

LEGISLATIVE HISTORY OF SB 179 (2003-2004)*¹

This history has been downloaded verbatim via CRLAF'S on-line legislative service (LegWeb). It has been organized into three parts:

- 1) Assembly and Senate committee and floor analyses of the bill [pg. 1-23]
- 2) Assembly and Senate committee and floor votes on the bill; [pp. 23-26]
- 3) Legislative amendments to the bill adopted in both houses. [pp. 26-32]

In each section, the materials are in chronological order.

PART ONE: COMMITTEE AND FLOOR ANALYSES

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Senate Committee on Labor and Industrial Relations
Richard Alarcon, Chair

Date of Hearing: March 26, 2003 2003-2004 Regular
Session

Consultant: Patrick W. Henning, Sr. Fiscal: Yes
Urgency: No

Bill No: SB 179

Author: Alarcon

Version: As Introduced: February 12, 2003

Subject:

Contracts for labor or services: financially insufficient

Purpose:

To provide that any person or entity that enters into a contract for labor or services, in specified industries, that knows or should know that the contract does not provide sufficient funds to comply with various laws, violates state law, and employees would be able to recover actual damages through civil action. Also, to provide a rebuttable presumption that a person or entity that enters into a voluntary written agreement with specified criteria does not violate the proposed law.

Analysis:

Existing law provides a framework of labor law enforcement of, among other things, minimum standards for wages, hours, conditions of employment, and occupational safety and health by the Department of Industrial Relations (DIR). The Employment Development Department administers the unemployment insurance, and state disability insurance programs, and requires that employers pay specified employee payroll taxes.

*¹ SB 179, as introduced and later chaptered, is identical to the final version of prior legislation introduced in the 2001/2002 session: SB 1466. That bill was vetoed by Governor Gray Davis. Committee analyses and versions of the text of SB 1466 are in the Appendix to this history.

This Bill has two major provisions. It:

1) provides that any person or entity that enters into a contract for labor or services for construction, farm labor, garment manufacturing, janitorial services, or security guard services, that knows or should know that the contract does not provide sufficient funds to comply with various local, state, and federal labor laws, violates state law.

If aggrieved employees plead and prove in a private court action that they were also injured by a violation of a labor law or regulation in connection with the performance of the contract or agreement, they would be able to recover the greater of all actual damages or \$250 per employee for each initial violation, and \$1,000 per employee for each subsequent violation, and recover costs and reasonable attorney's fees; the same right to fees would apply for injunctive relief.

Homeowners and employment covered by a collective bargaining agreement would be exempt from these provisions.

2) establishes to a rebuttable presumption that a person or entity that enters into a voluntary written agreement with a contractor does not violate these provisions if the written agreement, and successive amendments thereto, is in a single document and contains all the following criteria:

- information identifying the person or entity or contractor performing the services;
- a description of the labor and services to be performed, including a commencement and completion date;
- employer identification number for state tax purposes of the contractor;
- proof of workers' compensation coverage, including insurance contact information;
- for vehicles utilized for transportation in connection with a service, detailed information relating to insurance carrier and coverage;
- the address of any real property to house workers;
- the estimated number of workers to be employed, total wages to be paid, and the pay dates; and
- amounts of commissions or other payments made to the contractor for services; and
- the estimated number and identification of independent contractors to be utilized.

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If some of this information is not known at the time of contract, then the bill requires the "best estimate" available at the time.

Written agreements would be required to be kept by the person or entity for at least 4 years after termination of the agreement.

Comments:

1. Proponents argue that this measure attacks the hidden use of unfair economic leverage to influence labor contractors to enter into contracts that are financially inadequate to permit the contractor to comply with applicable laws. While employers usually claim they are unaware of abuses committed by their contractors, the reality is just the opposite. This measure does not require written contracts, rather it encourages them for sound business practices.

Some janitorial and security guard industry representatives state that this measure is necessary to weed out illegal and unethical employers in their industries.

Supporters cite federal and state evidence of Underground Economy enterprises that are unfair competition to law-abiding employers. These lawless operations pay little or no taxes, and fail to abide by minimum labor standards. Industry examples are highlighted:

In the garment industry, the US Department of Labor estimates that 67% of Los Angeles garment shops violated minimum wage and overtime laws. Also, many contractors claim that they were not given sufficient funds by principal garment manufacturers to pay workers.

