

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

AMENDED IN SENATE MAY 9, 2013

AMENDED IN SENATE MAY 1, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 377

Introduced by Senator Lieu

February 20, 2013

An act to amend ~~Sections 1726, 1741, 1771.2, and Section 1773.5~~ *of of, and to add Section 1741.1 to*, the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 377, as amended, Lieu. Public works: project determinations: wage and penalty assessments.

Existing law defines the term "public works" for purposes of requirements regarding the payment of prevailing wages, the regulation of working hours, and the securing of workers' compensation for public works projects. ~~Under existing law, the body awarding the contract for a public work is required to report any suspected violations of requirements relating to public works projects to the Labor Commissioner.~~

~~This bill would require a political subdivision that believes a project in which it is interested, as specified, is not a public work, to provide notice, as specified, to the Director of Industrial Relations, the Labor Commissioner, and any other person who requests that notice.~~

Existing law authorizes the Director of Industrial Relations to establish rules and regulations for the purpose of carrying out public works

requirements, including, but not limited to, the responsibilities and duties of awarding bodies relating to public works projects.

This bill would require, *when a request is made to the director for a determination of whether a specific project or type of work awarded or undertaken by a political subdivision is a public work*, the director to ~~determine, within 60 days of receipt of a request for a determination, except as specified, whether a project is a public work.~~ *This make that determination within 60 days of receipt of the last support or opposition letter relating to that project or type of work, and for projects or types of work that are otherwise private development projects receiving public funds, within 120 days of receipt, except as specified.* The bill would require an administrative appeal of that determination to be made within 30 days of the date of the determination, and would require the director to issue a determination on an appeal within ~~30~~ 120 days after the receipt of the appeal, except as specified. ~~This~~ *The bill would grant to the director quasi-legislative authority to determine coverage of projects or types of work under prevailing wage requirements, and provide that a final determination on any appeal is subject to judicial review. The bill would make those determinations, and determinations relating to the general prevailing rate of per diem wages and for holiday, shift, and overtime work, exempt from the Administrative Procedure Act.*

Existing law requires the Labor Commissioner to issue a civil wage and penalty assessment to a contractor or subcontractor, or both, if, after an investigation, the commissioner determines there has been a violation of the laws regulating public works projects, including the payment of prevailing wages. The assessment is required to be served within ~~180 days, with exceptions,~~ days after the filing of a valid notice of completion in the county where the public work was performed *or within 180 days after the acceptance of the public work, except as specified.* Existing law authorizes a joint labor-management committee, established pursuant to a specified provision of federal law, to bring an action against any employer who fails to pay prevailing wages as required by state law. Under existing law, each contractor and subcontractor is required to keep accurate payroll records, as prescribed, that are certified and available for inspection, as specified.

This bill would toll the period for service of assessments *and for commencing an action brought by a joint labor-management committee* for the period of time required by the Director of Industrial Relations to make a determination of whether the project is a public work, as specified. The bill would also toll ~~the period~~ *those periods* for the period

of time that a contractor or subcontractor fails to provide certified payroll records pursuant to a request from the Labor Commissioner, a joint labor-management committee, or an approved labor compliance program. *The bill would require the person filing the notice of completion to also provide notice to the Labor Commissioner, as specified, and would require the awarding body or political subdivision accepting a public work to provide to the Labor Commissioner notice of that acceptance, as specified. The bill would toll the period for service of assessments and for commencing an action brought by a joint labor-management committee for the length of time notice is not provided to the Labor Commissioner.*

~~Existing law authorizes a joint labor-management committee, established pursuant to a specified provision of federal law, to bring an action against any employer who fails to pay prevailing wages as required by state law. The action is required to commence not later than 180 days after the filing of a valid notice of completion in the county where the public work was performed or not later than 180 days after acceptance of the public work, whichever occurs later.~~

~~This bill would toll the period for commencing an action during the period of time in which a request to determine whether a project is a public work, including the period of a timely administrative appeal, is pending before the director, as specified. This bill would also toll the period for the period of time that a contractor or subcontractor fails to provide certified payroll records pursuant to a request from a joint labor-management committee.~~

