

ASSEMBLY BILL

No. 2850

Introduced by Assembly Member Ridley-Thomas

February 20, 2004

An act to add Chapter 4.7 (commencing with Section 1080) to Part 3 of Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2850, as introduced, Ridley-Thomas. Employment: displaced private security officers.

Existing law provides for a system of labor standards enforcement administered by the Labor Commissioner.

This bill would enact the Private Security Service Assurance Act, which would require contractors and subcontractors, as defined, that are awarded contracts or subcontracts to provide private security services at a particular job site or sites, to retain, for a period of 90 days, certain employees who were employed at that site by the previous contractor or subcontractor. This bill would require that employees retained under the bill's provisions for that 90-day period be offered continued employment if their performance during that 90-day period is satisfactory. This bill would only apply to contracts entered into on or after January 1, 2005. This bill would authorize an employee who was not retained in accordance with the bill's provisions, or his or her agent, to bring an enforcement action in a court of competent jurisdiction, as specified. This bill would authorize local government agencies to enact ordinances imposing stricter standards or additional enforcement 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. Chapter 4.7 (commencing with Section 1080) is
2 added to Part 3 of Division 2 of the Labor Code, to read:

3

4 CHAPTER 4.7. PRIVATE SECURITY SERVICE ASSURANCE ACT

5

6 1080. The following definitions shall apply throughout this
7 chapter:

8 (a) "Awarding authority" means any person who awards or
9 otherwise enters into contracts for private security services
10 performed within the State of California, including any
11 subcontracts for private security services.

12 (b) "Contractor" means any person who employs individuals
13 and who enters into a service contract with the awarding authority.

14 (c) "Employee" means any licensed security employee of a
15 contractor or subcontractor and who works at least 15 hours per
16 week and whose primary place of employment is in the State of
17 California under a contract to provide private security services.
18 "Employee" does not include a person who is a managerial,
19 supervisory, or confidential employee, including those employees
20 who would be so defined under the federal Fair Labor Standards
21 Act.

22 (d) "Licensed security officer" means a person registered as a
23 security guard pursuant to Chapter 11.5 (commencing with
24 Section 7580) of Division 3 of the Business and Professions Code.

25 (e) "Person" means any individual, proprietorship,
26 partnership, joint venture, corporation, limited liability company,
27 trust, association, or other entity that may employ individuals or
28 enter into contracts.

29 (f) "Service contract" means any contract that has the
30 principal purpose of providing services through the use of service
31 employees.

32 (g) "Subcontractor" means any person who is not an employee
33 who enters into a contract with a contractor to assist the contractor
34 in performing a service contract.

35 (h) "Successor service contract" means a service contract for
36 the performance of essentially the same services as were
37 previously performed pursuant to a different service contract at the
38 same facility that terminated within the previous 30 days. A



1 service contract entered into more than 30 days after the
2 termination of a predecessor service contract shall be considered
3 a “successor service contract” if its execution was delayed for the
4 purpose of avoiding application of this chapter.

5 1081. (a) (1) If an awarding authority notifies a contractor
6 that the service contract between the awarding authority and the
7 contractor has been terminated or will be terminated, the awarding
8 authority shall indicate in that notification whether a successor
9 service contract has been or will be awarded in its place and, if so,
10 shall identify the name and address of the successor contractor.
11 The terminated contractor shall, within three working days after
12 receiving that notification, provide to the successor contractor
13 identified by the awarding authority, the name, date of hire, and job
14 classification of each employee employed at the site or sites
15 covered by the terminated service contract at the time of the
16 contract termination.

17 (2) If the terminated contractor has not learned the identity of
18 the successor contractor, if any, the terminated contractor shall
19 provide that information to the awarding authority, which shall be
20 responsible for providing that information to the successor
21 contractor as soon as that contractor has been selected.

22 (3) The requirements of this section shall be equally applicable
23 to all subcontractors of a terminated contractor.

24 (b) (1) A successor contractor or successor subcontractor shall
25 retain, for a 90-day transition employment period, employees who
26 have been employed by the terminated contractor or its
27 subcontractors, if any, for the preceding four months or longer at
28 the site or sites covered by the successor service contract unless the
29 successor contractor or successor subcontractor has reasonable
30 and substantiated cause not to hire a particular employee based on
31 that employee’s performance or conduct while working under the
32 terminated contract. This requirement shall be stated by awarding
33 authorities in all initial bid packages that are governed by this
34 chapter.

