

Senate Bill No. 377

Passed the Senate September 10, 2013

Secretary of the Senate

Passed the Assembly September 9, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1773.5 of, and to add Section 1741.1 to, the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 377, 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.

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 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 120 days after the receipt of the appeal, except as specified. 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 exempt those determinations, and determinations relating to the general prevailing rate of per diem wages and for holiday, shift, and overtime work, 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 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 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.

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

SECTION 1. The Legislature finds and declares that the process for the Director of Industrial Relations to determine the existence of a public work and to decide administrative appeals from those determinations has created unacceptable delays and prejudice to the enforcement of the public works law, often resulting in the expiration of the statute of limitation for the identification and collection of wage and penalty assessments. As a result, wage theft

has occurred because workers are not paid prevailing wage rates and the time for assessment has expired. Further, there has been an incentive to some developers, contractors, and public bodies to engage in expensive and time-consuming litigation in efforts to extend the time for determining the existence of a public work. This litigation is often a needless expense to the state. In addition, public bodies, developers, contractors, and others are entitled to a determination of whether a project is a public work as early as possible so that the costs of the project and the duties of the parties under the law may be known as early as possible. Thus, this act is necessary to ensure the actual receipt of proper wages, to reduce administrative and litigation costs to the state and others, and to provide early guidance to all interested parties.

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

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

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

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

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

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

(b) 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, he or she shall make that determination within 60 days receipt of the last notice of support or opposition from any interested party relating to that project or type of work that was not unreasonably delayed, as determined by the director. If the director deems that the complexity of the request requires additional time to make that determination, the director may have up to an additional 60 days if he or she certifies in writing to the requestor, and any interested party, the reasons for the extension. If the requestor is not a political subdivision, the requester shall, within 15 days of the request, serve a copy of the request upon the political subdivision, in which event the political subdivision shall, within 30 days of its receipt, advise the director of its position regarding the request. For projects or types of work that are otherwise private development projects receiving public funds, as specified in subdivision (b) of Section 1720, the director shall determine whether a specific project or type of work is a public work within 120 days of receipt of the last notice of support or opposition relating to that project or type of work from any interested party that was not unreasonably delayed, as determined by the director.

(c) If an administrative appeal of the director's determination is made, it shall be made within 30 days of the date of the determination. The director shall issue a determination on the administrative appeal within 120 days after receipt of the last notice of support or opposition relating to that appeal from any interested party that was not unreasonably delayed, as determined by the director. The director may have up to an additional 60 days if he or she certifies in writing to the party requesting the appeal the reason for the extension.

(d) The director shall have quasi-legislative authority to determine coverage of projects or types of work under the prevailing wage laws of this chapter. A final determination on any administrative appeal is subject to judicial review pursuant to Section 1085 of the Code of Civil Procedure. These determinations,

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

Approved _____, 2013

Governor