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. The Legislature finds and declares that the process
 2 for the Director of Industrial Relations to determine the existence
 3 of a public work and to decide administrative appeals from those
 4 determinations has created unacceptable delays and prejudice to
 5 the enforcement of the public works law, often resulting in the
 6 expiration of the statute of limitation for the identification and
 7 collection of wage and penalty assessments. As a result, wage theft
 8 has occurred because workers are not paid prevailing wage rates
 9 and the time for assessment has expired. Further, there has been
 10 an incentive to some developers, contractors, and public bodies to

1 engage in expensive and time-consuming litigation in efforts to
 2 extend the time for determining the existence of a public work.
 3 This litigation is often a needless expense to the state. In addition,
 4 public bodies, developers, contractors, and others are entitled to a
 5 determination of whether a project is a public work as early as
 6 possible so that the costs of the project and the duties of the parties
 7 under the law may be known as early as possible. Thus, this act is
 8 necessary to ensure the actual receipt of proper wages, to reduce
 9 administrative and litigation costs to the state and others, and to
 10 provide early guidance to all interested parties.

11 SEC. 2. ~~Section 1726 of the Labor Code is amended to read:~~

12 ~~1726. (a) The body awarding the contract for public work shall~~
 13 ~~take cognizance of violations of this chapter committed in the~~
 14 ~~course of the execution of the contract, and shall promptly report~~
 15 ~~any suspected violations to the Labor Commissioner.~~

16 ~~(b) If the awarding body determines as a result of its own~~
 17 ~~investigation that there has been a violation of this chapter and~~
 18 ~~withholds contract payments, the procedures in Section 1771.6~~
 19 ~~shall be followed.~~

20 ~~(c) A contractor may bring an action in a court of competent~~
 21 ~~jurisdiction to recover from an awarding body the difference~~
 22 ~~between the wages actually paid to an employee and the wages~~
 23 ~~that were required to be paid to an employee under this chapter,~~
 24 ~~any penalties required to be paid under this chapter, and costs and~~
 25 ~~attorney’s fees related to this action, if either of the following is~~
 26 ~~true:~~

27 ~~(1) The awarding body previously affirmatively represented to~~
 28 ~~the contractor in writing, in the call for bids, or otherwise, that the~~
 29 ~~work to be covered by the bid or contract was not a “public work,”~~
 30 ~~as defined in this chapter.~~

31 ~~(2) The awarding body received actual written notice from the~~
 32 ~~Department of Industrial Relations that the work to be covered by~~
 33 ~~the bid or contract is a “public work,” as defined in this chapter,~~
 34 ~~and failed to disclose that information to the contractor before the~~
 35 ~~bid opening or awarding of the contract.~~

36 ~~(d) When a political subdivision believes that a project in which~~
 37 ~~it is interested is not a public work, it shall notify the Director of~~
 38 ~~Industrial Relations, the Labor Commissioner, and any person who~~
 39 ~~has asked for that notice, together with the reason therefor, within~~
 40 ~~30 days of the commencement of any work estimated to last six~~

1 months or more, and before the commencement of any work if a
2 project is not estimated to exceed six months. For purposes of this
3 section, a political subdivision is interested in a project if it has a
4 proprietary interest, and not only a regulatory interest, in the
5 project. This notice shall be a public record. The director shall
6 create necessary forms and adopt regulations to implement this
7 subdivision.

