

AMENDED IN SENATE AUGUST 17, 1999

AMENDED IN SENATE JULY 7, 1999

AMENDED IN ASSEMBLY MAY 20, 1999

AMENDED IN ASSEMBLY MAY 11, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 921

Introduced by Assembly Member Keeley

February 25, 1999

An act to amend Sections 1777.5, 1777.7, 3070, 3075, and 3080 of, and to add Sections 3073.1 and 3098 to, the Labor Code, relating to apprenticeship programs.

LEGISLATIVE COUNSEL'S DIGEST

AB 921, as amended, Keeley. Apprenticeship programs.

Existing law establishes the California Apprenticeship Council to issue rules and regulations that establish apprenticeship standards, among other things. The council is composed of 14 members appointed by the Governor plus the Director of Industrial Relations or his or her designee, the Superintendent of Public Instruction or his or her designee, and the Chancellor of the California Community Colleges or his or her designee. The Governor's appointees include 6 representatives each from employer and employee organizations, geographically selected, and 2 representatives of the general public. This provision also provides that each member of the council shall receive \$50 for each day of actual

attendance at council or committee meetings together with actual and necessary traveling expenses.

This bill would provide that the Governor's appointees shall be 6 representatives each from employer organizations that sponsor apprenticeship programs and employee organizations that sponsor apprenticeship programs, geographically selected, and 2 representatives of the general public. This bill would also increase the council members' per diem to \$100 for each day of actual attendance at council or committee meetings together with actual and necessary traveling expenses.

Existing law requires the Chief of the Division of Apprenticeship Standards or his or her representative, among other things, to foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their opportunities for profitable employment.

This bill would additionally require the division to *randomly* audit all apprenticeship programs at least once every 5 years to ensure compliance with specified requirements and require every apprenticeship program sponsor to cooperate with the division in conducting the audit. The audit reports would be presented to the California Apprenticeship Council and made public, except as specified. The chief would recommend remedial action to correct deficiencies and failure to correct them within a reasonable time would be grounds for withdrawing state approval of a program.

Existing law requires that the ratio of apprentice work to journeyman work performed on public works be not less than one hour of apprentice's work for every 5 hours by a journeyman, except as specified in the case of the land surveyor classification. A violation of this provision is punishable by a civil penalty of \$50 per day of noncompliance. *In the event of willful noncompliance of this provision, the Director of Industrial Relations would be required to debar the contractor, as specified.*

This bill would eliminate the land surveyor exception and increase the civil penalty to \$100 for each day of noncompliance. This bill would also impose a civil penalty of \$300 for each day of noncompliance in the event of a



subsequent violation of this provision within a 3-year period. *The bill would also revise the procedure for debarment under these provisions.*

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

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

1 SECTION 1. The Legislature finds and declares that
2 apprenticeship programs are a vital part of the
3 educational system in California. It is the purpose and
4 goal of this legislation to strengthen the regulation of
5 apprenticeship programs in California, to ensure that all
6 apprenticeship programs approved under Chapter 4
7 (commencing with Section 3070) of Division 3 of the
8 Labor Code meet the high standards necessary to
9 prepare apprentices for the workplaces of the future and
10 to prevent the exploitation of apprentices by employers
11 or apprenticeship programs. It is further the intent of the
12 Legislature that apprenticeship programs should make
13 active efforts to recruit qualified men, women, and
14 minorities and train them in the skills needed for the
15 workplace.

16 SEC. 2. Section 1777.5 of the Labor Code is amended
17 to read:

18 1777.5. (a) Nothing in this chapter shall prevent the
19 employment of properly registered apprentices upon
20 public works.

21 (b) Every apprentice employed upon public works
22 shall be paid the prevailing rate of per diem wages for
23 apprentices in the trade to which he or she is registered
24 and shall be employed only at the work of the craft or
25 trade to which he or she is registered.