In the janitorial industry, industry supporters of this Hearing Date: March 26, 2003 SB

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measure argue that a massive influx of unethical contractors have been given the upper hand in competing for cleaning contracts, and are ruining law-abiding businesses.

In agriculture, various surveys show that most growers using farm labor contractors were paying fees so low that either the government was not receiving mandate taxes, or else the farm workers were being paid below the minimum wage.

Construction labor law violations typically involve use of bad checks, cash pay, and no workers' compensation insurance coverage.

2. Opponents from the covered industries argue that this measure would require contracts to include several onerous and burdensome requirements that a normal contract for labor in any other industry would not require. Small companies who are suffering financially at the present time can ill afford additional costs of hiring an attorney to draft a contract every time they use a specialty contractor, just to obtain a rebuttable presumption that there has been no violations of law.

Many opponents argue that this measure would halt businesses from offering an introductory discount to obtain the business of a first-time customer.

Opponents state that supporters wrongly assume that harm necessarily flows from business contracts. This measure makes law-abiding employers law breakers for engaging in lawful business transactions from which no harm results. It would also have the unintended consequence of hurting a contractor's employees by denying them work opportunities in such situations.

Most businesses seek the lowest responsible bidder for competitive contracts. They leave it up to the bidding contractor to determine how to deliver the services requested at the most affordable price, and must maintain a
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belief that the contractor's bid is not based on illegal activities.

3. "Knowing" Standard : The "know" or "should have known" terms are common legal standards by which an ordinary, reasonable person in like or similar circumstances would have known. This measure defines the terms as follows:

The term "knows" includes the knowledge, arising from a familiarity with the normal facts and circumstances of the business activity engaged in, that the contract does not include funds sufficient to allow the contractor to comply with applicable laws.

The phrase "should know" includes the knowledge of any additional facts or information, which would make a reasonably prudent person undertake to inquire whether, taken together, such facts suggest that the contract does not include funds sufficient to allow the contractor to

comply with applicable laws.

4. Recent Hearing on the Underground Economy . On March 18, 2003, this committee conducted an extensive hearing on the harmful effects of the Underground Economy. Among other things, it was ascertained that the lawless enterprises deprive state treasuries over \$4 billion in lost tax revenues.

5. Prior Legislation . As introduced, this measure is identical to SB 1466 (Alarcon) of 2002 which was vetoed by the Governor. The stated reason given in the veto message was that other labor legislation benefiting low wage workers, signed into law as recently as 2002, needed to be given time to work.

Support:

California Labor Federation, AFL-CIO (Sponsor)
Service Employees International Union (Sponsor)
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Garment Worker Center (Co-Sponsor)
Maintenance Cooperation Trust Fund (Co-Sponsor)
California Rural Legal Assistance Foundation (Co-Sponsor)
American Federation of State, County, and Municipal
Employees
Asian Law Caucus
California Association of Licensed Security Agencies,
Guards & Associates
California Conference Board of Amalgamated Transit Union
California School Employees Association
California Teamsters Public Affairs Council
Coalition for Humane Immigrant Rights of Los Angeles
Coalition of Immigrant Worker Organizations
Engineers and Scientists of California
Hotel Employees, Restaurant Employees International Union
Mexican American Legal Defense and Educational Fund
Region 8 States Council, United Food and Commercial Workers
Union
Service Employees International Union, Local 1877
State Building and Construction Trades Council of
California
Sweatshop Watch
Teamsters Public Affairs Council
United Farm Workers of America
United Food and Commercial Workers Union Region 8 States
Council

Opposition:

California Building Industry Association
California Chamber of Commerce
California Farm Bureau Federation
California Manufacturers and Technology Association (CMTA)
California Restaurant Association

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Senate Committee on Labor and Industrial Relations

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BILL ANALYSIS

| SENATE RULES COMMITTEE | SB 179 |
| Office of Senate Floor Analyses | |
| 1020 N Street, Suite 524 | |
| (916) 445-6614 Fax: (916) | |
| 327-4478 | |