8 SEC. 3. Section 1741 of the Labor Code is amended to read:

9 1741. (a) If the Labor Commissioner or his or her designee
10 determines after an investigation that there has been a violation of
11 this chapter, the Labor Commissioner shall with reasonable
12 promptness issue a civil wage and penalty assessment to the
13 contractor or subcontractor or both. The assessment shall be in
14 writing and shall describe the nature of the violation and the
15 amount of wages, penalties, and forfeitures due and shall include
16 the basis for the assessment. The assessment shall be served not
17 later than 180 days after the filing of a valid notice of completion
18 in the office of the county recorder in each county in which the
19 public work or some part thereof was performed, or not later than
20 180 days after acceptance of the public work, whichever occurs
21 last. However, if the assessment is served after the expiration of
22 this 180-day period, but before the expiration of an additional 180
23 days, and the awarding body has not yet made full payment to the
24 contractor, the assessment is valid up to the amount of the funds
25 retained. Service of the assessment shall be completed pursuant
26 to Section 1013 of the Code of Civil Procedure by first-class and
27 certified mail to the contractor, subcontractor, and awarding body.
28 The assessment shall advise the contractor and subcontractor of
29 the procedure for obtaining review of the assessment. The Labor
30 Commissioner shall, to the extent practicable, ascertain the identity
31 of any bonding company issuing a bond that secures the payment
32 of wages covered by the assessment and any surety on a bond, and
33 shall serve a copy of the assessment by certified mail to the bonding
34 company or surety at the same time service is made to the
35 contractor, subcontractor, and awarding body. However, no
36 bonding company or surety shall be relieved of its responsibilities
37 because it failed to receive notice from the Labor Commissioner.

38 (b) Interest shall accrue on all due and unpaid wages at the rate
39 described in subdivision (b) of Section 3289 of the Civil Code.
40 The interest shall accrue from the date that the wages were due

1 and payable, as provided in Part 7 (commencing with Section
2 1720) of Division 2, until the wages are paid.

3 (e) (1) The Labor Commissioner shall maintain a public list of
4 the names of each contractor and subcontractor who has been found
5 to have committed a willful violation of Section 1775 or to whom
6 a final order, which is no longer subject to judicial review, has
7 been issued.

8 (2) The list shall include the date of each assessment, the amount
9 of wages and penalties assessed, and the amount collected.

10 (3) The list shall be updated at least quarterly, and the
11 contractor's or subcontractor's name shall remain on that list until
12 the assessment is satisfied, or for a period of three years beginning
13 from the date of the issuance of the assessment, whichever is later.

14 (d) The period for service of assessments shall be tolled for the
15 period of time required by the Director of Industrial Relations to
16 determine whether a project is a public work, including a
17 determination on administrative appeal, if applicable, pursuant to
18 subdivisions (b) and (c) of Section 1773.5. The period for service
19 of assessments shall also be tolled for the period of time that a
20 contractor or subcontractor fails to provide in a timely manner
21 certified payroll records pursuant to a request from the Labor
22 Commissioner or a joint labor-management committee under
23 Section 1776, or an approved labor compliance program under
24 Section 1771.5 or 1771.7.

25 SEC. 4. Section 1771.2 of the Labor Code is amended to read:

26 1771.2. (a) A joint labor-management committee established
27 pursuant to the federal Labor Management Cooperation Act of
28 1978 (Section 175a of Title 29 of the United States Code) may
29 bring an action in any court of competent jurisdiction against an
30 employer that fails to pay the prevailing wage to its employees,
31 as required by this article. This action shall be commenced not
32 later than 180 days after the filing of a valid notice of completion
33 in the office of the county recorder in each county in which the
34 public work or some part thereof was performed, or not later than
35 180 days after acceptance of the public work, whichever last
36 occurs.

37 (b) The period for commencing an action shall be tolled during
38 the period of time in which a request to determine whether a
39 specific project is a public work is pending before the Director of
40 Industrial Relations, including the period of a timely administrative

1 appeal to the director from that determination by an interested
2 party, if applicable. The period for commencing an action shall
3 also be tolled for the period of time that a contractor or
4 subcontractor fails to provide in a timely manner certified payroll
5 records pursuant to a request from a joint labor-management
6 committee under Section 1776.

7 *SEC. 2. Section 1741.1 is added to the Labor Code, to read:*

8 *1741.1. (a) The period for service of assessments shall be*
9 *tolled for the period of time required by the Director of Industrial*
10 *Relations to determine whether a project is a public work,*
11 *including a determination on administrative appeal, if applicable,*
12 *pursuant to subdivisions (b) and (c) of Section 1773.5. The period*
13 *for service of assessments shall also be tolled for the period of*
14 *time that a contractor or subcontractor fails to provide in a timely*
15 *manner certified payroll records pursuant to a request from the*
16 *Labor Commissioner or a joint labor-management committee*
17 *under Section 1776, or an approved labor compliance program*
18 *under Section 1771.5 or 1771.7.*

