

AMENDED IN SENATE JUNE 2, 2014

AMENDED IN ASSEMBLY APRIL 24, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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 amended, 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, *as defined*, to bring an action in a court of competent jurisdiction to recover from the ~~party it hiring party, as defined, that the contractor~~ 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 hiring~~ hiring 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 hiring party that the contractor~~ directly contracts with,
 5 any increased costs attributable solely to the provisions of this
 6 chapter, including, but not limited to, the difference between the
 7 wages actually paid to an employee and the wages that were
 8 required to be paid to an employee under this chapter, any penalties
 9 or other sums required to be paid under this chapter, and costs and
 10 attorney’s fees for the action incurred by the contractor as a result
 11 of any decision by the Department of Industrial Relations, the
 12 Labor and Workforce Development Agency, or a court that
 13 classifies, after the time at which the ~~contracting hiring~~ hiring party
 14 accepts the contractor’s bid, awards the contractor a contract under
 15 circumstances when no bid is solicited, or otherwise allows

1 construction by the contractor to proceed, the work covered by the
2 project, or any portion thereof, as a “public work,” as defined in
3 this chapter, ~~unless~~ *except to the extent that* either of the following
4 is true:

5 (1) The ~~owner or developer of a construction project~~ or its agent
6 expressly advised the contractor that the work to be covered by
7 the contract would be a “public work,” as defined in this ~~chapter.~~
8 *chapter, or is otherwise subject to the payment of prevailing wages.*

9 (2) The ~~hiring party with whom the contractor has a direct~~
10 ~~contract~~ expressly advised the contractor that the work subject to
11 the contract would be a “public work,” as defined in this ~~chapter.~~
12 *chapter, or is otherwise subject to the payment of prevailing wages.*

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

21 (c) A contractor is not required to list any prevailing wages or
22 apprenticeship standard violations on a prequalification
23 questionnaire that are the direct result of the failure of the ~~developer~~
24 ~~of a construction project or its agent, or a contractor, to notify~~
25 ~~contractors~~ *owner or developer or its agent, or a hiring party, to*
26 *notify the contractor* that the project, or any portion thereof, ~~should~~
27 ~~have been~~ *was* a “public work,” as defined in this chapter.

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

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

36 (f) *For purposes of this section, “hiring party” means the party*
37 *that has a direct contract for services provided by the contractor*
38 *who is seeking recovery pursuant to subdivision (a) on a private*
39 *works project that was subsequently determined to be a public*
40 *work by the Department of Industrial Relations or the Labor and*

1 *Workforce Development Agency, or by the initiation of any action*
2 *in a court alleging that the work covered by the project, or any*
3 *portion thereof, was a public work.*

4 *(g) A contractor may seek recovery pursuant to this section only*
5 *from a hiring party with whom the contractor has a direct contract.*

6 *(h) For purposes of this section, “contractor” means a person*
7 *or entity licensed by the Contractors’ State Licensing Board that*
8 *has a direct contract with the hiring party to provide services on*
9 *private property or for the benefit of a private owner or developer.*