

AMENDED IN SENATE SEPTEMBER 2, 2011

AMENDED IN SENATE AUGUST 30, 2011

AMENDED IN SENATE AUGUST 15, 2011

AMENDED IN SENATE JUNE 30, 2011

AMENDED IN ASSEMBLY APRIL 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 350**

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**Introduced by Assembly Member Solorio**  
**(Coauthors: Assembly Members Lara and Mendoza)**  
(Coauthor: Senator Vargas)

February 10, 2011

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An act to amend Sections 1060, 1061, and 1064 of, and to amend the heading of Chapter 4.5 (commencing with Section 1060) of Part 3 of Division 2 of, the Labor Code, relating to employment.

### LEGISLATIVE COUNSEL'S DIGEST

AB 350, as amended, Solorio. Displaced Janitor Opportunity Act.

Existing law, the Displaced Janitor Opportunity Act, requires contractors and subcontractors, that are awarded contracts or subcontracts by an awarding authority to provide janitorial or building maintenance services at a particular job site or sites, to retain, for a period of 60 days, certain employees who were employed at that site by the previous contractor or subcontractor. The act requires the successor contractors and subcontractors to offer continued employment to those employees retained for the 60-day period if their performance during that 60-day period is satisfactory. The act authorizes an employee

who was not offered employment or who has been discharged in violation of these provisions by a successor contractor or successor subcontractor, or an agent of the employee, to bring an action against a successor contractor or successor subcontractor in any superior court of the state having jurisdiction over the successor contractor or successor subcontractor, as specified.

This bill would rename the act the Displaced Property Service Employee Opportunity Act and make the provisions of the act applicable to property services, which would consist of licensed security, as defined, window cleaning, food cafeteria and dietary services, janitorial services, and ~~cleaning-related or light~~ building maintenance services. This bill would exclude from the definitions of “contractor” and “subcontractor” specified types of food service providers. The bill also would make conforming changes.

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 heading of Chapter 4.5 (commencing with  
2 Section 1060) of Part 3 of Division 2 of the Labor Code is amended  
3 to read:

4  
5 CHAPTER 4.5. DISPLACED PROPERTY SERVICE  
6 EMPLOYEE OPPORTUNITY ACT  
7

8 SEC. 2. Section 1060 of the Labor Code is amended to read:  
9 1060. The following definitions shall apply throughout this  
10 chapter:

11 (a) “Awarding authority” means any person that awards or  
12 otherwise enters into contracts for property services performed  
13 within the State of California, including any subcontracts for those  
14 services.

15 (b) “Contractor” means any person that employs 25 or more  
16 individuals and that enters into a property service contract with  
17 the awarding authority, excluding an organization vendored or  
18 contracted through a regional center or the State Department of  
19 Developmental Services pursuant to the Lanterman Developmental  
20 Disabilities Services Act (Division 4.5 (commencing with Section  
21 4500) of the Welfare and Institutions Code) or the California Early

1 Intervention Services Act (Title 14 (commencing with Section  
2 95000) of the Government Code) to provide services and supports  
3 for persons with developmental disabilities, as defined in Section  
4 4512 of the Welfare and Institutions Code, that employs 200 or  
5 fewer individuals in the delivery of food services, that enters into  
6 a food service contract with the awarding authority or with a  
7 contractor to assist that contractor in performing a food service  
8 contract, and that provides a written notice to the awarding  
9 authority asserting exemption pursuant to this subdivision. In  
10 calculating whether an organization employs 200 or fewer  
11 individuals for these purposes, persons employed solely to produce  
12 commodities or provide services for procurement pursuant to  
13 Sections 46 to 48c, inclusive, of Title 41 of the United States Code  
14 shall not be counted.

15 (c) “Employee” means any person employed as a property  
16 service employee of a contractor or subcontractor who works at  
17 least 15 hours per week, has been employed by the contractor for  
18 at least four months prior to receiving notification of a contract  
19 termination, as described in paragraph (1) of subdivision (a) of  
20 Section 1061, and whose primary place of employment is in the  
21 State of California under a contract to provide property services.  
22 “Employee” does not include a person who is a managerial,  
23 supervisory, or confidential employee, including those employees  
24 who would be so defined under the federal Fair Labor Standards  
25 Act.

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

30 (e) “Property service” means janitorial, ~~cleaning-related or light~~  
31 building maintenance, licensed security, window cleaning, or food  
32 cafeteria and dietary services. For purposes of this subdivision,  
33 “licensed security service” means service rendered by a person  
34 covered under a valid collective bargaining agreement who is  
35 registered as a security guard pursuant to Chapter 11.5  
36 (commencing with Section 7580) of Division 3 of the Business  
37 and Professions Code.

38 (f) “Property service contract” means any contract that has the  
39 principal purpose of providing property services through the use  
40 of property service employees.

(g) “Subcontractor” means any person who is not an employee who enters into a contract with a contractor to assist the contractor in performing a property service contract, excluding an organization vendored or contracted through a regional center or the State Department of Developmental Services pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) or the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) to provide services and supports for persons with developmental disabilities, as defined in Section 4512 of the Welfare and Institutions Code, that employs 200 or fewer individuals in the delivery of food services, that enters into a food service contract with the awarding authority or with a contractor to assist that contractor in performing a food service contract, and that provides a written notice to the awarding authority asserting exemption pursuant to this subdivision. In calculating whether an organization employs 200 or fewer individuals for these purposes, persons employed solely to produce commodities or provide services for procurement pursuant to Sections 46 to 48c, inclusive, of Title 41 of the United States Code shall not be counted.

