

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 972

Introduced by Assembly Member Ian Calderon

February 22, 2013

An act to amend ~~Section 1773.9~~ *Sections 108.2 and 1776* of the Labor Code, relating to ~~public works~~ *employment*.

LEGISLATIVE COUNSEL'S DIGEST

AB 972, as amended, Ian Calderon. ~~Public works: prevailing wage rates.~~ *Employment: electricians: certification.*

Existing law requires the Division of Labor Standards Enforcement of the Department of Industrial Relations to maintain minimum standards for the competency and training of electricians through a system of testing and certification. Existing law requires an individual who performs work as an electrician for contractors licensed as class C-10 electrical contractors, as specified, to become certified.

This bill would require an individual employed on a construction job site by a class C-10 electrical contractor to display his or her license on his or her person while on the job site. Under the bill, only an individual displaying his or her license at the time of a site inspection is considered a licensee for purposes of determining compliance.

~~Existing law requires that, except as specified, not less than the general prevailing rate of per diem wages, determined by the Director of Industrial Relations, be paid to workers employed on public works projects. Existing law requires the body awarding a contract for a public work to obtain from the Director of Industrial Relations the general prevailing rate of per diem wages for work of a similar character in the locality where the public work is to be performed, and the general~~

~~prevailing rate of per diem wages for holiday and overtime work, for each craft, classification, or type of worker needed to execute the contract. Under existing law, the director is required to use a specified methodology to determine the prevailing rate of per diem wages in the locality where the public work is to be performed. Under existing law, contractors and subcontractors are required to keep payroll records that include, among other things, the name, address, and work classification of each journeyman, apprentice, worker, or other employee employed in connection with the public works project. A contractor or subcontractor, or agent or representative thereof, doing public work who neglects to comply with those provisions is guilty of a misdemeanor.~~

This bill would require payroll records for projects that use an electrician to include the electrician's state certification number. By expanding the scope of a crime, this bill 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.

~~This bill would make technical, nonsubstantive changes to those provisions.~~

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

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

- 1 SECTION 1. Section 108.2 of the Labor Code is amended to
- 2 read:
- 3 108.2. (a) Persons who perform work as electricians shall
- 4 become certified pursuant to Section 108. Uncertified persons shall
- 5 not perform electrical work for which certification is required.
- 6 (b) (1) Certification is required only for those persons who
- 7 perform work as electricians for contractors licensed as class C-10
- 8 electrical contractors under the Contractors' State License Board
- 9 Rules and Regulations.
- 10 (2) Certification is not required for persons performing work
- 11 for contractors licensed as class C-7 low voltage systems or class

1 C-45 electric sign contractors as long as the work performed is
2 within the scope of the class C-7 or class C-45 license, including
3 incidental and supplemental work as defined in Section 7059 of
4 the Business and Professions Code, and regardless of whether the
5 same contractor is also licensed as a class C-10 contractor.

6 (3) Certification is not required for work performed by a worker
7 on a high-voltage electrical transmission or distribution system
8 owned by a local publicly owned electric utility, as defined in
9 Section 224.3 of the Public Utilities Code; an electrical corporation,
10 as defined in Section 218 of the Public Utilities Code; a person,
11 as defined in Section 205 of the Public Utilities Code; or a
12 corporation, as defined in Section 204 of the Public Utilities Code;
13 when the worker is employed by the utility or a licensed contractor
14 principally engaged in installing or maintaining transmission or
15 distribution systems.

16 (4) Individuals desiring to be certified shall submit an
17 application for certification and examination that includes an
18 employment history report from the Social Security Administration.
19 The individual may redact his or her social security number from
20 the employment history report before it is submitted.

21 (5) *An individual employed on a construction job site by a class*
22 *C-10 electrical contractor shall visibly display his or her license*
23 *on his or her person while on the construction job site. Only an*
24 *individual displaying his or her license at the time of a site*
25 *inspection shall be considered a licensee when determining*
26 *compliance with this section.*

27 (c) The division shall maintain separate certifications for general
28 electrician, fire/life safety technician, residential electrician, voice
29 data video technician, and nonresidential lighting technician.