26 (c) Only apprentices, as defined in Section 3077, who
27 are in training under apprenticeship standards that have
28 been approved by the Chief of the Division of
29 Apprenticeship Standards and who are parties to written
30 apprentice agreements under Chapter 4 (commencing
31 with Section 3070) of Division 3 are eligible to be
32 employed on public works. The employment and training



1 of each apprentice shall be in accordance with either (1)
2 the apprenticeship standards and apprentice agreements
3 under which he or she is training or (2) with the rules and
4 regulations of the California Apprenticeship Council.

5 (d) When the contractor to whom the contract is
6 awarded by the state or any political subdivision, or any
7 subcontractor under him or her, in performing any of the
8 work under the contract or subcontract, employs workers
9 in any apprenticeable craft or trade, the contractor or
10 subcontractor shall employ apprentices in the ratio set
11 forth in this section and may apply to any apprenticeship
12 committee administering apprenticeship standards of
13 the craft or trade that can provide apprentices to the site
14 of the public work for a certificate approving the
15 contractor or subcontractor under the apprenticeship
16 standards for the employment and training of
17 apprentices in the area or industry affected. However,
18 approval as established by the apprenticeship committee
19 or committees shall be subject to the approval of the
20 Administrator of Apprenticeship. The apprenticeship
21 committee or committees, upon approving the
22 contractor or subcontractor, shall arrange for the
23 dispatch of apprentices to the contractor or
24 subcontractor. "Apprenticeable craft or trade," as used in
25 this section, means a craft or trade determined as an
26 apprenticeable occupation in accordance with rules and
27 regulations prescribed by the California Apprenticeship
28 Council.

29 (e) Prior to commencing work on a contract for public
30 works, every contractor and subcontractor shall submit
31 contract award information to an applicable
32 apprenticeship committee or committees that can supply
33 apprentices to the site of the public work, including an
34 estimate of journeyman hours to be performed under the
35 contract, the number of apprentices proposed to be
36 employed, and the approximate dates the apprentices
37 would be employed. A copy of this information shall also
38 be submitted to the awarding body and to the Division of
39 Apprenticeship Standards. Within 60 days after
40 concluding work on the contract, each contractor and



1 subcontractor shall submit to the awarding body and to
2 the Division of Apprenticeship Standards a verified
3 statement of the journeyman and apprentice hours
4 performed on the contract. The information submitted to
5 the Division of Apprenticeship Standards under this
6 subdivision shall be public information.

7 (f) The apprenticeship committee or committees
8 administering apprenticeship standards of a craft or trade
9 that can supply apprentices to the area of the site of the
10 public work shall ensure equal employment and
11 affirmative action in apprenticeship for women and
12 minorities. A contractor or subcontractor shall not be
13 required to submit an individual application for approval
14 to an apprenticeship committee provided the contractor
15 or subcontractor is already covered by the apprenticeship
16 committee's standards.

17 (g) The ratio of work performed by apprentices to
18 journeymen employed in a particular craft or trade on the
19 public work may be no higher than the ratio stipulated in
20 the apprenticeship standards under which the
21 apprenticeship committee operates where the
22 contractor agrees to be bound by those standards, but,
23 except as otherwise provided in this section, in no case
24 shall the ratio be less than one hour of apprentice work
25 for every five hours of journeyman work.

26 (h) This ratio of apprentice work to journeyman work
27 shall apply during any day or portion of a day when any
28 journeyman is employed at the jobsite and shall be
29 computed on the basis of the hours worked during the day
30 by journeymen so employed. Any work performed by a
31 journeyman in excess of eight hours per day or 40 hours
32 per week shall not be used to calculate the ratio. The
33 contractor shall employ apprentices for the number of
34 hours computed as above before the end of the contract.
35 However, the contractor shall endeavor, to the greatest
36 extent possible, to employ apprentices during the same
37 time period that the journeymen in the same craft or
38 trade are employed at the jobsite. Where an hourly
39 apprenticeship ratio is not feasible for a particular craft or
40 trade, the Division of Apprenticeship Standards, upon



1 application of an apprenticeship committee, may order a
2 minimum ratio of not less than one apprentice for each
3 five journeymen in a craft or trade classification.

4 (i) A contractor or subcontractor covered by this
5 section that has agreed to be covered by an
6 apprenticeship program's standards upon the issuance of
7 the approval certificate, or that has been previously
8 approved for an apprenticeship program in the craft or
9 trade, shall employ the number of apprentices or the ratio
10 of apprentices to journeymen stipulated in the applicable
11 apprenticeship standards.

