

AMENDED IN SENATE JUNE 18, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2744

**Introduced by Committee on Labor and Employment (Assembly
Members Roger Hernández (Chair), Alejo, Chau, and Holden)**

February 27, 2014

An act to amend Section 1777.1 of, and to repeal and add Section 1777.7 of, the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 2744, as amended, Committee on Labor and Employment. Public works: apprenticeship program.

Existing law provides that when a contractor or subcontractor performing a public works project is found by the Labor Commissioner to be in violation of the requirements relating to public works contracts, except with regard to the employment of apprentices, with intent to defraud, or within a 3-year period of having committed 2 or more separate willful violations of these provisions, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible to bid on, be awarded, or perform work as a subcontractor on a public works contract for specified periods of time.

This bill would make these provisions applicable to violations of provisions related to the employment of apprentices.

Existing law, among other things, imposes a civil penalty on contractors or subcontractors who are determined to have knowingly violated specified provisions regulating the employment of apprentices on public works projects, provides that a contractor or subcontractor who is determined to have knowingly committed a serious violation of

the apprentice employment provisions may additionally be denied the right to bid on or be awarded or perform work as a subcontractor on any public works contract for a specified period of time, provides for a review of the civil penalty or debarment by the Labor Commissioner, and provides for a process to collect the civil penalty.

This bill would revise and recast these provisions by, among other things, making the civil penalty applicable to the contractor and any subcontractor responsible for the violation, requiring the Labor Commissioner or his or her designee to issue a civil wage and penalty assessment in accordance with a specified provision, and providing for notice by the Division of Labor Standards Enforcement to the contractor within 15 days of receipt of a complaint that their subcontractor knowingly violated the apprentice employment provisions.

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

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

- 1 SECTION 1. Section 1777.1 of the Labor Code is amended to
2 read:
- 3 1777.1. (a) Whenever a contractor or subcontractor performing
4 a public works project pursuant to this chapter is found by the
5 Labor Commissioner to be in violation of this chapter with intent
6 to defraud, the contractor or subcontractor or a firm, corporation,
7 partnership, or association in which the contractor or subcontractor
8 has any interest is ineligible for a period of not less than one year
9 or more than three years to do either of the following:
- 10 (1) Bid on or be awarded a contract for a public works project.
11 (2) Perform work as a subcontractor on a public works project.
- 12 (b) Whenever a contractor or subcontractor performing a public
13 works project pursuant to this chapter is found by the Labor
14 Commissioner to have committed two or more separate willful
15 violations of this chapter within a three-year period, the contractor
16 or subcontractor or a firm, corporation, partnership, or association
17 in which the contractor or subcontractor has any interest is
18 ineligible for a period up to three years to do either of the
19 following:
- 20 (1) Bid on or be awarded a contract for a public works project.
21 (2) Perform work as a subcontractor on a public works project.

1 (c) Whenever a contractor or subcontractor performing a public
2 works project has failed to provide a timely response to a request
3 by the Division of Labor Standards Enforcement, the Division of
4 Apprenticeship Standards, or the awarding body to produce
5 certified payroll records pursuant to Section 1776, the Labor
6 Commissioner shall notify the contractor or subcontractor that, in
7 addition to any other penalties provided by law, the contractor or
8 subcontractor will be subject to debarment under this section if
9 the certified payroll records are not produced within 30 days after
10 receipt of the written notice. If the commissioner finds that the
11 contractor or subcontractor has failed to comply with Section 1776
12 by that deadline, unless the commissioner finds that the failure to
13 comply was due to circumstances outside the contractor's or
14 subcontractor's control, the contractor or subcontractor or a firm,
15 corporation, partnership, or association in which the contractor or
16 subcontractor has any interest is ineligible for a period of not less
17 than one year and not more than three years to do either of the
18 following:

19 (1) Bid on or be awarded a contract for a public works project.

20 (2) Perform work as a subcontractor on a public works project.

21 *(d) (1) In the event a contractor or subcontractor is determined*
22 *by the Labor Commissioner to have knowingly committed a serious*
23 *violation of any provision of Section 1777.5, the Labor*
24 *Commissioner may also deny to the contractor or subcontractor,*
25 *and to its responsible officers, the right to bid on or to be awarded*
26 *or perform work as a subcontractor on any public works contract*
27 *for a period of up to one year for the first violation and for a period*
28 *of up to three years for a second or subsequent violation. Each*
29 *period of debarment shall run from the date the determination of*
30 *noncompliance by the Labor Commissioner becomes a final order.*

31 *(2) The Labor Commissioner shall consider, in determining*
32 *whether a violation is serious, and in determining whether and*
33 *for how long a party should be debarred for violating Section*
34 *1777.5, all of the following circumstances:*

35 *(A) Whether the violation was intentional.*

36 *(B) Whether the party has committed other violations of Section*
37 *1777.5.*

38 *(C) Whether, upon notice of the violation, the party took steps*
39 *to voluntarily remedy the violation.*

1 (D) Whether, and to what extent, the violation resulted in lost
2 training opportunities for apprentices.