35 (2) The successor contractor or successor subcontractor shall
36 make a written offer of employment to each employee, as required
37 by this section, in the employee’s primary language or another
38 language in which the employee is literate. That offer shall state
39 the time within which the employee must accept that offer, but in
40 no case may that time be less than 10 days. Nothing in this section



1 requires the successor contractor or successor subcontractor to pay
2 the same wages or offer the same benefits as were provided by the
3 prior contractor or prior subcontractor.

4 (3) If at any time the successor contractor or successor
5 subcontractor determines that fewer employees are needed to
6 perform services under the successor service contract or successor
7 subcontract than were required by the terminated contractor under
8 the terminated contract or terminated subcontract, the successor
9 contractor or successor subcontractor shall retain employees by
10 seniority within the job classification.

11 (c) The successor contractor or successor subcontractor, upon
12 commencing service under the successor service contract, shall
13 provide a list of its employees and a list of employees of its
14 subcontractors providing services at the site or sites covered under
15 that contract to the awarding authority. These lists shall indicate
16 which of these employees were employed at the site or sites by the
17 terminated contractor or terminated subcontractor. The successor
18 contractor or successor subcontractor shall also provide a list of
19 any of the terminated contractor's employees who were not
20 retained either by the successor contractor or successor
21 subcontractor, stating the reason these employees were not
22 retained.

23 (d) During the 90-day transition employment period, the
24 successor contractor or successor subcontractor shall maintain a
25 preferential hiring list of eligible covered employees not retained
26 by the successor contractor or successor subcontractor from which
27 the successor contractor or successor subcontractor shall hire
28 additional employees until such time as all of the terminated
29 contractor's or terminated subcontractor's employees have been
30 offered employment with the successor contractor or successor
31 subcontractor.

32 (e) During the initial 90-day transition employment period, the
33 successor contractor or successor subcontractor shall not
34 discharge without cause an employee retained pursuant to this
35 chapter. Cause shall be based only on the performance or conduct
36 of the particular employee.

37 (f) At the end of the 90-day transition employment period, a
38 successor contractor or successor subcontractor shall provide a
39 written performance evaluation to each employee retained
40 pursuant to this chapter. If the employee's performance during that



1 90-day period is satisfactory, the successor contractor or successor
2 subcontractor shall offer the employee continued employment.
3 Any employment after the 90-day transition employment period
4 shall be at-will employment under which the employee may be
5 terminated without cause.

6 1082. (a) An employee, who was not offered employment or
7 who has been discharged in violation of this chapter by a successor
8 contractor or successor subcontractor, or an agent of the employee
9 may bring an action against a successor contractor or successor
10 subcontractor in any superior court of the State of California
11 having jurisdiction over the successor contractor or successor
12 subcontractor. Upon finding a violation of this chapter, the court
13 shall award backpay, including the value of benefits, for each day
14 during which the violation has occurred and continues to occur.
15 The amount of backpay shall be calculated as the greater of either
16 of the following:

17 (1) The average regular rate of pay received by the employee
18 during the last three years of the employee's employment in the
19 same occupation classification multiplied by the average hours
20 worked during the last three years of the employee's employment.

21 (2) The final regular rate of pay received by the employee at the
22 time of termination of the predecessor contract multiplied by the
23 number of hours usually worked by the employee.

24 (b) The court may order a preliminary or permanent injunction
25 to stop the continued violation of this chapter.

26 (c) If the employee is the prevailing party in the legal action, the
27 court shall award the employee reasonable attorney's fees and
28 costs as part of the costs recoverable.

29 (d) In the absence of a claim by an employee that he or she was
30 terminated in violation of this chapter, an employee may not
31 maintain a cause of action under this chapter solely for the failure
32 of an employer to provide a written performance evaluation.

33 1083. (a) This chapter applies only to contracts entered into
34 on or after January 1, 2005.

35 (b) Except for the obligations specified in subdivisions (a) and
36 (b) of Section 1081, nothing in this chapter changes or increases
37 the relationship or duties of a property owner or an awarding
38 authority, or their agents, with respect to contractors,
39 subcontractors, or their employees.



1 (c) Nothing in this chapter limits the right of a property owner
2 or an awarding authority to terminate a service contract or to
3 replace a contractor with another contractor or with the property
4 owner's or awarding authority's own employees.

5 1084. Nothing in this chapter shall prohibit a local
6 government agency from enacting ordinances relating to displaced
7 private security officers that impose greater standards than, or
8 establish additional enforcement provisions to, those prescribed
9 by this chapter.

10 1085. If any provision or provisions of this chapter or any
11 application thereof is held invalid, that invalidity shall not affect
12 any other provisions or applications of this chapter that can be
13 given effect notwithstanding that invalidity.