THIRD READING

Bill No: SB 179
Author: Alarcon (D)
Amended: As introduced
Vote: 21

SEN. LABOR & INDUSTRIAL RELATIONS COMMITTEE : 5-1, 3/26/03
AYES: Alarcon, Dunn, Figueroa, Kuehl, Romero
NOES: McClintock

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SUBJECT : Contracts for labor or services

SOURCE : Author

DIGEST : This bill provides that any person or entity
that enters into a contract for labor or services, in

specified industries, that knows or should know that the contract does not provide sufficient funds to comply with various laws, violates state law, and employees would be able to recover actual damages through civil action. The bill also provides a rebuttable presumption that a person or entity that enters into a voluntary written agreement with specified criteria does not violate the proposed law.

ANALYSIS : Existing law provides a framework of labor law enforcement of, among other things, minimum standards for wages, hours, conditions of employment, and occupational safety and health by the State Department of Industrial Relations (DIR). The State Employment Development Department (EDD) administers the unemployment insurance,

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and state disability insurance programs, and requires that employers pay specified employee payroll taxes.

This bill has two major provisions. The bill:

1. Provides that any person or entity that enters into a contract for labor or services for construction, farm labor, garment manufacturing, janitorial services, or security guard services, that knows or should know that the contract does not provide sufficient funds to comply with various local, state, and federal labor laws, violates state law.

If aggrieved employees plead and prove in a private court action that they were also injured by a violation of a labor law or regulation in connection with the performance of the contract or agreement, they would be able to recover the greater of all actual damages or \$250 per employee for each initial violation, and \$1,000 per employee for each subsequent violation, and recover costs and reasonable attorney's fees; the same right to fees would apply for injunctive relief.

Homeowners and employment covered by a collective bargaining agreement would be exempt from these provisions.

2. Establishes to a rebuttable presumption that a person or entity that enters into a voluntary written agreement with a contractor does not violate these provisions if the written agreement, and successive amendments thereto, is in a single document and contains all the following criteria:

- A. Information identifying the person or entity or contractor performing the services.
- B. A description of the labor and services to be performed, including a commencement and completion date.
- C. Employer identification number for state tax purposes of the contractor.

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- D. Proof of workers' compensation coverage, including insurance contact information.
- E. For vehicles utilized for transportation in connection with a service, detailed information relating to insurance carrier and coverage.
- F. The address of any real property to house workers.
- G. The estimated number of workers to be employed, total wages to be paid, and the pay dates.
- H. Amounts of commissions or other payments made to the contractor for services.
- I. The estimated number and identification of independent contractors to be utilized.

If some of this information is not known at the time of contract, then the bill requires the "best estimate" available at the time.

Written agreements will be required to be kept by the person or entity for at least four years after termination of the agreement.

Comments

"Knowing" Standard : The "know" or "should have known" terms are common legal standards by which an ordinary, reasonable person in like or similar circumstances would have known. This bill defines the terms as follows:

1. The term "knows" includes the knowledge, arising from a familiarity with the normal facts and circumstances of the business activity engaged in, that the contract does not include funds sufficient to allow the contractor to comply with applicable laws.

2.The phrase "should know" includes the knowledge of any additional facts or information, which would make a reasonably prudent person undertake to inquire whether, taken together, such facts suggest that the contract does not include funds sufficient to allow the contractor to

comply with applicable laws.

Recent Hearing on the Underground Economy . On March 18, 2003, the Senate Labor and Industrial Relations Committee conducted an extensive hearing on the harmful effects of the Underground Economy. Among other things, it was ascertained that the lawless enterprises deprive state treasuries over \$4 billion in lost tax revenues.

