

AMENDED IN ASSEMBLY APRIL 28, 2016

AMENDED IN ASSEMBLY MARCH 8, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1669**

---

---

**Introduced by Assembly Member Roger Hernández**

January 15, 2016

---

---

An act to amend Sections ~~1070 and 1071~~ 1070, 1071, and 1072 of, ~~and~~ and to amend the heading of Chapter 4.6 (commencing with Section 1070) of Part 3 of Division 2 of, *and to add Section 1075 to*, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1669, as amended, Roger Hernández. Displaced employees: service contracts: collection and transportation of solid waste.

Existing law requires a local government agency letting a public transit service contract out to bid to give a bidding preference for contractors and subcontractors who agree to retain for a specified period certain employees who were employed to perform essentially the same services by the previous contractor or subcontractor. Such a contractor or subcontractor ~~must~~ *is required to* offer employment to those employees, except for reasonable and substantiated cause. Existing law requires a successor contractor or subcontractor that determines that fewer employees are needed than under the prior contract to retain qualified employees by seniority within the job classification. The existing contractor ~~must~~ *is required to* provide prescribed information regarding employment under the existing service contract to the awarding authority, any entity that the awarding authority identifies as a bona fide bidder, and the successor contractor. *Existing law authorizes*

*an employee who was not offered employment or who has been discharged in violation of existing law, or his or her agent, to bring an action against the successor contractor or subcontractor in any superior court having jurisdiction over the successor contractor or subcontractor. Existing law authorizes an awarding authority to terminate a service contract under prescribed circumstances.*

This bill would ~~make~~ *expand the application of these provisions applicable to exclusive contracts for the collection and transportation of solid waste. The bill would require the information provided to a bona fide bidder to be made available in writing at least 30 days before bids for the service contract are due. The bill would establish certain provisions applicable only to service contracts for the collection and transportation of solid waste, including limits on the requirement to retain employees and specified requirements for notice and opportunity to cure in the context of civil action or termination.* By requiring local agencies to give a bidding preference under these provisions to those contractors and subcontractors for the collection and transportation of solid waste, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. The heading of Chapter 4.6 (commencing with  
2 Section 1070) of Part 3 of Division 2 of the Labor Code is amended  
3 to read:

4  
5 CHAPTER 4.6. PUBLIC TRANSIT SERVICE CONTRACTS AND  
6 CONTRACTS FOR THE COLLECTION AND TRANSPORTATION OF SOLID  
7 WASTE

8  
9 SEC. 2. Section 1070 of the Labor Code is amended to read:  
10 1070. The Legislature finds and declares all of the following:

1 (a) That when public agencies with jurisdiction over public  
2 transit services or the collection and transportation of solid waste  
3 award contracts to operate bus and rail services, or to provide for  
4 the collection and transportation of solid waste to a new contractor,  
5 qualified employees of the prior contractor who are not reemployed  
6 by the successor contractor face significant economic dislocation  
7 as a result.

8 (b) That those displaced employees rely unnecessarily upon the  
9 unemployment insurance system, public social services, and health  
10 programs, increasing costs to these vital government programs  
11 and placing a significant burden upon both the government and  
12 the taxpayers.

13 (c) That it serves an important social purpose to establish  
14 incentives for contractors who bid on public transit service  
15 contracts or contracts for the collection and transportation of solid  
16 waste to retain qualified employees of the prior contractor to  
17 perform the same or similar work.

18 SEC. 3. Section 1071 of the Labor Code is amended to read:

19 1071. The following definitions apply to this chapter:

20 (a) "Awarding authority" means any local government agency,  
21 including any city, county, special district, transit district, joint  
22 powers authority, or nonprofit corporation that awards or otherwise  
23 enters into contracts for public transit services or for the collection  
24 and transportation of solid waste performed within the State of  
25 California.

26 (b) "Bidder" means any person who submits a bid to an  
27 awarding ~~agency~~ *authority* for a public transit service contract, ~~a~~  
28 *an exclusive* contract for the collection and transportation of solid  
29 waste, or a subcontract.

30 (c) "Contractor" means any person who enters into a public  
31 transit service contract ~~or a~~ *an exclusive* contract for the collection  
32 and transportation of solid waste with an awarding authority.

33 (d) "Employee" means any ~~person~~ *individual* who works for a  
34 contractor or subcontractor under a contract. "Employee" does not  
35 include an executive, administrative, or professional employee  
36 exempt from the payment of overtime compensation within the  
37 meaning of subdivision (a) of Section 515 or any person who is  
38 not an "employee" as defined under Section 2(3) of the National  
39 Labor Relations Act (29 U.S.C. Sec. 152(3)).

1 (e) “Person” means any individual, proprietorship, partnership,  
2 joint venture, corporation, limited liability company, trust,  
3 association, or other entity that may employ individuals or enter  
4 into contracts.

5 (f) “Public transit services” means the provision of passenger  
6 transportation services to the general public, including paratransit  
7 service.

8 (g) “Service contract” means any contract the principal purpose  
9 of which is to provide public transit services or the *exclusive right*  
10 *to provide* collection and transportation of solid waste through the  
11 use of ~~service~~ employees.

12 (h) “Solid waste” has the same meaning as defined in Section  
13 40191 of the Public Resources Code.

