic hourly rate of pay shall be prevailing.

(c) (1) If the director determines that the general prevailing rate of per diem wages is the rate established by a collective bargaining agreement, and that the collective bargaining agreement contains definite and predetermined changes during its term that will affect the rate adopted, the director shall incorporate those changes into the determination. Predetermined changes that are rescinded prior to their effective date shall not be enforced.

(2) When the director determines that there is a definite and predetermined change in the general prevailing rate of per diem wages as described in paragraph (1), but has not published, at the time of the effective date of the predetermined change, the allocation of the predetermined change as between the basic hourly wage and other employer payments included in per diem wages

1 pursuant to Section 1773.1, a contractor or subcontractor may
2 allocate payments of not less than the amount of the definite and
3 predetermined change to either the basic hourly wage or other
4 employer payments included in per diem wages for up to 60 days
5 following the director's publication of the specific allocation of
6 the predetermined change.

7 (3) ~~When the director determines that there is a definite and~~
8 ~~predetermined change in the general prevailing rate of per diem~~
9 ~~wages as described in paragraph (1), but the allocation of that~~
10 ~~predetermined change as between the basic hourly wage and other~~
11 ~~employer payments included in per diem wages pursuant to Section~~
12 ~~1773.1 is subsequently altered by the parties to a collective~~
13 ~~bargaining agreement described in paragraph (1), a contractor or~~
14 ~~subcontractor may allocate payments of not less than the amount~~
15 ~~of the definite and predetermined change in accordance with either~~
16 ~~the originally published allocation or the allocation as altered in~~
17 ~~the collective bargaining agreement.~~

18 (c) *In determining the general prevailing rate of per diem wages*
19 *in the locality in which the public work is to be performed, the*
20 *director shall conduct a survey of the wages paid for work*
21 *performed in each locality in which the public work is to be*
22 *performed for each craft, classification, or type of worker needed*
23 *to execute the contract, and use an average of the wage rates*
24 *surveyed, weighted by the total employed for each craft,*
25 *classification, or type of work.*

26 (d) *The director shall determine the general prevailing rate of*
27 *per diem wages for journeypersons and apprentices pursuant to*
28 *Section 1777.5.*

29 SEC. 4. *Section 1776 of the Labor Code is amended to read:*

30 1776. (a) Each contractor and subcontractor shall keep accurate
31 payroll records, showing the name, address, social security number,
32 work classification, straight time and overtime hours worked each
33 day and week, and the actual per diem wages paid to each
34 journeyman, apprentice, worker, or other employee employed by
35 him or her in connection with the public work. Each payroll record
36 shall contain or be verified by a written declaration that it is made
37 under penalty of perjury, stating both of the following:

38 (1) The information contained in the payroll record is true and
39 correct.

1 (2) The employer has complied with the requirements of
2 Sections 1771, 1811, and 1815 for any work performed by his or
3 her employees on the public works project.

4 (b) The payroll records enumerated under subdivision (a) shall
5 be certified and shall be available for inspection at all reasonable
6 hours at the principal office of the contractor on the following
7 basis:

8 (1) A certified copy of an employee's payroll record shall be
9 made available for inspection or furnished to the employee or his
10 or her authorized representative on request.

11 (2) A certified copy of all payroll records enumerated in
12 subdivision (a) shall be made available for inspection or furnished
13 upon request to a representative of the body awarding the contract,
14 the Division of Labor Standards Enforcement, and the Division
15 of Apprenticeship Standards of the Department of Industrial
16 Relations.

17 (3) A certified copy of all payroll records enumerated in
18 subdivision (a) shall be made available upon request by the public
19 for inspection or for copies thereof. However, a request by the
20 public shall be made through either the body awarding the contract,
21 the Division of Apprenticeship Standards, or the Division of Labor
22 Standards Enforcement. If the requested payroll records have not
23 been provided pursuant to paragraph (2), the requesting party shall,
24 prior to being provided the records, reimburse the costs of
25 preparation by the contractor, subcontractors, and the entity through
26 which the request was made. The public may not be given access
27 to the records at the principal office of the contractor.

28 (c) The certified payroll records shall be on forms provided by
29 the Division of Labor Standards Enforcement or shall contain the
30 same information as the forms provided by the division. The
31 payroll records may consist of printouts of payroll data that are
32 maintained as computer records, if the printouts contain the same
33 information as the forms provided by the division and the printouts
34 are verified in the manner specified in subdivision (a).

35 (d) A contractor or subcontractor shall file a certified copy of
36 the records enumerated in subdivision (a) with the entity that
37 requested the records within 10 days after receipt of a written
38 request.

39 (e) Any copy of records made available for inspection as copies
40 and furnished upon request to the public or any public agency by

1 the awarding body, the Division of Apprenticeship Standards, or
 2 the Division of Labor Standards Enforcement shall be marked or
 3 obliterated to prevent disclosure of an individual's name, address,
 4 and social security number. The name and address of the contractor
 5 awarded the contract or the subcontractor performing the contract
 6 shall not be marked or obliterated. Any copy of records made
 7 available for inspection by, or furnished to, a joint
 8 labor-management committee established pursuant to the federal
 9 Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a)
 10 shall be marked or obliterated only to prevent disclosure of an
 11 individual's name, *address*, and social security number. A joint
 12 labor management committee may maintain an action in a court
 13 of competent jurisdiction against an employer who fails to comply
 14 with Section 1774. The court may award restitution to an employee
 15 for unpaid wages and may award the joint labor management
 16 committee reasonable attorney's fees and costs incurred in
 17 maintaining the action. An action under this subdivision may not
 18 be based on the employer's misclassification of the craft of a
 19 worker on its certified payroll records. Nothing in this subdivision
 20 limits any other available remedies for a violation of this chapter.

21 (f) The contractor shall inform the body awarding the contract
 22 of the location of the records enumerated under subdivision (a),
 23 including the street address, city, and county, and shall, within five
 24 working days, provide a notice of a change of location and address.

25 (g) The contractor or subcontractor has 10 days in which to
 26 comply subsequent to receipt of a written notice requesting the
 27 records enumerated in subdivision (a). In the event that the
 28 contractor or subcontractor fails to comply within the 10-day
 29 period, he or she shall, as a penalty to the state or political
 30 subdivision on whose behalf the contract is made or awarded,
 31 forfeit twenty-five dollars (\$25) for each calendar day, or portion
 32 thereof, for each worker, until strict compliance is effectuated.
 33 Upon the request of the Division of Apprenticeship Standards or
 34 the Division of Labor Standards Enforcement, these penalties shall
 35 be withheld from progress payments then due. A contractor is not
 36 subject to a penalty assessment pursuant to this section due to the
 37 failure of a subcontractor to comply with this section.

38 (h) The body awarding the contract shall cause to be inserted
 39 in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

~~SECTION 1. Section 22032 of the Public Contract Code is amended to read:~~

~~22032. (a) Public projects of thirty thousand dollars (\$30,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order.~~

~~(b) Public projects of one hundred twenty-five thousand dollars (\$125,000) or less may be let to contract by the informal procedures set forth in this article.~~

~~(c) Public projects of more than one hundred twenty-five thousand dollars (\$125,000) shall, except as otherwise provided in this article, be let to contract by formal bidding procedure.~~