Prior Legislation . As introduced, this measure is identical to SB 1466 (Alarcon) of 2002 which was vetoed by the Governor. The stated reason given in the veto message was that other labor legislation benefiting low wage workers, signed into law as recently as 2002, needed to be given time to work.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

SUPPORT : (Verified 4/29/03)

California Labor Federation, AFL-CIO (source)
Service Employees International Union (source)
Garment Worker Center (source)
Maintenance Cooperation Trust Fund (source)
California Rural legal Assistance Foundation (source)
American Federation of State, County, and Municipal Employees
Asian Law Caucus
California Association of Licensed Security Agencies, Guards & Associates
California Conference Board of Amalgamated Transit Union
California School Employees Association
California Teamsters Public Affairs Council
Coalition for Humane Immigrant Rights of Los Angeles
Coalition of Immigrant Worker Organizations
Engineers and Scientists of California
Hotel Employees, Restaurant Employees International Union
Mexican American Legal Defense and Educational Fund
Region 8 States Council, United Food and Commercial Workers Union
Service Employees International Union, Local 1877
State Building and Construction Trades Council of California

Sweatshop Watch
Teamsters Public Affairs Council
United Farm Workers of America
United Food and Commercial Workers Union Region 8 States
Council

OPPOSITION : (Verified 4/29/03)

California Building Industry Association
California Chamber of Commerce
California Farm Bureau Federation
California Manufacturers and Technology Association
California Restaurant Association
Motion Picture Association of America, California Group

ARGUMENTS IN SUPPORT : Proponents argue that this bill attacks the hidden use of unfair economic leverage to influence labor contractors to enter into contracts that are financially inadequate to permit the contractor to comply with applicable laws. While employers usually claim they are unaware of abuses committed by their contractors, the reality is just the opposite. This bill does not require written contracts, rather it encourages them for sound business practices.

Some janitorial and security guard industry representatives state that this measure is necessary to weed out illegal and unethical employers in their industries.

Supporters cite federal and state evidence of Underground Economy enterprises that are unfair competition to law-abiding employers. These lawless operations pay little or no taxes, and fail to abide by minimum labor standards. Industry examples are highlighted:

In the garment industry, the US Department of Labor estimates that 67% of Los Angeles garment shops violated minimum wage and overtime laws. Also, many contractors claim that they were not given sufficient funds by principal garment manufacturers to pay workers.

In the janitorial industry, industry supporters of this measure argue that a massive influx of unethical contractors have been given the upper hand in competing

for cleaning contracts, and are ruining law-abiding businesses.

In agriculture, various surveys show that most growers using farm labor contractors were paying fees so low that either the government was not receiving mandate taxes, or else the farm workers were being paid below the minimum wage.

Construction labor law violations typically involve use of bad checks, cash pay, and no workers' compensation insurance coverage.

ARGUMENTS IN OPPOSITION : Opponents from the covered industries argue that this measure would require contracts to include several onerous and burdensome requirements that a normal contract for labor in any other industry would not require. Small companies who are suffering financially at the present time can ill afford additional costs of hiring an attorney to draft a contract every time they use a specialty contractor, just to obtain a rebuttable presumption that there has been no violations of law.

Many opponents argue that this measure would halt businesses from offering an introductory discount to obtain the business of a first-time customer.

Opponents state that supporters wrongly assume that harm necessarily flows from business contracts. This measure makes law-abiding employers law breakers for engaging in lawful business transactions from which no harm results. It would also have the unintended consequence of hurting a contractor's employees by denying them work opportunities in such situations.

Most businesses seek the lowest responsible bidder for competitive contracts. They leave it up to the bidding contractor to determine how to deliver the services requested at the most affordable price, and must maintain a belief that the contractor's bid is not based on illegal activities.

NC:cm 4/30/03 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

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BILL ANALYSIS

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Date of Hearing: July 9, 2003

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT
Paul Koretz, Chair
SB 179 (Alarcon) - As Introduced: February 12, 2003

SENATE VOTE : 21-14

SUBJECT : Contracts for labor or services.

