

**ASSEMBLY BILL**

**No. 2002**

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**Introduced by Assembly Member De Leon**

February 15, 2008

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An act to amend Sections 1771.6 and 1776 of the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 2002, as introduced, De Leon. Public works: payments.

Existing law requires any awarding body that enforces the laws regulating public works contracts, in accordance with specified provisions, to provide written notice of the withholding of contract payments to the contractor and subcontractor, as specified. Existing law specifies that the withholding of contract payments is reviewable in the same manner as a civil penalty order of the Labor Commissioner.

This bill would allow an administrative judge to award an awarding body the reasonable attorney's fees and costs incurred in defending the withholding of contract payments if the contractor or subcontractor fails to demonstrate to the satisfaction of the administrative law judge that the contractor or subcontractor had substantial grounds for believing the withholding of contract payments to be in error.

Existing law requires each contractor and subcontractor performing work on a public work to keep accurate payroll records regarding his or her employees that may be accessed by the public through the awarding body or state agencies and requires the contractor or subcontractor to produce certified copies of those records, as requested by the public, as provided, within 10 days subsequent to receipt of a written notice for those records. Existing law imposes, on the contractor or subcontractor, a penalty of \$25 for each calendar day of

noncompliance but provides that a contractor is not subject to a penalty assessment due to the failure of its subcontractor to comply with specified requirements.

This bill would instead subject a contractor to a penalty assessment if its subcontractor fails to comply with the applicable requirements, as provided.

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. Section 1771.6 of the Labor Code is amended to  
2 read:

3 1771.6. (a) (1) Any awarding body that enforces this chapter  
4 in accordance with Section 1726 or 1771.5 shall provide notice of  
5 the withholding of contract payments to the contractor and  
6 subcontractor, if applicable. The notice shall be in writing and  
7 shall describe the nature of the violation and the amount of wages,  
8 penalties, and forfeitures withheld. Service of the notice shall be  
9 completed pursuant to Section 1013 of the Code of Civil Procedure  
10 by first-class and certified mail to the contractor and subcontractor,  
11 if applicable. The notice shall advise the contractor and  
12 subcontractor, if applicable, of the procedure for obtaining review  
13 of the withholding of contract payments.

14 ~~The~~  
15 (2) The awarding body shall also serve a copy of the notice by  
16 certified mail to any bonding company issuing a bond that secures  
17 the payment of wages covered by the notice and to any surety on  
18 a bond, if their identities are known to the awarding body.

19 (b) The withholding of contract payments in accordance with  
20 Section 1726 or 1771.5 shall be reviewable under Section 1742 in  
21 the same manner as if the notice of the withholding was a civil  
22 penalty order of the Labor Commissioner under this chapter. If  
23 review is requested, the Labor Commissioner may intervene to  
24 represent the awarding body.

25 (c) Pending a final order, or the expiration of the time period  
26 for seeking review of the notice of the withholding, the awarding  
27 body shall not disburse any contract payments withheld.

28 (d) From the amount recovered, the wage claim shall be satisfied  
29 prior to the amount being applied to penalties. If insufficient money

1 is recovered to pay each worker in full, the money shall be prorated  
2 among all workers.

3 (e) Wages for workers who cannot be located shall be placed  
4 in the Industrial Relations Unpaid Wage Fund and held in trust for  
5 the workers pursuant to Section 96.7. Penalties shall be paid into  
6 the General Fund of the awarding body that has enforced this  
7 chapter pursuant to Section 1771.5.

8 (f) *If the contractor or subcontractor fails to demonstrate to the*  
9 *satisfaction of the administrative law judge that he or she had*  
10 *substantial grounds for believing the withholding of contract*  
11 *payments to be in error, the administrative judge shall award the*  
12 *awarding body the reasonable attorney's fees and costs incurred*  
13 *in defending the withholding of contract payments at the hearing.*

14 SEC. 2. Section 1776 of the Labor Code is amended to read:

15 1776. (a) Each contractor and subcontractor shall keep accurate  
16 payroll records, showing the name, address, social security number,  
17 work classification, straight time and overtime hours worked each  
18 day and week, and the actual per diem wages paid to each  
19 journeyman, apprentice, worker, or other employee employed by  
20 him or her in connection with the public work. Each payroll record  
21 shall contain or be verified by a written declaration that it is made  
22 under penalty of perjury, stating both of the following:

23 (1) The information contained in the payroll record is true and  
24 correct.

25 (2) The employer has complied with the requirements of  
26 Sections 1771, 1811, and 1815 for any work performed by his or  
27 her employees on the public works project.