12 (j) Upon proper showing by a contractor that he or she
13 employs apprentices in a particular craft or trade in the
14 state on all of his or her contracts on an annual average
15 of not less than one hour of apprentice work for every five
16 hours of labor performed by journeymen, the Division of
17 Apprenticeship Standards may grant a certificate
18 exempting the contractor from the 1-to-5 hourly ratio, as
19 set forth in this section for that craft or trade.

20 (k) An apprenticeship committee has the discretion to
21 grant a certificate, which shall be subject to the approval
22 of the Administrator of Apprenticeship, exempting a
23 contractor from the 1-to-5 ratio set forth in this section
24 when it finds that any one of the following conditions is
25 met:

26 (1) Unemployment for the previous three-month
27 period in the area exceeds an average of 15 percent.

28 (2) The number of apprentices in training in the area
29 exceeds a ratio of 1 to 5.

30 (3) There is a showing that the apprenticeable craft or
31 trade is replacing at least one-thirtieth of its journeymen
32 annually through apprenticeship training, either on a
33 statewide basis or on a local basis.

34 (4) Assignment of an apprentice to any work
35 performed under a public works contract would create a
36 condition that would jeopardize his or her life or the life,
37 safety, or property of fellow employees or the public at
38 large, or the specific task to which the apprentice is to be
39 assigned is of a nature that training cannot be provided
40 by a journeyman.



1 (l) When an exemption is granted pursuant to
2 subdivision (k) to an organization that represents
3 contractors in a specific trade from the 1-to-5 ratio on a
4 local or statewide basis, the member contractors will not
5 be required to submit individual applications for approval
6 to local joint apprenticeship committees, if they are
7 already covered by the local apprenticeship standards.

8 (m) A contractor to whom the contract is awarded, or
9 any subcontractor under him or her, who, in performing
10 any of the work under the contract, employs journeymen
11 or apprentices in any apprenticeable craft or trade and
12 who is not contributing to a fund or funds to administer
13 and conduct the apprenticeship program in any craft or
14 trade in the area of the site of the public works, to which
15 fund or funds other contractors in the area of the site of
16 the public works are contributing, shall contribute to the
17 fund or funds in each craft or trade in which he or she
18 employs journeymen or apprentices on the public work
19 in the same amount or upon the same basis and in the
20 same manner as the other contractors do, but, where the
21 fund or funds do not accept those contributions, the
22 contractor or subcontractor shall pay a like amount to the
23 California Apprenticeship Council. The contractor or
24 subcontractor may add the amount of the contributions
25 in computing his or her bid for the contract. The Division
26 of Labor Standards Enforcement is authorized to enforce
27 the payment of the contributions to the fund or funds as
28 set forth in Section 227. Where an apprenticeship
29 program dispatches apprentices to a contractor or
30 subcontractor, and the contractor or subcontractor
31 makes payments to the California Apprenticeship
32 Council in lieu of contributing to the fund or funds that
33 support the apprenticeship program, the California
34 Apprenticeship Council shall maintain these payments in
35 a separate account. At the end of each fiscal year the
36 California Apprenticeship Council shall make grants to
37 each apprenticeship program equal to the amount that
38 the California Apprenticeship Council has received
39 during the fiscal year in payments pursuant to this



1 subdivision on account of training provided by the
2 apprenticeship program.

3 (n) The body awarding the contract shall cause to be
4 inserted in the contract stipulations to effectuate this
5 section. The stipulations shall fix the responsibility of
6 compliance with this section for all apprenticeable
7 occupations with the prime contractor.

8 (o) This section does not apply to contracts of general
9 contractors or to contracts of specialty contractors not
10 bidding for work through a general or prime contractor
11 when the contracts of general contractors or those
12 specialty contractors involve less than thirty thousand
13 dollars (\$30,000) or 20 working days.

14 (p) All decisions of an apprenticeship committee
15 under this section are subject to Section 3081.