30 (d) Notwithstanding subdivision (a), certification is not required
31 for registered apprentices performing electrical work as part of an
32 apprenticeship program approved under Chapter 4 of Division 3
33 (commencing with Section 3070), a federal Office of
34 Apprenticeship program, or a state apprenticeship program
35 authorized by the federal Office of Apprenticeship. An apprentice
36 who is within one year of completion of his or her term of
37 apprenticeship shall be permitted to take the certification
38 examination and, upon passing the examination, shall be certified
39 immediately upon completion of the term of apprenticeship.

- 1 (e) Notwithstanding subdivision (a), certification is not required
2 for any person employed pursuant to Section 108.4.
- 3 (f) Notwithstanding subdivision (a), certification is not required
4 for a nonresidential lighting trainee (1) who is enrolled in an
5 on-the-job instructional training program approved by the Chief
6 of the Division of Apprenticeship Standards pursuant to Section
7 3090, and (2) who is under the onsite supervision of a
8 nonresidential lighting technician certified pursuant to Section
9 108.
- 10 (g) Notwithstanding subdivision (a), the qualifying person for
11 a class C-10 electrical contractor license issued by the Contractors'
12 State License Board need not also be certified pursuant to Section
13 108 to perform electrical work for that licensed contractor or to
14 supervise an uncertified person employed by that licensed
15 contractor pursuant to Section 108.4.
- 16 (h) The following shall constitute additional grounds for
17 disciplinary proceedings, including suspension or revocation of
18 the license of a class C-10 electrical contractor pursuant to Article
19 7 (commencing with Section 7090) of Chapter 9 of Division 3 of
20 the Business and Professions Code:
 - 21 (1) The contractor willfully employs one or more uncertified
22 persons to perform work as electricians in violation of this section.
 - 23 (2) The contractor willfully fails to provide the adequate
24 supervision of uncertified workers required by paragraph (3) of
25 subdivision (a) of Section 108.4.
 - 26 (3) The contractor willfully fails to provide adequate supervision
27 of apprentices performing work pursuant to subdivision (d).
- 28 (i) The Labor Commissioner shall maintain a process for
29 referring cases to the Contractors' State License Board when it
30 has been determined that a violation of this section has likely
31 occurred. The Labor Commissioner shall have a memorandum of
32 understanding with the Registrar of Contractors in furtherance of
33 this section.
- 34 (j) Upon receipt of a referral by the Labor Commissioner
35 alleging a violation under this section, the Registrar of Contractors
36 shall open an investigation. Any disciplinary action against the
37 licensee shall be initiated within 60 days of the receipt of the
38 referral. The Registrar of Contractors may initiate disciplinary
39 action against any licensee upon his or her own investigation, the
40 filing of any complaint, or any finding that results from a referral

1 from the Labor Commissioner alleging a violation under this
2 section. Failure of the employer or employee to provide evidence
3 of certification or trainee status shall create a rebuttable
4 presumption of violation of this provision.

5 (k) For the purposes of this section, “electricians” has the same
6 meaning as the definition set forth in Section 108.

7 *SEC. 2. Section 1776 of the Labor Code is amended to read:*

8 1776. (a) Each contractor and subcontractor shall keep accurate
9 payroll records, showing the name, address, social security number,
10 work classification, straight time and overtime hours worked each
11 day and week, and the actual per diem wages paid to each
12 journeyman, apprentice, worker, or other employee employed by
13 him or her in connection with the public work. *In addition, projects*
14 *that require the use of an electrician shall also provide the*
15 *electrician’s state certification number on the payroll records*
16 *below his or her name.* Each payroll record shall contain or be
17 verified by a written declaration that it is made under penalty of
18 perjury, stating both of the following:

19 (1) The information contained in the payroll record is true and
20 correct.

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

24 (b) The payroll records enumerated under subdivision (a) shall
25 be certified and shall be available for inspection at all reasonable
26 hours at the principal office of the contractor on the following
27 basis:

28 (1) A certified copy of an employee’s payroll record shall be
29 made available for inspection or furnished to the employee or his
30 or her authorized representative on request.

