

AMENDED IN SENATE MAY 1, 1997
AMENDED IN SENATE APRIL 7, 1997

SENATE BILL

No. 1328

Introduced by Senator Brulte

February 28, 1997

An act to amend Sections ~~1727, 1729, 1730, 1731, 1732, 1733, 1735, 1771.5, 1771.7, 1775, 1776, 1777.5, 1777.7, 1812, and 1813~~ of, and to add Section 1722.2 to, the Labor Code, *Section 1775 of the Labor Code*, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 1328, as amended, Brulte. Public works: prevailing wages.

~~Existing law requires the body awarding a public works contract to withhold from payment otherwise due the contractor the amount of any wages and penalties forfeited pursuant to any stipulation in the contract and the terms of specified statutory provisions relating to public works contracts.~~

~~This bill would make an exception for wages or penalties owed by a subcontractor or an employer, as defined, if the contractor has paid the subcontractor or employer in full and retains no funds on behalf of the subcontractor or employer.~~

~~Existing law requires awarding bodies to transfer wages and penalties so withheld to the Labor Commissioner for prescribed disbursement if the contractor fails to bring suit for recovery thereof within a prescribed time.~~

~~This bill would instead require this transfer if the employer, as defined, fails to bring suit for recovery thereof. The bill would also delete existing provisions authorizing a public works contractor, who has paid a subcontractor, to commence a civil action to recover from the subcontractor penalties or forfeitures withheld by the awarding body on account of certain violations of the subcontractor.~~

~~Existing law authorizes public works contractors to withhold payment to a subcontractor of an amount sufficient to cover penalties withheld by the awarding body on account of the subcontractor's failure to comply with specified requirements respecting public works contracts.~~

~~This bill would recast the above provisions to allow contractors to withhold these payments from defined employers.~~

~~Existing law prohibits specified discrimination in employment by contractors on public works projects and makes violation a misdemeanor.~~

~~This bill would impose a state-mandated local program by making this prohibition instead applicable to defined employers.~~

~~Existing law exempts certain public works contracts from the requirement for payment of the general prevailing rate of per diem wages if the awarding body elects to initiate and enforce a prescribed labor compliance program for every public works project under its authority. Under existing law, the contractor may appeal an enforcement action under a labor compliance program to the Director of Industrial Relations.~~

~~This bill would instead authorize defined employers to appeal these enforcement actions to the director.~~

~~Existing law requires, except for public works projects of \$1,000 or less, not less than the general prevailing rate of per diem wages to be paid to all workers employed on a public works project. Existing law imposes upon the contractor a penalty of \$50 for each calendar day, or portion thereof, for each worker paid less than that prevailing rate for work performed for the contractor under the public works contract or for work performed for any subcontractor under the contractor. Existing law also requires the contractor to pay the~~



difference in the amount of the prevailing wage rate that was due each employee of the contractor or a subcontractor and the amount that was actually paid to each employee.

This bill would provide that, if a worker employed by a subcontractor on a public works project is not paid the prevailing wage by the subcontractor, the prime contractor of the project is not liable for any of those penalties or amounts otherwise due under that existing law unless the prime contractor had actual knowledge, as specified, of that failure of the subcontractor. The bill also would exempt a prime contractor from liability for any penalties or amounts otherwise due under that existing law based on the failure of the subcontractor to pay the general prevailing per diem wages to those workers if the prime contractor takes timely corrective action to halt or rectify that failure after the contractor becomes aware of that failure.

~~This bill would require an employer, as defined, that fails to pay the required prevailing rate of per diem wages under a public works contract to pay the penalty for failure to pay prevailing wage rates, and would exempt the contractor from payment of the penalty if the contractor meets certain requirements. The bill would make the contractor liable for payment of the difference between prevailing wage rates and the wage rates actually paid to all employees on a public works project, but would require the Division of Labor Standards Enforcement to first seek payment from the employer, as defined, if other than the contractor. The bill would require public works contractors to withhold a sufficient amount from subcontractors in violation of prevailing wage requirements and would make procedural changes in the enforcement proceedings of the division.~~

~~Existing law, with certain exceptions, requires each public works contractor and subcontractor to keep an accurate and certified payroll record, showing specified employment information for each employee employed by the contractor in connection with the public work. Existing law requires each public works contractor and subcontractor to make those records available within 10 days upon receipt of a written request by certain entities. Existing law imposes, after the~~



~~expiration of than 10-day period, a penalty of \$25 per calendar day for each day of noncompliance by the contractor.~~

~~This bill would limit the obligation of the contractor to respond to requests of the public for inspection of a certified copy of payroll records, made through the awarding authority, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement, to once per month. The bill would shift certain requirements concerning these records from the contractor to the employer, as defined. The bill would impose a state-mandated local program by requiring the body awarding a public works contract, including local agencies, to include certain enforcement provisions in their public works contracts.~~

