

AMENDED IN SENATE JUNE 9, 2016

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, 1071, and 1072 of, to amend the heading of Chapter 4.6 (commencing with Section 1070) of Part 3 of Division 2 of, and to add ~~Section~~ *Sections 1075 and 1076* 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 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 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 expand the application of these provisions 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. *The bill would not apply to contracts awarded before January 1, 2017, or to contracts for which the bid process has been completed before January 1, 2017.* 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

1 SEC. 2. Section 1070 of the Labor Code is amended to read:

2 1070. The Legislature finds and declares all of the following:

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

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

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

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

21 1071. The following definitions apply to this chapter:

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

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

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

35 (d) "Employee" means any individual who works for a
36 contractor or subcontractor under a contract. "Employee" does not
37 include an executive, administrative, or professional employee
38 exempt from the payment of overtime compensation within the
39 meaning of subdivision (a) of Section 515 or any person who is

1 not an “employee” as defined under Section 2(3) of the National
2 Labor Relations Act (29 U.S.C. Sec. 152(3)).

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

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

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

14 (h) “Solid waste” has the same meaning as defined in Section
15 40191 of the Public Resources Code.

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

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

22 1072. (a) A bidder shall declare as part of the bid for a service
23 contract whether or not the bidder will retain the employees of the
24 prior contractor or subcontractor for a period of not less than 90
25 days, as provided in this chapter, if awarded 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, addresses, dates
3 of hire, wages, benefit levels, and job classifications of employees
4 to the successor contractor. The duties imposed by this subdivision
5 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 retained
18 pursuant to subdivision (a). That offer shall state the time within
19 which the employee must accept that offer, but in no case less than
20 10 days. Nothing in this section requires the successor contractor
21 or subcontractor to pay the same wages or offer the same benefits
22 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, the successor contractor
26 or subcontractor shall retain qualified employees by seniority
27 within the job classification. In determining those employees who
28 are qualified, the successor contractor or subcontractor may require
29 an employee to possess any license that is required by law to
30 operate the equipment that the employee will operate as an
31 employee of the successor contractor or subcontractor.

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

33 1075. Notwithstanding any other provision of this chapter, the
34 following shall apply to service contracts for the collection and
35 transportation of solid waste:

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

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

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

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

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

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

25 *SEC. 6. Section 1076 is added to the Labor Code, to read:*

26 *1076. The amendments and additions to this chapter made by*
27 *the act adding this section shall not apply to contracts awarded*
28 *before January 1, 2017, or to contracts for which the bid process*
29 *has been completed before January 1, 2017.*

30 ~~SEC. 6.~~

31 *SEC. 7. If the Commission on State Mandates determines that*
32 *this act contains costs mandated by the state, reimbursement to*
33 *local agencies and school districts for those costs shall be made*
34 *pursuant to Part 7 (commencing with Section 17500) of Division*
35 *4 of Title 2 of the Government Code.*