31 (2) A certified copy of all payroll records enumerated in
32 subdivision (a) shall be made available for inspection or furnished
33 upon request to a representative of the body awarding the contract
34 and the Division of Labor Standards Enforcement of the
35 Department of Industrial Relations.

36 (3) A certified copy of all payroll records enumerated in
37 subdivision (a) shall be made available upon request by the public
38 for inspection or for copies thereof. However, a request by the
39 public shall be made through either the body awarding the contract
40 or the Division of Labor Standards Enforcement. If the requested

1 payroll records have not been provided pursuant to paragraph (2),
2 the requesting party shall, prior to being provided the records,
3 reimburse the costs of preparation by the contractor, subcontractors,
4 and the entity through which the request was made. The public
5 may not be given access to the records at the principal office of
6 the contractor.

7 (c) The certified payroll records shall be on forms provided by
8 the Division of Labor Standards Enforcement or shall contain the
9 same information as the forms provided by the division. The
10 payroll records may consist of printouts of payroll data that are
11 maintained as computer records, if the printouts contain the same
12 information as the forms provided by the division and the printouts
13 are verified in the manner specified in subdivision (a).

14 (d) A contractor or subcontractor shall file a certified copy of
15 the records enumerated in subdivision (a) with the entity that
16 requested the records within 10 days after receipt of a written
17 request.

18 (e) Except as provided in subdivision (f), any copy of records
19 made available for inspection as copies and furnished upon request
20 to the public or any public agency by the awarding body or the
21 Division of Labor Standards Enforcement shall be marked or
22 obliterated to prevent disclosure of an individual's name, address,
23 and social security number. The name and address of the contractor
24 awarded the contract or the subcontractor performing the contract
25 shall not be marked or obliterated. Any copy of records made
26 available for inspection by, or furnished to, a joint
27 labor-management committee established pursuant to the federal
28 Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a)
29 shall be marked or obliterated only to prevent disclosure of an
30 individual's name and social security number. A joint labor
31 management committee may maintain an action in a court of
32 competent jurisdiction against an employer who fails to comply
33 with Section 1774. The court may award restitution to an employee
34 for unpaid wages and may award the joint labor management
35 committee reasonable attorney's fees and costs incurred in
36 maintaining the action. An action under this subdivision may not
37 be based on the employer's misclassification of the craft of a
38 worker on its certified payroll records. Nothing in this subdivision
39 limits any other available remedies for a violation of this chapter.

1 (f) (1) Notwithstanding any other provision of law, agencies
2 that are included in the Joint Enforcement Strike Force on the
3 Underground Economy established pursuant to Section 329 of the
4 Unemployment Insurance Code and other law enforcement
5 agencies investigating violations of law shall, upon request, be
6 provided nonredacted copies of certified payroll records. Any
7 copies of records or certified payroll made available for inspection
8 and furnished upon request to the public by an agency included in
9 the Joint Enforcement Strike Force on the Underground Economy
10 or to a law enforcement agency investigating a violation of law
11 shall be marked or redacted to prevent disclosure of an individual's
12 name, address, and social security number.

13 (2) An employer shall not be liable for damages in a civil action
14 for any reasonable act or omission taken in good faith in
15 compliance with this subdivision.

16 (g) The contractor shall inform the body awarding the contract
17 of the location of the records enumerated under subdivision (a),
18 including the street address, city, and county, and shall, within five
19 working days, provide a notice of a change of location and address.

20 (h) The contractor or subcontractor has 10 days in which to
21 comply subsequent to receipt of a written notice requesting the
22 records enumerated in subdivision (a). In the event that the
23 contractor or subcontractor fails to comply within the 10-day
24 period, he or she shall, as a penalty to the state or political
25 subdivision on whose behalf the contract is made or awarded,
26 forfeit one hundred dollars (\$100) for each calendar day, or portion
27 thereof, for each worker, until strict compliance is effectuated.
28 Upon the request of the Division of Labor Standards Enforcement,
29 these penalties shall be withheld from progress payments then due.
30 A contractor is not subject to a penalty assessment pursuant to this
31 section due to the failure of a subcontractor to comply with this
32 section.