16 SEC. 3. Section 1777.7 of the Labor Code is amended
17 to read:

18 1777.7. (a) A contractor or subcontractor that
19 knowingly violates Section 1777.5 shall forfeit as a civil
20 penalty ~~the sum of~~ *an amount not exceeding* one
21 hundred dollars (\$100) for each full calendar day of
22 noncompliance. *The amount of this penalty shall be based*
23 *on consideration whether the violation was a good faith*
24 *mistake due to inadvertence.* A contractor or
25 subcontractor that knowingly commits a second or
26 subsequent violation of Section 1777.5 within a three-year
27 period, where the noncompliance results in
28 apprenticeship training not being provided as required
29 by this chapter, shall forfeit as a civil penalty the sum of
30 not more than three hundred dollars (\$300) for each full
31 calendar day of noncompliance. Notwithstanding Section
32 1727, upon receipt of a determination that a civil penalty
33 has been imposed, the awarding body shall withhold the
34 amount of the civil penalty from contract progress
35 payments then due or to become due.

36 (b) (1) In the event a contractor or subcontractor is
37 determined by the Director of Industrial Relations to
38 have knowingly violated any provision of Section 1777.5,
39 the Director of Industrial Relations shall deny to the
40 contractor or subcontractor, both individually and in the



1 name of the business entity under which the contractor
2 or subcontractor is doing business, the right to bid on or
3 receive any public works contract for a period of up to one
4 year for the first violation and for a period of up to three
5 years for a second or subsequent violation. Each period of
6 debarment shall run from the date the determination of
7 noncompliance by the Administrator of Apprenticeship
8 becomes an order of the California Apprenticeship
9 Council.

10 *(2) An affected contractor or subcontractor may*
11 *obtain a review of the debarment by transmitting a*
12 *written request to the office of the Administrator within*
13 *30 days after service of the order of debarment. If the*
14 *Administrator receives no request for review within 30*
15 *days after service, the order of debarment shall become*
16 *final for the period authorized.*

17 *(3) Within 20 days of the timely receipt of a request for*
18 *hearing, the Administrator shall provide the contractor or*
19 *subcontractor the opportunity to review any evidence*
20 *the Administrator may offer at the hearing. The*
21 *Administrator shall also promptly disclose to the*
22 *contractor or subcontractor any nonprivileged*
23 *documents obtained after the 20-day time limit.*

24 *(4) Within 90 days of the timely receipt of the a request*
25 *for hearing, a hearing shall be commenced before an*
26 *impartial hearing officer designated by the Administrator*
27 *and possessing the qualifications of an administrative law*
28 *judge pursuant to Section 11502 of the Government Code.*
29 *The contractor or subcontractor shall have the burden of*
30 *showing compliance with Section 1777.5. The decision to*
31 *debar shall be reviewed by a hearing officer or court only*
32 *for abuse of discretion.*

33 *(5) Within 45 days of the conclusion of the hearing, the*
34 *hearing officer shall issue a written decision affirming,*
35 *modifying, or dismissing the debarment. The decision*
36 *shall contain a notice of findings, findings, and an order.*
37 *This decision shall be deemed the final decision of the*
38 *Administrator and shall be served on all parties and the*
39 *awarding body pursuant to Section 1013 of the Code of*
40 *Civil Procedure by first-class mail at the last known*



1 address of the party on file with the Administrator. Within
2 15 days of issuance of the decision, the hearing officer may
3 reconsider or modify the decision to correct an error,
4 except that a clerical error may be corrected at any time.

5 (6) An affected contractor or subcontractor may
6 obtain review of the final decision of the Administrator by
7 filing a petition for a writ of mandate to the appropriate
8 superior court pursuant to Section 1094.5 of the Code of
9 Civil Procedure within 45 days after service of the final
10 decision to debar. If no petition for a writ of mandate is
11 filed within 45 days after service of the final decision, the
12 order shall become final. If the petitioner claims that the
13 findings are not supported by the evidence, abuse of
14 discretion is established if the court determines that the
15 findings are not supported by substantial evidence in
16 light of the entire record.