~~Existing law specifies conditions upon which apprentices may be employed under public works contracts and requires public works contracts to make the prime contractor responsible for compliance and subject to prescribed civil penalties for noncompliance.~~

~~This bill would instead require public works contracts to make the employer, as defined, of an apprentice responsible for compliance and subject to the civil penalties for noncompliance.~~

~~Existing law requires contractors and subcontractors under public works contracts to keep records of hours worked by their employees on the contracted public works.~~

~~This bill would instead make this requirement applicable to employers, as defined, of employees employed in connection with public works.~~

~~Existing law makes contractors under public works contracts liable for prescribed civil penalties for violation of overtime work restrictions by the contractor or any subcontractor.~~

~~This bill would instead make an employer, as defined, who violates these overtime work restrictions liable for the penalties.~~

~~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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do~~



~~not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

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

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

1 ~~SECTION 1.—~~

2 *SECTION 1. Section 1775 of the Labor Code is*
3 *amended to read:*

4 1775. (a) The contractor shall, as a penalty to the
5 state or political subdivision on whose behalf the contract
6 is made or awarded, forfeit not more than fifty dollars
7 (\$50) for each calendar day, or portion thereof, for each
8 worker paid less than the prevailing *wage* rates as
9 determined by the director for the work or craft in which
10 the worker is employed for any public work done under
11 the contract by him or her or by any subcontractor under
12 him or her. The amount of this penalty shall be
13 determined by the Labor Commissioner and shall be
14 based on consideration of the ~~contractor's~~ mistake,
15 inadvertence, or neglect *of the contractor* in failing to pay
16 the correct rate of prevailing wages, or the previous
17 record of the contractor in meeting his or her prevailing
18 wage obligations, or ~~a contractor's~~ *the* willful failure *by*
19 *the contractor* to pay the correct rates of prevailing
20 wages. A mistake, inadvertence, or neglect in failing to
21 pay the correct rate of prevailing wages is not excusable
22 if the contractor had knowledge of his or her obligations
23 under this part. The difference between the prevailing
24 wage rates and the amount paid to each worker for each
25 calendar day or portion thereof for which each worker



1 was paid less than the prevailing wage rate shall be paid
2 to each worker by the contractor, and the body awarding
3 the contract shall cause to be inserted in the contract a
4 stipulation that this section will be complied with.

5 *(b) If a worker employed by a subcontractor on a*
6 *public works project is not paid the general prevailing per*
7 *diem wages by the subcontractor, the prime contractor*
8 *of the project is not liable for any penalties or amounts*
9 *due under subdivision (a) unless the prime contractor*
10 *had actual knowledge of that failure of the subcontractor.*
11 *For purposes of this subdivision, a prime contractor is*
12 *deemed to have had “actual knowledge” if the contractor*
13 *was aware of the willful failure of the subcontractor to pay*
14 *the general prevailing per diem wages to those workers.*
15 *A prime contractor also is not liable for any penalties or*
16 *amounts specified under subdivision (a) due to the*
17 *failure of the subcontractor to pay the general prevailing*
18 *per diem wages to those workers if the contractor takes*
19 *timely corrective action to halt or rectify that failure after*
20 *the prime contractor becomes aware of that failure.*

21 *(c) To the extent that there is insufficient money due*
22 *a contractor to cover all penalties and amounts due in*
23 *accordance with this section, or ~~in accordance with~~*
24 *Section 1813, and in all cases where the contract does not*
25 *provide for a money payment by the awarding body to*
26 *the contractor, the awarding body shall notify the*
27 *Division of Labor Standards Enforcement of the violation*
28 *and the ~~Division of Labor Standards Enforcement~~*
29 *division, if necessary with the assistance of the awarding*
30 *body, may maintain an action in any court of competent*
31 *jurisdiction to recover the penalties and the amounts due*
32 *provided in this section. This action shall be commenced*
33 *not later than 90 days after the filing of a valid notice of*
34 *completion in the office of the county recorder in each*
35 *county in which the public work or some part thereof was*
36 *performed, or not later than 90 days after acceptance of*
37 *the public work, whichever last occurs. No issue other*
38 *than that of the liability of the contractor for the penalties*
39 *allegedly forfeited and amounts due shall be determined*
40 *in the action, and the burden shall be upon the contractor*



1 to establish that the penalties and amounts demanded in
2 the action are not due.

3 Out of any money withheld, recovered, or both, there
4 shall first be paid the amount due each worker, and if
5 insufficient funds are withheld, recovered, or both, to pay
6 each worker in full, the money shall be prorated among
7 all workers.

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**All matter omitted in this version of the
bill appears in the bill as amended in the
Senate, April 7, 1997 (JR 11)**

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