SUMMARY : Provides that any person or entity that enters into specified contracts for labor or services, that knows or should know that the contract does not provide sufficient funds to comply with various laws, violates state law, and provides for a rebuttable presumption, as provided. Specifically, this bill :

- 1) Provides that any person or entity that enters into a contract for labor or services for construction, farm labor, garment manufacturing, janitorial services, or security guard services, that knows or should know that the contract does not provide sufficient funds to comply with various local, state, and federal labor laws, violates state law.
- 2) Establishes a rebuttable presumption that a person or entity entering into such a contract for labor or services does not violate the bill's provisions if the labor contract or any material change to the labor contract is in writing, contained in a single document and meets the following requirements;
 - a) Information identifying the person or entity or contractor performing the services;
 - b) A description of the labor and services to be performed, including a commencement and completion date;
 - c) Employer identification number for state tax purposes of the contractor;
 - d) Proof of workers' compensation coverage, including insurance contact information;
 - e) For vehicles utilized for transportation in connection with a service, detailed information relating to insurance carrier and coverage;

- f) The address of any real property to be used to house workers in connection with a contract or agreement;
 - g) The estimated number of workers to be employed, total wages to be paid, and the pay dates;
 - h) Amounts of commissions or other payments made to the contractor for services; and,
 - i) The estimated number and identification of independent contractors to be utilized.
 - j) The signatures of all parties, and the date the contract was signed.
- 1) Provides that if some of the above required information is not known at the time of contract, then the "best estimate" available at the time is required to qualify for the rebuttable presumption.
 - 2) Requires written agreements to be kept by the person or entity for at least four years after termination of the agreement.
 - 3) Exempts a person or entity who executes a specified collective bargaining agreement, or a person who enters into a contract or agreement for labor or services to be performed on his or her home residence or residences, under specified conditions.
 - 4) Allows aggrieved employees to recover the greater of all actual damages or \$250 per employee for each initial violation, and \$1,000 per employee for each subsequent violation, and recover costs and reasonable attorney's fees, if the aggrieved employees plead and prove in a private court action that they were also injured by a violation of a labor law or regulation in connection with the performance of the contract or agreement.
 - 5) Defines the terms "knows" and "should know."

EXISTING LAW provides a framework of labor law enforcement of, among other things, minimum standards for wages, hours, conditions of employment, and occupational safety and health by the State Department of Industrial Relations (DIR). The State Employment Development Department (EDD) administers the unemployment insurance, and state disability insurance programs,

and requires that employers pay specified employee payroll taxes.

FISCAL EFFECT : This measure was approved by the Senate Appropriations Committee pursuant to Senate Rule 28.8.

COMMENTS :

"Knowing" Standard

The "know" or "should have known" terms are common legal standards by which an ordinary, reasonable person in like or similar circumstances would have known. There are many statutes, contained in various sections of California law, which contain a similar or identical standard as this bill.

This bill defines the terms as follows: 1) The term "knows" includes the knowledge, arising from a familiarity with the normal facts and circumstances of the business activity engaged in, that the contract does not include funds sufficient to allow the contractor to comply with applicable laws; 2) The phrase "should know" includes the knowledge of any additional facts or information, which would make a reasonably prudent person undertake to inquire whether, taken together, such facts suggest that the contract does not include funds sufficient to allow the contractor to comply with applicable laws.

Recent Hearing on the Underground Economy

On March 18, 2003, the Senate Labor and Industrial Relations Committee conducted an extensive hearing on the harmful effects of the Underground Economy. Among other things, it was ascertained that lawless enterprises deprive state treasuries over \$4 billion in lost tax revenues.

Arguments in Support

Generally, the author and supporters argue that this bill is necessary to protect workers and law-abiding employers from employers and contractors that knowingly enter into contracts and agreements that are financially inadequate to permit

compliance with applicable laws. The purpose of this bill is to establish state policy regarding financially insufficient contracts in industries most associated with the underground economy. Supporters emphasize that this bill does not require written contracts, rather it encourages them for sound business practices.

Supporters cite evidence of underground economy enterprises that are unfair competition to legitimate employers. These enterprises pay little in taxes and fail to abide by minimum labor standards. In the janitorial industry, supporters of this bill argue that unethical contractors have been given the upper hand in competing for cleaning contracts, and are ruining law-abiding businesses. Supporters cite an example of one janitorial business being undercut 39 percent in contract bidding by a competitor paying a monthly salary that is less than minimum wage.

In the garment industry, the US Department of Labor (DOL) estimates that in the Los Angeles area only one in three garment manufacturers were in compliance with minimum wage and overtime laws. The DOL also reported that garment industry employers in Southern California owed as much as 80 million dollars in unpaid wages to garment workers. The Garment Worker Center, writing in support of this bill, argues that these numbers are particularly compelling considering the survey was conducted among registered garment manufacturers.

