

Assembly Bill No. 1939

CHAPTER 161

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

[Approved by Governor July 21, 2014. Filed with
Secretary of State July 21, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1939, 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 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 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.

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

SECTION 1. Section 1784 is added to the Labor Code, to read:

1784. (a) Notwithstanding any other law, a contractor may bring an action in a court of competent jurisdiction to recover from the hiring party that the contractor directly contracts with, any increased costs attributable solely to the provisions of this chapter, including, but not limited to, the difference between the wages actually paid to an employee and the wages that were required to be paid to an employee under this chapter, any penalties or other sums required to be paid under this chapter, and costs and attorney's fees for the action incurred by the contractor 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 hiring party accepts the contractor's bid, awards the contractor a contract under circumstances when no bid is solicited, or otherwise allows construction by the contractor to proceed, the work covered by the project, or any portion thereof, as a "public work," as defined in this chapter, except to the extent that either of the following is true:

(1) The owner or developer or its agent expressly advised the contractor that the work to be covered by the contract would be a "public work," as defined in this chapter, or is otherwise subject to the payment of prevailing wages.

(2) The hiring party expressly advised the contractor that the work subject to the contract would be a "public work," as defined in this chapter, or is otherwise subject to the payment of prevailing wages.

(b) (1) To be entitled to the recovery of increased costs described in subdivision (a), the contractor shall notify the hiring party and the owner or developer within 30 days after receipt of the notice of a decision by the Department of Industrial Relations or the Labor and Workforce Development Agency, or the initiation of any action in a court alleging, that the work covered by the project, or any portion thereof, is a "public work," as defined in this chapter.

(2) The notice provided pursuant to this subdivision shall set forth the legal name, address, and telephone number of the contractor, and the name, address, and telephone number of the contractor's representative, if any, and shall be given by registered or certified mail, express mail, or overnight delivery by an express service carrier.

(c) A contractor is not required to list any prevailing wages or apprenticeship standard violations on a prequalification questionnaire that are the direct result of the failure of the owner or developer or its agent, or a hiring party, to notify the contractor that the project, or any portion thereof, was a "public work," as defined in this chapter.

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

(e) This section does not apply if the conduct of the contractor caused the project to be a "public work," as defined in this chapter, or if the

contractor has actual knowledge that the work is a “public work,” as defined in this chapter.

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

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

(h) For purposes of this section, “hiring party” means the party that has a direct contract for services provided by the contractor who is seeking recovery pursuant to subdivision (a) on a private works project that was subsequently determined to be a public work by the Department of Industrial Relations or the Labor and Workforce Development Agency, or by the initiation of any action in a court alleging that the work covered by the project, or any portion thereof, was a public work.