17 (7) The Administrator may file a certified copy of a
18 final order with the clerk of the superior court in any
19 county in which the affected contractor or subcontractor
20 has property or has or had a place of business.

21 (c) In lieu of the penalty provided for in subdivision
22 (a) or (b), the director may for a first-time violation and
23 with the concurrence of the joint apprenticeship
24 committee, order the contractor or subcontractor to
25 provide apprentice employment equivalent to the work
26 hours that would have been provided for apprentices
27 during the period of noncompliance.

28 (d) Any funds withheld by the awarding body
29 pursuant to this section shall be deposited in the General
30 Fund if the awarding body is a state entity, or in the
31 equivalent fund of an awarding body if the awarding body
32 is an entity other than the state.

33 (e) The interpretation and enforcement of Section
34 1777.5 and this section shall be in accordance with the
35 rules and procedures of the California Apprenticeship
36 Council.

37 SEC. 4. Section 3070 of the Labor Code is amended to
38 read:

39 3070. There is in the Division of Apprenticeship
40 Standards the California Apprenticeship Council, which



1 shall be appointed by the Governor, composed of six
2 representatives each from employers or employer
3 organizations that sponsor apprenticeship programs
4 under this chapter and employee organizations that
5 sponsor apprenticeship programs under this chapter,
6 respectively, geographically selected, and of two
7 representatives of the general public. The Director of
8 Industrial Relations, or his or her permanent and best
9 qualified designee, and the Superintendent of Public
10 Instruction, or his or her permanent and best qualified
11 designee, and the Chancellor of the California
12 Community Colleges, or his or her permanent and best
13 qualified designee, shall also be members of the California
14 Apprenticeship Council. The chairperson shall be elected
15 by vote of the California Apprenticeship Council.
16 Beginning with appointments in 1985, three
17 representatives each of employers and employees, and
18 one public representative shall serve until January 15,
19 1989. In 1987, three representatives each of the employers
20 and employees, and one public representative shall serve
21 until January 15, 1991. Any member whose term expires
22 on January 15, 1986, shall continue to serve until January
23 15, 1987. Thereafter each member shall serve for a term
24 of four years. Any member appointed to fill a vacancy
25 occurring prior to the expiration of the term of his or her
26 predecessor shall be appointed for the remainder of that
27 term. Each member of the council shall receive the sum
28 of one hundred dollars (\$100) for each day of actual
29 attendance at meetings of the council, for each day of
30 actual attendance at hearings by the council or a
31 committee thereof pursuant to Section 3082, and for each
32 day of actual attendance at meetings of other committees
33 established by the council and approved by the Director
34 of Industrial Relations, together with his or her actual and
35 necessary traveling expenses incurred in connection
36 therewith.

37 SEC. 5. Section 3073.1 is added to the Labor Code, to
38 read:

39 3073.1. (a) The division shall *randomly* audit each
40 apprenticeship program approved under this chapter at



1 least once every five years to ensure that the program is
2 complying with its standards, that all on-the-job training
3 is performed by journeymen, that all related and
4 supplemental instruction required by the apprenticeship
5 standards is being provided, that all work processes in the
6 apprenticeship standards are being covered, and that
7 graduates have completed the apprenticeship program's
8 requirements. The California Apprenticeship Council
9 may adopt industry-specific training criteria, and these
10 audits shall ensure that any applicable training criteria
11 are being followed. The division shall also examine each
12 apprenticeship program to determine whether
13 apprentices are graduating from the program on
14 schedule or dropping out and to determine whether
15 graduates of the program have obtained employment as
16 journeymen. Every apprenticeship program sponsor
17 shall have a duty to cooperate with the division in
18 conducting an audit.

19 (b) Audit reports shall be presented to the California
20 Apprenticeship Council and shall be made public, except
21 that the division shall not make public information which
22 would infringe on the privacy of individual apprentices.
23 The division shall recommend remedial action to correct
24 deficiencies recognized in the audit report, and the
25 failure to correct deficiencies within a reasonable period
26 of time shall be grounds for withdrawing state approval
27 of a program. Nothing shall prevent the division from
28 conducting more frequent audits of apprenticeship
29 programs where deficiencies have been identified.