In agriculture, various surveys show that most growers using farm labor contractors were paying fees so low that either the government was not receiving mandated taxes, or else the farm workers were being paid below the minimum wage. Labor law violations in the construction industry typically involve use of bad checks, cash pay, and no workers' compensation insurance coverage.

Argument in Opposition

Opponents from the covered industries argue that this measure would require contracts to include several onerous and burdensome requirements that a normal contract for labor in any other industry would not require. Small companies who are suffering financially can ill afford additional costs of hiring an attorney to draft a contract every time they use a specialty contractor. The California Restaurant Association argues that

the process necessary to establish the rebuttable presumption under this bill is particularly burdensome, for example, to a small business contracting for one or two individuals to clean only one restaurant.

The California Farm Bureau argues in opposition that the rebuttable presumption offered in this bill provides no protection to an accused employer beyond what the law already confers. A defendant already enjoys the presumption of innocence, the Bureau further argues, and the existence of a written contract would not effect this process in any way.

Other opponents focus on the "knowing" standard. The California Chamber of Commerce argues in opposition that this bill requires a person or entity to "know" the intricate financial dealings of a contractor in order to determine compliance with labor laws. The Chamber further argues that the broad definition of "should know" could be construed to include trivial information.

Public sector opponents of this bill argue that the California Public Contract Code requires public agencies to award contracts to the lowest responsible bidder. As such, public agencies have limited discretion in the competitive bidding process. This bill, opponents argue, places public agencies in the position of complying with the Public Contract Code while making a judgement as to whether the contracts provide sufficient funds.

Prior Legislation: As introduced, this measure is identical to SB 1466 (Alarcon) of 2002 which was vetoed by the Governor. The stated reason given in the veto message was that other labor legislation benefiting low wage workers, signed into law as recently as 2002, needed to be given time to work.

REGISTERED SUPPORT / OPPOSITION :

Support

American Federation of State, County and Municipal Employees
California Applicants' Attorneys Association
California Labor Federation, AFL-CIO
California Pipe Trades Council
California Rural Legal Assistance Foundation
California School Employees Association
California State Association of Electrical Workers
California Teamsters Public Affairs Council

Consumer Attorneys of California
Garment Worker Center
Gray Panthers
International Association of Plumbing and Mechanical Officials
Northern California District Council - ILWU
Region 8 States Council of the United Food & Commercial Workers
Service Employees International Union
United Farm Workers of America
Western States Council of Sheet Metal Workers

Opposition

Agricultural Council of California
Associated Builders and Contractors of California
California Association of Sanitation Agencies
California Building Industry Association
California Chamber of Commerce
California Farm Bureau Federation
California Grocers Association
California Manufacturers & Technology Association
California Restaurant Association
California State Association of Counties
City of Buena Park
County Sanitation Districts of Los Angeles County
Western Growers Association
Wine Institute

Analysis Prepared by : Nick Louizos / L. & E. / (916) 319-2091

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BILL ANALYSIS

SB 179
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Date of Hearing: August 20, 2003

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Darrell Steinberg, Chair

SB 179 (Alarcon) - As Introduced: February 12, 2003

Policy Committee: Labor and
Employment Vote: 5-2

Urgency: No State Mandated Local Program:
No Reimbursable:

SUMMARY

This bill makes it a violation of state law for any person or

entity to enter into a contract for labor or services, in specified industries if the person or entity knows or should know that the contract does not provide sufficient funds to comply with various laws, and allows employees to recover actual damages through civil action. Specifically, this bill:

- 1) Prohibits a person or entity from entering into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, or security guard contractor, where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.
- 2) Requires an employee, to maintain an action under the provisions of this bill, to plead and prove that the employee was injured as a result of a violation of a labor law or regulation in connection with the performance of the contract or agreement.
- 3) Creates a rebuttable presumption affecting the burden of proof that there has been no violation where the contract or agreement is in writing.
- 4) Exempts from the provisions of this bill:
 - a) A person or entity who executes a collective bargaining agreement covering the workers employed under the contract

or agreement, or

- b) A person who enters into a contract or agreement for labor or services to be performed on his or her primary residence.

