

AMENDED IN SENATE MARCH 27, 2014

SENATE BILL

No. 1109

Introduced by Senator Hueso

February 19, 2014

An act to add Sections 10338 and 10339 to the Public Contract Code, and to amend Section 19404 of the Welfare and Institutions Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1109, as amended, Hueso. ~~Public State~~ contracts: integrated employment: *persons with disabilities*.

~~Existing~~

(1) ~~Existing~~ law establishes specified requirements applicable to ~~contracts entered into the acquisition of services by state agencies, as provided agencies~~. Existing law establishes a minimum wage for all industries but permits mentally or physically handicapped persons to be employed at less than the minimum wage, under specified circumstances.

This bill would remove the authorization of a successful bidder to use lower minimum wage exemptions for specified contracts entered into by a state agency for services rendered to the state.

(2) ~~Existing~~ law establishes participation goals for specified enterprises to participate in contracts with state agencies for construction, services, materials, supplies, equipment, alterations, repairs, or improvements..

This bill would establish statewide participation goals of not less than 3% for persons with disabilities business enterprises, as defined, to participate in contracts awarded by a state agency for services, as specified.

(3) Existing law authorizes a state agency, city or county, political subdivision, or district of this state to purchase materials and supplies manufactured and services provided by public or private nonprofit California corporations operating community rehabilitation programs serving persons with disabilities that have indicated an interest in supplying those goods without advertising or calling for bids.

This bill would require that a corporation employing persons with disabilities under a contract with a state agency for goods or services described above pay all of its employees at least the state minimum wage for work on the contract.

~~This bill would state the intent of the Legislature to enact legislation to provide that the state serve as a model for employers in California in increasing competitive integrated employment for individuals with disabilities by prohibiting the entering into of contracts by the state with organizations that pay employees with disabilities less than the minimum wage.~~

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 10338 is added to the Public Contract
- 2 Code, to read:
- 3 10338. (a) A successful bidder on a contract awarded under
- 4 this article is not authorized to use the minimum wage exemption
- 5 under Section 1191 or 1191.5 of the Labor Code for any employee,
- 6 engaged in any way, in providing services under the contract.
- 7 (b) This section shall apply to a contract awarded under this
- 8 article that is not subject to competitive bidding requirements.
- 9 (c) This section shall apply only to contracts entered into or
- 10 renewed on or after January 1, 2015.
- 11 SEC. 2. Section 10339 is added to the Public Contract Code,
- 12 to read:
- 13 10339. (a) Each state agency shall have a goal of awarding
- 14 3 percent of its contracts under this article to a disability business
- 15 enterprise.
- 16 (b) For purposes of this section, “disability business enterprise”
- 17 means a public or private nonprofit California corporation
- 18 operating community rehabilitation programs serving persons
- 19 with disabilities.

1 (c) (1) *Contracts performed by a disability business enterprise*
2 *under this section shall be performed by a labor force comprised*
3 *primarily of persons with disabilities, as measured by the*
4 *percentage of person-hours of direct labor devoted to the contract*
5 *work.*

6 (2) *For purposes of paragraph (1), “primarily” means 75*
7 *percent or greater.*

8 *SEC. 3. Section 19404 of the Welfare and Institutions Code is*
9 *amended to read:*

10 19404. Any state agency, city or county, political subdivision,
11 or district of this state may, without advertising or calling for bids,
12 purchase materials and supplies manufactured and services
13 provided by public or private nonprofit California corporations
14 operating community rehabilitation programs serving persons with
15 disabilities who have indicated an interest in supplying those goods
16 and services and may, on an equitable basis apportion the business
17 among the interested community rehabilitation programs, provided
18 the goods or services meet the specifications and needs of the
19 purchasing agency and are purchased at a fair market price, as
20 determined by the appropriate state or local agency and provided
21 that the public or private nonprofit California corporations comply
22 with all of the following requirements:

23 (a) (1) Contract work obtained under this section shall be
24 performed by a labor force which is comprised primarily of persons
25 with disabilities, as measured by the percentage of person-hours
26 of direct labor devoted to the contract work.

27 (2) For purposes of this paragraph, “primarily” means 75 percent
28 or greater.

29 (3) Agree to make those elections permitted of any nonprofit
30 corporation under the federal Insurance Contributions Act and the
31 California Unemployment Insurance Code in order to provide
32 social security and unemployment and disability benefits for its
33 employees commencing with its first contract or purchase order
34 under this section and continuing thereafter. In the event that the
35 nonprofit corporation ceases to provide those benefits, any existing
36 contract or purchase order under this section with the corporation
37 is terminated and no further contracts or purchase orders shall be
38 awarded to that corporation for the period of two years after the
39 corporation ceases to provide the benefits. For the purposes of this

1 subdivision, a person with a disability shall be considered an
 2 employee when performing productive work.

3 (4) Provide in its articles of incorporation that at least two of
 4 the directors of its board of directors shall be comprised of persons
 5 with disabilities or the parents, guardians, or conservators of
 6 individuals with disabilities. Directors who are also employees of
 7 the nonprofit corporation shall not participate in or be present at
 8 discussions of the board of directors concerned with
 9 labor-management contract negotiations.

10 (5) Provide for disabled employees of the nonprofit corporation
 11 benefits and other employer-employee agreements substantially
 12 equal to those benefits and agreements entered into between each
 13 nonprofit corporation and the representatives designated by a
 14 majority of the employees.

15 (6) Not commit any unfair labor practices as defined in Section
 16 8(a) of the National Labor Relations Act.

17 (7) Abide by the provisions of the Federal Fair Labor Standards
 18 Act, the Walsh-Healy Public Contract Act, the Wagner O’Day
 19 Act, and the regulations of the State Division of Industrial Welfare.

20 (8) *Notwithstanding any other law, each employee who performs*
 21 *work for a state agency under a contract pursuant to this section,*
 22 *shall be paid at the state minimum wage rate or a higher rate.*

23 (b) For purposes of this section a “person with a disability”
 24 means any person, other than a person who is blind, who is so
 25 severely incapacitated by any physical or mental disability that he
 26 or she cannot currently engage in normal competitive employment
 27 because of the disability.

28 ~~SECTION 1. It is the intent of the Legislature to enact~~
 29 ~~legislation to provide that the state serve as a model for employers~~
 30 ~~in California in increasing competitive integrated employment for~~
 31 ~~individuals with disabilities by prohibiting the entering into of~~
 32 ~~contracts by the state with organizations that pay employees with~~
 33 ~~disabilities less than the minimum wage.~~