19 *(b) The person filing a notice of completion in the office of a*
20 *county recorder pursuant to subdivision (a) of Section 1741 shall*
21 *at the same time also provide notice to the Labor Commissioner,*
22 *in a manner determined by the Labor Commissioner. The awarding*
23 *body or political subdivision accepting a public work under*
24 *subdivision (a) of Section 1741 shall provide notice of that*
25 *acceptance to the Labor Commissioner within five days of the*
26 *acceptance, in a manner determined by the Labor Commissioner.*
27 *The 180-day period for service of assessments shall be tolled for*
28 *the length of time notice is not given in a timely manner to the*
29 *Labor Commissioner pursuant to this subdivision.*

30 *(c) The tolling provisions in this section shall also apply to the*
31 *period of time for commencing an action brought by a joint*
32 *labor-management committee pursuant to Section 1771.2.*

33 ~~*SEC. 5.*~~

34 *SEC. 3. Section 1773.5 of the Labor Code is amended to read:*

35 *1773.5. (a) The Director of Industrial Relations may establish*
36 *rules and regulations for the purpose of carrying out this chapter,*
37 *including, but not limited to, the responsibilities and duties of*
38 *awarding bodies under this chapter.*

39 ~~*(b) The director shall determine whether a specific project is a*~~
40 ~~*public work within 60 days of the receipt of a request for a*~~

1 ~~determination~~. *When a request is made to the director for a*
 2 *determination of whether a specific project or type of work*
 3 *awarded or undertaken by a political subdivision is a public work,*
 4 *he or she shall make that determination within 60 days receipt of*
 5 *the last notice of support or opposition from any interested party*
 6 *relating to that project or type of work that was not unreasonably*
 7 *delayed, as determined by the director.* If the director deems that
 8 the complexity of the request requires additional time to make that
 9 determination, the director may have up to an additional 60 days
 10 if he or she certifies in writing to the requestor, and any interested
 11 ~~awarding body~~, party, the reasons for the extension. If the
 12 requestor is not ~~an awarding body~~ a political subdivision, the
 13 requestor ~~shall~~ shall, within 15 days of the request, serve a copy
 14 of the request upon the ~~awarding body~~ political subdivision, in
 15 which event the ~~awarding body~~ political subdivision shall, within
 16 ~~15~~ 30 days of its receipt, advise the director of its position
 17 regarding the request. *For projects or types of work that are*
 18 *otherwise private development projects receiving public funds, as*
 19 *specified in subdivision (b) of Section 1720, the director shall*
 20 *determine whether a specific project or type of work is a public*
 21 *work within 120 days of receipt of the last notice of support or*
 22 *opposition relating to that project or type of work from any*
 23 *interested party that was not unreasonably delayed, as determined*
 24 *by the director.*

25 (c) If an administrative appeal of the director's determination
 26 is made, it shall be made within 30 days of the date of the
 27 determination. The director shall issue a determination on the
 28 administrative appeal within ~~30~~ 120 days after receipt of the
 29 appeal, unless he or she certifies in writing to the party requesting
 30 the appeal the reason for additional time, in which case the
 31 director's determination shall issue within 60 days of the appeal.
 32 *last notice of support or opposition relating to that appeal from*
 33 *any interested party that was not unreasonably delayed, as*
 34 *determined by the director. The director may have up to an*
 35 *additional 60 days if he or she certifies in writing to the party*
 36 *requesting the appeal the reason for the extension.*

37 (d) The director shall have quasi-legislative authority to
 38 determine coverage of projects or types of work under the
 39 prevailing wage laws of this chapter. A final determination on any
 40 administrative appeal is subject to judicial review pursuant to

1 Section 1085 of the Code of Civil Procedure. *These determinations,*
2 *and any determinations relating to the general prevailing rate of*
3 *per diem wages and the general prevailing rate for holiday, shift*
4 *rate, and overtime work, shall be exempt from the Administrative*
5 *Procedure Act (Chapter 3.5 (commencing with Section 11340) of*
6 *Part 1 of Division 3 of Title 2 of the Government Code).*

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