

AMENDED IN ASSEMBLY JANUARY 21, 2014

AMENDED IN ASSEMBLY JUNE 5, 2013

AMENDED IN SENATE APRIL 22, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 263

Introduced by Senator Monning
(Principal coauthor: Assembly Member Achadjian)

February 13, 2013

An act to amend ~~Section 7028 of the Business and Professions Code, relating to contractors~~ *Section 1071 of the Labor Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

SB 263, as amended, Monning. ~~Contractors: unlicensed activity. Private employment: public transit employees.~~

Existing law requires a local government agency to give a 10% preference to any bidder on a service contract to provide public transit services who agrees to retain employees of the prior contractor or subcontractor for a period of not less than 90 days, as specified.

This bill would expand these provisions to require a state agency to also give a 10% preference to any bidder under these provisions.

~~The Contractors' State License Law provides for the licensure and regulation of contractors by the Contractors' State License Board within the Department of Consumer Affairs.~~

~~The Contractors' State License Law makes it a misdemeanor for a person to engage in the business or act in the capacity of a contractor without having a license, unless the person is particularly exempted.~~

~~This bill, instead, would provide that, unless exempted, it is a misdemeanor for a person to engage in the business or act in the capacity of a contractor if the person either has never been licensed pursuant to the Contractors' State License Law, or the person was a licensee, but performed acts covered by the law under a license that was under suspension for failure to pay a civil penalty or comply with an order of correction, or failure to resolve all outstanding final liabilities, as specified.~~

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

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

1 SECTION 1. Section 1071 of the Labor Code is amended to
2 read:

3 1071. The following definitions apply throughout this chapter:

4 (a) "Awarding authority" means any *state or* local government
5 agency, including, *but not limited to*, any city, county, special
6 district, transit district, joint powers authority, or nonprofit
7 corporation that awards or otherwise enters into contracts for public
8 transit services performed within the ~~State of California~~ *state*.

9 (b) "Bidder" means any person who submits a bid to an
10 awarding agency for a public transit service contract or subcontract.

11 (c) "Contractor" means any person who enters into a public
12 transit service contract with an awarding authority.

13 (d) "Employee" means any person who works for a contractor
14 or subcontractor under a contract. "Employee" does not include
15 an executive, administrative, or professional employee exempt
16 from the payment of overtime compensation within the meaning
17 of subdivision (a) of Section 515 or any person who is not an
18 "employee" as defined under Section 2(3) of the National Labor
19 Relations Act (29 U.S.C. Sec. 152(3)).

20 (e) "Person" means any individual, proprietorship, partnership,
21 joint venture, corporation, limited liability company, trust,
22 association, or other entity that may employ individuals or enter
23 into contracts.

24 (f) "Public transit services" means the provision of passenger
25 transportation services to the general public, including paratransit
26 service.

1 (g) “Service contract” means any contract the principal purpose
2 of which is to provide public transit services through the use of
3 service employees.

4 (h) “Subcontractor” means any person who is not an employee
5 who enters into a contract with a contractor to assist the contractor
6 in performing a service contract.

7 SECTION 1. ~~Section 7028 of the Business and Professions~~
8 ~~Code is amended to read:~~

9 ~~7028. (a) Unless exempted from this chapter, it is a~~
10 ~~misdemeanor for a person to engage in the business or act in the~~
11 ~~capacity of a contractor within this state under either of the~~
12 ~~following conditions:~~

13 ~~(1) The person has never been licensed in accordance with this~~
14 ~~chapter.~~

15 ~~(2) The person was a licensee, as defined in Section 7096, but~~
16 ~~performed acts covered by this chapter under a license that was~~
17 ~~under suspension for failure to pay a civil penalty or comply with~~
18 ~~an order of correction, pursuant to Section 7090.1, or failure to~~
19 ~~resolve all outstanding final liabilities, pursuant to Section 7145.5.~~

20 ~~(b) A first conviction for the offense described in this section~~
21 ~~is punishable by a fine not exceeding five thousand dollars (\$5,000)~~
22 ~~or by imprisonment in a county jail not exceeding six months, or~~
23 ~~by both that fine and imprisonment.~~

24 ~~(c) If a person has been previously convicted of the offense~~
25 ~~described in this section, unless the provisions of subdivision (d)~~
26 ~~are applicable, the court shall impose a fine of 20 percent of the~~
27 ~~contract price, or 20 percent of the aggregate payments made to,~~
28 ~~or at the direction of, the unlicensed person, or five thousand~~
29 ~~dollars (\$5,000), whichever is greater, and, unless the sentence~~
30 ~~prescribed in subdivision (d) is imposed, the person shall be~~
31 ~~confined in a county jail for not less than 90 days, except in an~~
32 ~~unusual case where the interests of justice would be served by~~
33 ~~imposition of a lesser sentence or a fine. If the court imposes only~~
34 ~~a fine or a jail sentence of less than 90 days for second or~~
35 ~~subsequent convictions under this section, the court shall state the~~
36 ~~reasons for its sentencing choice on the record.~~

37 ~~(d) A third or subsequent conviction for the offense described~~
38 ~~in this section is punishable by a fine of not less than five thousand~~
39 ~~dollars (\$5,000) nor more than the greater amount of ten thousand~~
40 ~~dollars (\$10,000) or 20 percent of the contract price, or 20 percent~~

1 of the aggregate payments made to, or at the direction of, the
2 unlicensed person, and by imprisonment in a county jail for not
3 more than one year or less than 90 days. The penalty provided by
4 this subdivision is cumulative to the penalties available under all
5 other laws of this state.

6 (e) A person who violates this section is subject to the penalties
7 prescribed in subdivision (d) if the person was named on a license
8 that was previously revoked and, either in fact or under law, was
9 held responsible for any act or omission resulting in the revocation.

10 (f) If the unlicensed person engaging in the business of or acting
11 in the capacity of a contractor has agreed to furnish materials and
12 labor on an hourly basis, “the contract price” for the purposes of
13 this section means the aggregate sum of the cost of materials and
14 labor furnished and the cost of completing the work to be
15 performed.

16 (g) Notwithstanding any other law, an indictment for any
17 violation of this section by an unlicensed person shall be found,
18 or an information or complaint filed, within four years from the
19 date of the contract proposal, contract, completion, or abandonment
20 of the work, whichever occurs last.

21 (h) For any conviction under this section, a person who utilized
22 the services of the unlicensed person is a victim of crime and is
23 eligible, pursuant to subdivision (f) of Section 1202.4 of the Penal
24 Code, for restitution for economic losses, regardless of whether
25 he or she had knowledge that the person was unlicensed.

26 (i) The changes made to this section by the act adding this
27 subdivision are declaratory of existing law.