(h) “Successor property service contract” means a property service contract for the performance of essentially the same services as were previously performed pursuant to a different property service contract at the same facility that terminated within the previous 30 days. A property service contract entered into more than 30 days after the termination of a predecessor property service contract shall be considered a “successor property service contract” if its execution was delayed for the purpose of avoiding application of this chapter.

SEC. 3. Section 1061 of the Labor Code is amended to read:

1061. (a) (1) If an awarding authority notifies a contractor that the property service contract between the awarding authority and the contractor has been terminated or will be terminated, the awarding authority shall indicate in that notification whether a successor property service contract has been or will be awarded in its place and, if so, shall identify the name and address of the successor contractor. The terminated contractor shall, within three working days after receiving that notification, provide to the successor contractor identified by the awarding authority, the name,

1 date of hire, and job classification of each employee employed at  
2 the site or sites covered by the terminated property service contract  
3 at the time of the contract termination.

4 (2) If the terminated contractor has not learned the identity of  
5 the successor contractor, if any, the terminated contractor shall  
6 provide that information to the awarding authority, which shall be  
7 responsible for providing that information to the successor  
8 contractor as soon as that contractor has been selected.

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

11 (b) (1) A successor contractor or successor subcontractor shall  
12 retain, for a 60-day transition employment period, employees who  
13 have been employed by the terminated contractor or its  
14 subcontractors, if any, for the preceding four months or longer at  
15 the site or sites covered by the successor service contract unless  
16 the successor contractor or successor subcontractor has reasonable  
17 and substantiated cause not to hire a particular employee based on  
18 that employee's performance or conduct while working under the  
19 terminated contract. This requirement shall be stated by awarding  
20 authorities in all initial bid packages that are governed by this  
21 chapter.

22 (2) The successor contractor or successor subcontractor shall  
23 make a written offer of employment to each employee, as required  
24 by this section, in the employee's primary language or another  
25 language in which the employee is literate. That offer shall state  
26 the time within which the employee must accept that offer, but in  
27 no case may that time be less than 10 days. Nothing in this section  
28 requires the successor contractor or successor subcontractor to pay  
29 the same wages or offer the same benefits as were provided by the  
30 prior contractor or prior subcontractor.

31 (3) If at any time the successor contractor or successor  
32 subcontractor determines that fewer employees are needed to  
33 perform services under the successor property service contract or  
34 successor subcontract than were required by the terminated  
35 contractor under the terminated contract or terminated subcontract,  
36 the successor contractor or successor subcontractor shall retain  
37 employees by seniority within the job classification.

38 (c) The successor contractor or successor subcontractor, upon  
39 commencing service under the successor property service contract,  
40 shall provide a list of its employees and a list of employees of its

1 subcontractors providing property services at the site or sites  
2 covered under that contract to the awarding authority. These lists  
3 shall indicate which of these employees were employed at the site  
4 or sites by the terminated contractor or terminated subcontractor.  
5 The successor contractor or successor subcontractor shall also  
6 provide a list of any of the terminated contractor's employees who  
7 were not retained either by the successor contractor or successor  
8 subcontractor, stating the reason these employees were not retained.

9 (d) During the 60-day transition employment period, the  
10 successor contractor or successor subcontractor shall maintain a  
11 preferential hiring list of eligible covered employees not retained  
12 by the successor contractor or successor subcontractor from which  
13 the successor contractor or successor subcontractor shall hire  
14 additional employees until such time as all of the terminated  
15 contractor's or terminated subcontractor's employees have been  
16 offered employment with the successor contractor or successor  
17 subcontractor.

18 (e) During the initial 60-day transition employment period, the  
19 successor contractor or successor subcontractor shall not discharge  
20 without cause an employee retained pursuant to this chapter. Cause  
21 shall be based only on the performance or conduct of the particular  
22 employee.

23 (f) At the end of the 60-day transition employment period, a  
24 successor contractor or successor subcontractor shall provide a  
25 written performance evaluation to each employee retained pursuant  
26 to this chapter. If the employee's performance during that 60-day  
27 period is satisfactory, the successor contractor or successor  
28 subcontractor shall offer the employee continued employment.  
29 Any employment after the 60-day transition employment period  
30 shall be at-will employment under which the employee may be  
31 terminated without cause.

32 (g) *Nothing in this section shall require an employer to employ*  
33 *a person who is a registered sex offender or who has been*  
34 *convicted of a felony involving robbery, rape, murder, assault with*  
35 *intent to kill, assault that inflicts grievous bodily injury, or any*  
36 *similar violation.*

37 SEC. 4. Section 1064 of the Labor Code is amended to read:

38 1064. Nothing in this chapter shall prohibit a local government  
39 agency from enacting ordinances relating to displaced property  
40 service employees that impose greater standards than, or establish

- 1 enforcement provisions in addition to, those prescribed by this
- 2 chapter.

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