14 (i) “Subcontractor” means any person who is not an employee  
15 who enters into a contract with a contractor to ~~assist the contractor~~  
16 ~~in performing~~ *perform a portion of the contractor’s express*  
17 *obligations under a service contract. “Subcontractor” does not*  
18 *include a contractor’s vendors, suppliers, insurers, or other service*  
19 *providers.*

20 *SEC. 4. Section 1072 of the Labor Code is amended to read:*

21 1072. (a) A bidder shall declare as part of the bid for a service  
22 contract whether or not ~~he or she~~ *the bidder* will retain the  
23 employees of the prior contractor or subcontractor for a period of  
24 not less than ~~90 days.~~ *days, as provided in this chapter, if awarded*  
25 *the service contract.*

26 (b) An awarding authority letting a service contract out to bid  
27 shall give a 10 percent preference to any bidder who agrees to  
28 retain the employees of the prior contractor or subcontractor  
29 pursuant to subdivision (a).

30 (c) (1) If the awarding authority announces that it intends to  
31 let a service contract out to bid, the existing service contractor,  
32 within a reasonable time, shall provide to the awarding authority  
33 the number of employees who are performing services under the  
34 service contract and the wage rates, benefits, and job classifications  
35 of those employees. In addition, the existing service contractor  
36 shall make this information available to any entity that the awarding  
37 authority has identified as a bona fide bidder. *This information*  
38 *shall be made available to each bona fide bidder in writing at least*  
39 *30 days before bids for the service contract are due, whether by*  
40 *inclusion of the information in the request for bids or otherwise.*

1 If the successor service contract is awarded to a new contractor,  
2 the existing contractor shall provide the ~~names~~, *names*, addresses,  
3 dates of hire, wages, benefit levels, and job classifications of  
4 employees to the successor contractor. The duties imposed by this  
5 subdivision shall be contained in all service contracts.

6 (2) A successor contractor or subcontractor who agrees to retain  
7 employees pursuant to subdivision (a) shall retain employees who  
8 have been employed by the prior contractor or subcontractors,  
9 except for reasonable and substantiated cause. That cause is limited  
10 to the particular employee's performance or conduct while working  
11 under the prior contract or the employee's failure of any controlled  
12 substances and alcohol test, physical examination, criminal  
13 background check required by law as a condition of employment,  
14 or other standard hiring qualification lawfully required by the  
15 successor contractor or subcontractor.

16 (3) The successor contractor or subcontractor shall make a  
17 written offer of employment to each employee to be ~~rehired~~  
18 *retained pursuant to subdivision (a)*. That offer shall state the time  
19 within which the employee must accept that offer, but in no case  
20 less than 10 days. Nothing in this section requires the successor  
21 contractor or subcontractor to pay the same wages or offer the  
22 same benefits provided by the prior contractor or subcontractor.

23 (4) If, at any time, the successor contractor or subcontractor  
24 determines that fewer employees are required than were required  
25 under the prior contract or subcontract, ~~he or she~~ *the successor*  
26 *contractor or subcontractor* shall retain qualified employees by  
27 seniority within the job classification. In determining those  
28 employees who are qualified, the successor contractor or  
29 subcontractor may require an employee to possess any license that  
30 is required by law to operate the equipment that the employee will  
31 operate as an employee of the successor contractor or  
32 subcontractor.

33 *SEC. 5. Section 1075 is added to the Labor Code, to read:*

34 *1075. Notwithstanding any other provision of this chapter, the*  
35 *following shall apply to service contracts for the collection and*  
36 *transportation of solid waste:*

37 *(a) A successor contractor or subcontractor shall be required*  
38 *to retain only employees of a contractor or subcontractor under*  
39 *a prior service contract whose employment would be terminated*  
40 *if the service contract were awarded to another contractor.*

1 (b) A successor contractor or subcontractor shall not be  
 2 required to retain an employee of a contractor or subcontractor  
 3 under a prior service contract under any of the following  
 4 circumstances:

5 (1) If the employee of the prior contractor or subcontractor  
 6 does not meet any standard hiring qualification lawfully required  
 7 by the successor contractor or subcontractor for the position.

8 (2) If the successor contractor or subcontractor would be  
 9 required to terminate or reassign an existing employee covered  
 10 under a collective bargaining agreement with the successor  
 11 contractor or subcontractor in order to hire the employee of the  
 12 prior contractor or subcontractor.

13 (3) If, and to the extent, the actual number of employees meeting  
 14 the requirements of this chapter exceeds the number of those  
 15 employees communicated to bona fide bidders in accordance with  
 16 paragraph (1) of subdivision (c) of Section 1072.

17 (c) An employee or his or her agent shall not bring an action  
 18 against a successor contractor or subcontractor under subdivision  
 19 (a) of Section 1073 without first giving the successor contractor  
 20 or subcontractor written notice of the violation or breach and 30  
 21 days to cure the violation or breach. An awarding authority shall  
 22 not terminate a service contract under subdivision (a) of Section  
 23 1074 without first giving the successor contractor or subcontractor  
 24 written notice of the violation or breach and 30 days to cure the  
 25 violation or breach.

26 ~~SEC. 4.~~

27 SEC. 6. If the Commission on State Mandates determines that  
 28 this act contains costs mandated by the state, reimbursement to  
 29 local agencies and school districts for those costs shall be made  
 30 pursuant to Part 7 (commencing with Section 17500) of Division  
 31 4 of Title 2 of the Government Code.