30 (c) The division shall give priority in conducting
31 audits to programs that have ~~operated under approval of~~
32 ~~the California Apprenticeship Council for fewer than 10~~
33 ~~years and to programs that have~~ been identified as having
34 deficiencies. The division may conduct simplified audits
35 for programs with fewer than five registered apprentices.

36 SEC. 6. Section 3075 of the Labor Code is amended to
37 read:

38 3075. (a) An apprenticeship program sponsor may
39 be a joint apprenticeship committee, unilateral
40 management or labor apprenticeship committee, or an



1 individual employer. Programs may be approved by the
2 chief in any trade in the state or in a city or trade area,
3 whenever the apprentice training needs justify the
4 establishment. Where a collective bargaining agreement
5 exists, a program shall be jointly sponsored unless either
6 party to the agreement waives its right to representation
7 in writing. Joint apprenticeship committees shall be
8 composed of an equal number of employer and employee
9 representatives.

10 (b) For purposes of this section, the apprentice
11 training needs shall be deemed to justify the approval of
12 a new apprenticeship program only if any of the following
13 conditions are met:

14 (1) There is no existing apprenticeship program
15 approved under this chapter serving the same craft or
16 trade and geographic area.

17 (2) Existing apprenticeship programs approved under
18 this chapter that serve the same craft or trade and
19 geographic area do not have the capacity, or neglect or
20 refuse, to dispatch sufficient apprentices to qualified
21 employers willing to abide by the applicable
22 apprenticeship standards.

23 (3) Existing apprenticeship programs approved under
24 this chapter that serve the same trade and geographic
25 area have been identified by the ~~chief or~~ *Chief of* the
26 California Apprenticeship Council as deficient in
27 meeting their obligations under this chapter.

28 (c) *Notwithstanding subdivision (b), the California*
29 *Apprenticeship Council may approve a new*
30 *apprenticeship program if special circumstances justify*
31 *the establishment of the program.*

32 SEC. 7. Section 3080 of the Labor Code is amended to
33 read:

34 3080. (a) For the purpose of providing greater
35 diversity of training or continuity of employment, any
36 apprentice agreement made under this chapter may in
37 the discretion of the California Apprenticeship Council
38 be signed by an association of employers or an
39 organization of employees instead of by an individual
40 employer. In that case, the apprentice agreement shall



1 expressly provide that the association of employers or
2 organization of employees does not assume the obligation
3 of an employer but agrees to use its best endeavors to
4 procure employment and training for an apprentice with
5 one or more employers who will accept full responsibility,
6 as herein provided, for all the terms and conditions of
7 employment and training set forth in the agreement
8 between the apprentice and employer association or
9 employee organization during the period of the
10 apprentice's employment. The apprentice agreement
11 shall also expressly provide for the transfer of the
12 apprentice, subject to the approval of the California
13 Apprenticeship Council, to an employer or employers
14 who shall sign a written agreement with the apprentice,
15 and if the apprentice is a minor, with the apprentice's
16 parent or guardian, as specified in Section 3079,
17 contracting to employ the apprentice for the whole or a
18 definite part of the total period of apprenticeship under
19 the terms and conditions of employment and training set
20 forth in the apprentice agreement.

21 (b) Apprenticeship programs not sponsored by joint
22 apprenticeship committees shall include in their
23 standards provisions to ensure that the interests of
24 journeymen and apprentices are taken into account in
25 the management of the program.

26 SEC. 8. Section 3098 is added to the Labor Code, to
27 read:

28 3098. (a) Apprenticeship standards for minimum
29 wages, maximum hours, and working conditions adopted
30 by the California Apprenticeship Council pursuant to
31 Section 3071 shall not vary based on whether the
32 apprentice is employed on public work.

33 (b) An apprentice registered in an approved
34 apprenticeship program in any of the building and
35 construction trades shall be covered by the standards for
36 minimum wages, maximum hours, and working
37 conditions adopted by the California Apprenticeship
38 Council pursuant to Section 3071 for all work performed
39 by the individual on any construction project, regardless



- 1 of whether the individual is classified by the employer as
- 2 an apprentice with respect to particular work.

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