3 (E) Whether, and to what extent, the violation otherwise harmed
4 apprentices or apprenticeship programs.

5 ~~(d)~~

6 (e) A willful violation occurs when the contractor or
7 subcontractor knew or reasonably should have known of his or
8 her obligations under the public works law and deliberately fails
9 or *deliberately* refuses to comply with its provisions.

10 ~~(e)~~

11 (f) The Labor Commissioner shall publish on the commissioner's
12 Internet Web site a list of contractors who are ineligible to bid on
13 or be awarded a public works contract, or to perform work as a
14 subcontractor on a public works project pursuant to this chapter.
15 The list shall contain the name of the contractor, the Contractors'
16 State License Board license number of the contractor, and the
17 effective period of debarment of the contractor. Contractors shall
18 be added to the list upon issuance of a debarment order and the
19 commissioner shall also notify the Contractors' State License
20 Board when the list is updated. At least annually, the commissioner
21 shall notify awarding bodies of the availability of the list of
22 debarred contractors. The commissioner shall also place
23 advertisements in construction industry publications targeted to
24 the contractors and subcontractors, chosen by the commissioner,
25 that state the effective period of the debarment and the reason for
26 debarment. The advertisements shall appear one time for each
27 debarment of a contractor in each publication chosen by the
28 commissioner. The debarred contractor or subcontractor shall be
29 liable to the commissioner for the reasonable cost of the
30 advertisements, not to exceed five thousand dollars (\$5,000). The
31 amount paid to the commissioner for the advertisements shall be
32 credited against the contractor's or subcontractor's obligation to
33 pay civil fines or penalties for the same willful violation of this
34 chapter.

35 ~~(f)~~

36 (g) For purposes of this section, "contractor or subcontractor"
37 means a firm, corporation, partnership, or association and its
38 responsible managing officer, as well as any supervisors, managers,
39 and officers found by the Labor Commissioner to be personally

1 and substantially responsible for the willful violation of this
2 chapter.

3 ~~(g)~~

4 (h) For the purposes of this section, the term “any interest”
5 means an interest in the entity bidding or performing work on the
6 public works project, whether as an owner, partner, officer,
7 manager, employee, agent, consultant, or representative. “Any
8 interest” includes, but is not limited to, all instances where the
9 debarred contractor or subcontractor receives payments, whether
10 cash or any other form of compensation, from any entity bidding
11 or performing work on the public works project, or enters into any
12 contracts or agreements with the entity bidding or performing work
13 on the public works project for services performed or to be
14 performed for contracts that have been or will be assigned or sublet,
15 or for vehicles, tools, equipment, or supplies that have been or will
16 be sold, rented, or leased during the period from the initiation of
17 the debarment proceedings until the end of the term of the
18 debarment period. “Any interest” does not include shares held in
19 a publicly traded corporation if the shares were not received as
20 compensation after the initiation of debarment from an entity
21 bidding or performing work on a public works project.

22 ~~(h)~~

23 (i) For the purposes of this section, the term “entity” is defined
24 as a company, limited liability company, association, partnership,
25 sole proprietorship, limited liability partnership, corporation,
26 business trust, or organization.

27 ~~(i)~~

28 (j) The Labor Commissioner shall adopt rules and regulations
29 for the administration and enforcement of this section.

30 SEC. 2. Section 1777.7 of the Labor Code is repealed.

31 SEC. 3. Section 1777.7 is added to the Labor Code, to read:

32 1777.7. (a) (1) If the Labor Commissioner or his or her
33 designee determines after an investigation that a contractor or
34 subcontractor knowingly violated Section 1777.5, the contractor
35 and any subcontractor responsible for the violation shall forfeit,
36 as a civil penalty to the state or political subdivision on whose
37 behalf the contract is made or awarded, not more than one hundred
38 dollars (\$100) for each full calendar day of noncompliance. The
39 amount of this penalty may be reduced by the Labor Commissioner
40 if the amount of the penalty would be disproportionate to the

1 severity of the violation. A contractor or subcontractor that
2 knowingly commits a second or subsequent violation within a
3 three-year period, if the noncompliance results in apprenticeship
4 training not being provided as required by this chapter, shall forfeit
5 as a civil penalty the sum of not more than three hundred dollars
6 (\$300) for each full calendar day of noncompliance.