28 (b) The payroll records enumerated under subdivision (a) shall  
29 be certified and shall be available for inspection at all reasonable  
30 hours at the principal office of the contractor on the following  
31 basis:

32 (1) A certified copy of an employee's payroll record shall be  
33 made available for inspection or furnished to the employee or his  
34 or her authorized representative on request.

35 (2) A certified copy of all payroll records enumerated in  
36 subdivision (a) shall be made available for inspection or furnished  
37 upon request to a representative of the body awarding the contract,  
38 the Division of Labor Standards Enforcement, and the Division  
39 of Apprenticeship Standards of the Department of Industrial  
40 Relations.

1 (3) A certified copy of all payroll records enumerated in  
2 subdivision (a) shall be made available upon request by the public  
3 for inspection or for copies thereof. However, a request by the  
4 public shall be made through either the body awarding the contract,  
5 the Division of Apprenticeship Standards, or the Division of Labor  
6 Standards Enforcement. If the requested payroll records have not  
7 been provided pursuant to paragraph (2), the requesting party shall,  
8 prior to being provided the records, reimburse the costs of  
9 preparation by the contractor, subcontractors, and the entity through  
10 which the request was made. The public may not be given access  
11 to the records at the principal office of the contractor.

12 (c) The certified payroll records shall be on forms provided by  
13 the Division of Labor Standards Enforcement or shall contain the  
14 same information as the forms provided by the division. The  
15 payroll records may consist of printouts of payroll data that are  
16 maintained as computer records, if the printouts contain the same  
17 information as the forms provided by the division and the printouts  
18 are verified in the manner specified in subdivision (a).

19 (d) A contractor or subcontractor shall file a certified copy of  
20 the records enumerated in subdivision (a) with the entity that  
21 requested the records within 10 days after receipt of a written  
22 request.

23 (e) Any copy of records made available for inspection as copies  
24 and furnished upon request to the public or any public agency by  
25 the awarding body, the Division of Apprenticeship Standards, or  
26 the Division of Labor Standards Enforcement shall be marked or  
27 obliterated to prevent disclosure of an individual's name, address,  
28 and social security number. The name and address of the contractor  
29 awarded the contract or the subcontractor performing the contract  
30 shall not be marked or obliterated. Any copy of records made  
31 available for inspection by, or furnished to, a joint  
32 labor-management committee established pursuant to the federal  
33 Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a)  
34 shall be marked or obliterated only to prevent disclosure of an  
35 individual's name and social security number. A joint labor  
36 management committee may maintain an action in a court of  
37 competent jurisdiction against an employer who fails to comply  
38 with Section 1774. The court may award restitution to an employee  
39 for unpaid wages and may award the joint labor management  
40 committee reasonable attorney's fees and costs incurred in

1 maintaining the action. An action under this subdivision may not  
2 be based on the employer's misclassification of the craft of a  
3 worker on its certified payroll records. Nothing in this subdivision  
4 limits any other available remedies for a violation of this chapter.

5 (f) The contractor shall inform the body awarding the contract  
6 of the location of the records enumerated under subdivision (a),  
7 including the street address, city, and county, and shall, within five  
8 working days, provide a notice of a change of location and address.

9 (g) The contractor or subcontractor has 10 days in which to  
10 comply subsequent to receipt of a written notice requesting the  
11 records enumerated in subdivision (a). In the event that the  
12 contractor or subcontractor fails to comply within the 10-day  
13 period, he or she shall, as a penalty to the state or political  
14 subdivision on whose behalf the contract is made or awarded,  
15 forfeit twenty-five dollars (\$25) for each calendar day, or portion  
16 thereof, for each worker, until strict compliance is effectuated.  
17 Upon the request of the Division of Apprenticeship Standards or  
18 the Division of Labor Standards Enforcement, these penalties shall  
19 be withheld from progress payments then due. A contractor is ~~not~~  
20 subject to a penalty assessment pursuant to this section due to the  
21 failure of a subcontractor to comply with this section.

22 (h) The body awarding the contract shall cause to be inserted  
23 in the contract stipulations to effectuate this section.

24 (i) The director shall adopt rules consistent with the California  
25 Public Records Act (Chapter 3.5 (commencing with Section 6250)  
26 of Division 7 of Title 1 of the Government Code) and the  
27 Information Practices Act of 1977 (Title 1.8 (commencing with  
28 Section 1798) of Part 4 of Division 3 of the Civil Code) governing  
29 the release of these records, including the establishment of  
30 reasonable fees to be charged for reproducing copies of records  
31 required by this section.