

ASSEMBLY BILL

No. 1939

Introduced by Assembly Member Daly

February 19, 2014

An act to add Section 1784 to the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 1939, as introduced, Daly. Public works: prevailing wages: contractor's costs.

Existing law generally requires the payment of not less than the prevailing rate of per diem wages for work of a similar character in the locality in which the public work, as defined, is performed, and not less than the prevailing rate for holiday and overtime work, to workers employed on public works projects of greater than \$1,000. Existing law requires an awarding body, as defined, to obtain the general prevailing rate of per diem wages, as determined by the Department of Industrial Relations.

Existing law authorizes a contractor to bring an action in a court of competent jurisdiction to recover from an awarding body specified labor costs, penalties, and legal fees if either the awarding body previously affirmatively represented to the contractor that the work to be covered by the bid or contract was not a "public work" or the awarding body received actual written notice from the Department of Industrial Relations that the work to be covered by the bid or contract is a "public work" and failed to disclose that information to the contractor. Existing law also authorizes a contractor to bring an action to recover from the body awarding a contract for a public work, or otherwise undertaking any public work, any increased costs incurred by the contractor as a

result of a decision of the awarding body, the Department of Industrial Relations, or a court that classifies the work as a “public work,” if that body, before the bid opening or awarding of the contract, failed to identify as a “public work” in the bid specification or in the contract documents that portion of the work that the decision classifies as a “public work.”

This bill would authorize a contractor to bring an action in a court of competent jurisdiction to recover from the party it directly contracts with, any increased costs, including labor costs, penalties, and legal fees incurred as a result of any decision by the Department of Industrial Relations, the Labor and Workforce Development Agency, or a court that classifies, after the time at which the contracting party accepts the contractor’s bid, awards the contractor a contract when no bid is solicited, or otherwise allows construction to proceed, the work covered by the project, or any portion thereof, as a public work, except under the circumstances specified.

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

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

1 SECTION 1. Section 1784 is added to the Labor Code, to read:
2 1784. (a) Notwithstanding any other law, a contractor may
3 bring an action in a court of competent jurisdiction to recover from
4 the party it directly contracts with, any increased costs attributable
5 solely to the provisions of this chapter, including, but not limited
6 to, the difference between the wages actually paid to an employee
7 and the wages that were required to be paid to an employee under
8 this chapter, any penalties or other sums required to be paid under
9 this chapter, and costs and attorney’s fees related to this action
10 incurred by the contractor as a result of any decision by the
11 Department of Industrial Relations, the Labor and Workforce
12 Development Agency, or a court that classifies, after the time at
13 which the contracting party accepts the contractor’s bid, awards
14 the contractor a contract under circumstances where no bid is
15 solicited, or otherwise allows construction by the contractor to
16 proceed, the work covered by the project, or any portion thereof,
17 as a “public work,” as defined in this chapter, unless either of the
18 following is true:

1 (1) The developer of a construction project or its agent expressly
2 advised the contractor with whom it has a direct contract pursuant
3 to this chapter that the work to be covered by the contract would
4 be a “public work,” as defined in this chapter.

5 (2) A contractor on the developer’s construction project
6 expressly advised the other contractors with whom it has a direct
7 contract that the work subject to the contract would be a “public
8 work,” as defined in this chapter.

9 (b) To be entitled to the recovery of increased costs described
10 in subdivision (a), the contractor who has a direct contract with
11 the developer shall notify the developer within 30 days after receipt
12 of the notice of a decision by the Department of Industrial Relations
13 or the Labor and Workforce Development Agency, or the initiation
14 of any action in a court alleging, that the work covered by the
15 project, or any portion thereof, is a “public work,” as defined in
16 this chapter.

17 (c) A contractor is not required to list any prevailing wages or
18 apprenticeship standard violations on a prequalification
19 questionnaire that are the direct result of the failure of the developer
20 of a construction project or its agent, or a contractor, to notify
21 contractors that the project, or any portion thereof, should have
22 been a “public work,” as defined in this chapter.

23 (d) This section does not apply to private residential projects
24 built on private property unless the project is built pursuant to an
25 agreement with a state agency, redevelopment agency, or local
26 public housing authority.

27 (e) This section does not apply if the conduct of the contractor
28 caused the project to be a “public work,” as defined in this chapter,
29 or if the contractor has actual knowledge that the work is a “public
30 work,” as defined in this chapter.