7 (2) In lieu of the penalty provided for in this subdivision, the
8 Labor Commissioner may, for a first-time violation and with the
9 concurrence of an apprenticeship program described in subdivision
10 (d) of Section 1777.5, order the contractor or subcontractor to
11 provide apprentice employment equivalent to the work hours that
12 would have been provided for apprentices during the period of
13 noncompliance.

14 (b) The Labor Commissioner shall consider, in setting the
15 amount of a monetary penalty, all of the following circumstances:

16 (1) Whether the violation was intentional.

17 (2) Whether the party has committed other violations of Section
18 1777.5.

19 (3) Whether, upon notice of the violation, the party took steps
20 to voluntarily remedy the violation.

21 (4) Whether, and to what extent, the violation resulted in lost
22 training opportunities for apprentices.

23 (5) Whether, and to what extent, the violation otherwise harmed
24 apprentices or apprenticeship programs.

25 (c) (1) The Labor Commissioner or his or her designee shall
26 issue a civil wage and penalty assessment, in accordance with the
27 provisions of Section 1741, upon determination of penalties
28 assessed under subdivisions (a) and (b). Review of a civil wage
29 and penalty assessment issued under this subdivision may be
30 requested in accordance with the provisions of Section 1742. The
31 regulations of the Director of Industrial Relations, which govern
32 proceedings for review of civil wage and penalty assessments and
33 the withholding of contract payments under Article 1 (commencing
34 with Section 1720) and Article 2 (commencing with Section 1770),
35 shall apply.

36 (2) For purposes of this section, a determination issued pursuant
37 to subdivision (a) or (b) includes a determination that has been
38 approved by the Labor Commissioner and issued by an awarding
39 body that has been authorized to assist the director in the
40 enforcement of Section 1777.5 pursuant to subdivision (p) of that

1 section. The Labor Commissioner may intervene in any proceeding
2 for review of a determination issued by an awarding body. If the
3 involvement of the Labor Commissioner in a labor compliance
4 program enforcement action is limited to a review of the
5 determination and the matter is resolved without litigation by or
6 against the Labor Commissioner or the department, the awarding
7 body shall enforce any applicable penalties, as specified in this
8 section, and shall deposit any penalties and forfeitures collected
9 in the General Fund.

10 (d) The determination of the Labor Commissioner as to the
11 amount of the penalty imposed under subdivisions (a) and (b) shall
12 be reviewable only for an abuse of discretion.

13 (e) If a subcontractor is found to have violated Section 1777.5,
14 the prime contractor of the project is not liable for any penalties
15 under subdivision (a) unless the prime contractor had knowledge
16 of the subcontractor's failure to comply with the provisions of
17 Section 1777.5 or unless the prime contractor fails to comply with
18 any of the following requirements:

19 (1) The contract executed between the contractor and the
20 subcontractor for the performance of work on the public works
21 project shall include a copy of the provisions of Sections 1771,
22 1775, 1776, 1777.5, 1813, and 1815.

23 (2) The contractor shall continually monitor a subcontractor's
24 use of apprentices required to be employed on the public works
25 project pursuant to subdivision (d) of Section 1777.5, including,
26 but not limited to, periodic review of the certified payroll of the
27 subcontractor.

28 (3) Upon becoming aware of a failure of the subcontractor to
29 employ the required number of apprentices, the contractor shall
30 take corrective action, including, but not limited to, retaining funds
31 due to the subcontractor for work performed on the public works
32 project until the failure is corrected.

33 (4) Prior to making the final payment to the subcontractor for
34 work performed on the public works project, the contractor shall
35 obtain a declaration signed under penalty of perjury from the
36 subcontractor that the subcontractor has employed the required
37 number of apprentices on the public works project.

38 (f) The Division of Labor Standards Enforcement shall notify
39 the contractor on a public works project within 15 days of the

1 receipt by the division of a complaint that a subcontractor on that
2 public works project knowingly violated Section 1777.5.

3 (g) ~~(4)~~—The interpretation of Section 1777.5 and the substantive
4 requirements of this section applicable to contractors or
5 subcontractors shall be in accordance with the regulations of the
6 California Apprenticeship Council.

7 ~~(2)~~—A contractor knowingly violates Section 1777.5 if the
8 contractor knew or should have known of the requirements of that
9 section and fails to comply, unless the failure to comply was due
10 to circumstances beyond the contractor’s control.

11 ~~(3)~~—There is an irrebuttable presumption that a contractor knew
12 or should have known of the requirements of Section 1777.5 if the
13 contractor had previously been found to have violated that section,
14 the contract or bid documents, or both, notified the contractor of
15 the obligation to comply with this code’s provisions applicable to
16 public works projects, or the contractor had previously employed
17 apprentices on a public works project.

18 (h) The Director of Industrial Relations may adopt regulations
19 to establish guidelines for the imposition of monetary penalties.