33 (i) The body awarding the contract shall cause to be inserted in
34 the contract stipulations to effectuate this section.

35 (j) The director shall adopt rules consistent with the California
36 Public Records Act (Chapter 3.5 (commencing with Section 6250)
37 of Division 7 of Title 1 of the Government Code) and the
38 Information Practices Act of 1977 (Title 1.8 (commencing with
39 Section 1798) of Part 4 of Division 3 of the Civil Code) governing
40 the release of these records, including the establishment of

1 reasonable fees to be charged for reproducing copies of records
2 required by this section.

3 *SEC. 3. No reimbursement is required by this act pursuant to*
4 *Section 6 of Article XIII B of the California Constitution because*
5 *the only costs that may be incurred by a local agency or school*
6 *district will be incurred because this act creates a new crime or*
7 *infraction, eliminates a crime or infraction, or changes the penalty*
8 *for a crime or infraction, within the meaning of Section 17556 of*
9 *the Government Code, or changes the definition of a crime within*
10 *the meaning of Section 6 of Article XIII B of the California*
11 *Constitution.*

12 ~~SECTION 1. Section 1773.9 of the Labor Code is amended to~~
13 ~~read:~~

14 ~~1773.9. (a) The Director of Industrial Relations shall use the~~
15 ~~methodology set forth in subdivision (b) to determine the general~~
16 ~~prevailing rate of per diem wages in the locality where the public~~
17 ~~work is to be performed.~~

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

20 ~~(1) The basic hourly wage rate being paid to a majority of~~
21 ~~workers engaged in the particular craft, classification, or type of~~
22 ~~work within the locality and in the nearest labor market area, if a~~
23 ~~majority of the workers is paid at a single rate. If a single rate is~~
24 ~~not being paid to a majority of the workers, then the single rate~~
25 ~~being paid to the greatest number of workers, or modal rate, is~~
26 ~~prevailing. If a modal rate cannot be determined, then the director~~
27 ~~shall establish an alternative rate, consistent with the methodology~~
28 ~~for determining the modal rate, by considering the appropriate~~
29 ~~collective bargaining agreements, federal rates, rates in the nearest~~
30 ~~labor market area, or other data such as wage survey data.~~

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

38 ~~(3) The rate for holiday and overtime work shall be those rates~~
39 ~~specified in the collective bargaining agreement when the basic~~
40 ~~hourly rate is based on a collective bargaining agreement rate. In~~

1 ~~the event the basic hourly rate is not based on a collective~~
2 ~~bargaining agreement, the rate for holidays and overtime work, if~~
3 ~~any, included with the prevailing basic hourly rate of pay shall be~~
4 ~~prevailing.~~

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

12 ~~(2) When the director determines that there is a definite and~~
13 ~~predetermined change in the general prevailing rate of per diem~~
14 ~~wages as described in paragraph (1), but has not published, at the~~
15 ~~time of the effective date of the predetermined change, the~~
16 ~~allocation of the predetermined change between the basic hourly~~
17 ~~wage and other employer payments included in per diem wages~~
18 ~~pursuant to Section 1773.1, a contractor or subcontractor may~~
19 ~~allocate payments of not less than the amount of the definite and~~
20 ~~predetermined change to either the basic hourly wage or other~~
21 ~~employer payments included in per diem wages for up to 60 days~~
22 ~~following the director's publication of the specific allocation of~~
23 ~~the predetermined change.~~

24 ~~(3) When the director determines that there is a definite and~~
25 ~~predetermined change in the general prevailing rate of per diem~~
26 ~~wages as described in paragraph (1), but the allocation of that~~
27 ~~predetermined change between the basic hourly wage and other~~
28 ~~employer payments included in per diem wages pursuant to Section~~
29 ~~1773.1 is subsequently altered by the parties to a collective~~
30 ~~bargaining agreement described in paragraph (1), a contractor or~~
31 ~~subcontractor may allocate payments of not less than the amount~~
32 ~~of the definite and predetermined change in accordance with either~~
33 ~~the originally published allocation or the allocation as altered in~~
34 ~~the collective bargaining agreement.~~

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