FISCAL EFFECT

No state fiscal impact. The bill provides for a civil enforcement remedy.

COMMENTS

- 1) Rationale . According to the author, the purpose of the bill is twofold. To declare California state policy regarding financially insufficient contracts in the construction, agricultural, garment, janitorial and security guard

industries and to encourage contractors to voluntarily agree to put their contracts in writing. Additionally, the bill attacks the hidden use of unfair economic leverage to influence labor contractors to enter into contracts that are financially inadequate to permit the contractor to comply with applicable local, state and federal laws.

2)Opposition . The Building Owners and Managers Association of California and the California Grocers Association contend that the bill forces building owners and grocers to investigate the business operations of every covered contractor with whom they transact business, in order to avoid prosecution, particularly under the "should have known" standard. This may preclude business owners from being able to seek out the lowest responsible bidder for competitive contracts.

3)Prior Legislation . This measure is identical to SB 1466 (Alarcon) of 2002, which was vetoed by the governor. The stated reason given in the veto message was that other labor legislation benefiting low wage workers, signed into law as recently as 2002, needed to be given time to work.

Analysis Prepared by : Stephen Shea / APPR. / (916) 319-2081

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SENATE THIRD READING
SB 179 (Alarcon)
As Introduced February 12, 2003
Majority vote

SENATE VOTE :21-14

LABOR AND EMPLOYMENT 5-2 APPROPRIATIONS 15-7

| | | | |
|-------|---|-------|---|
| Ayes: | Koretz, Mullin, Hancock, Laird, Negrete McLeod | Ayes: | Steinberg, Berg, Calderon, Corbett, Correa, Diaz, Goldberg, Leno, Nation, Negrete McLeod, Nunez, Pavley, Ridley-Thomas, Simitian, Yee |
| Nays: | Shirley Horton, Houston | Nays: | Bates, Daucher, Haynes, Maldonado, Pacheco, Runner, Samuelian |

SUMMARY : Provides that any person or entity that enters into specified contracts for labor or services, that knows or should know that the contract does not provide sufficient funds to comply with various laws, violates state law, and provides for a rebuttable presumption, as provided. Specifically, this bill :

- 1) Provides that any person or entity that enters into a contract for labor or services for construction, farm labor, garment manufacturing, janitorial services, or security guard services, that knows or should know that the contract does not provide sufficient funds to comply with various local, state, and federal labor laws, violates state law.
- 2) Establishes a rebuttable presumption that a person or entity entering into such a contract for labor or services does not violate this bill's provisions if the labor contract or any material change to the labor contract is in writing, contained in a single document and meets the following requirements:
 - a) Information identifying the person or entity or contractor

performing the services;

- b) A description of the labor and services to be performed, including a commencement and completion date;
- c) Employer identification number for state tax purposes of the contractor;
- d) Proof of workers' compensation coverage, including insurance contact information;
- e) For vehicles utilized for transportation in connection with a service, detailed information relating to insurance carrier and coverage;
- f) The address of any real property to be used to house workers in connection with a contract or agreement;
- g) The estimated number of workers to be employed, total wages to be paid, and the pay dates;
- h) Amounts of commissions or other payments made to the contractor for services;
- i) The estimated number and identification of independent

contractors to be utilized; and,

j) The signatures of all parties, and the date the contract was signed.

- 1) Provides that if some of the above required information is not known at the time of contract, then the "best estimate" available at the time is required to qualify for the rebuttable presumption.
- 2) Requires written agreements to be kept by the person or entity for at least four years after termination of the agreement.
- 3) Exempts a person or entity who executes a specified collective bargaining agreement, or a person who enters into a contract or agreement for labor or services to be performed on his or her home residence or residences, under specified conditions.
- 4) Allows aggrieved employees to recover the greater of all actual damages or \$250 per employee for each initial

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violation, and \$1,000 per employee for each subsequent violation, and recover costs and reasonable attorney's fees, if the aggrieved employees plead and prove in a private court action that they were also injured by a violation of a labor law or regulation in connection with the performance of the contract or agreement.

5) Defines the terms "knows" and "should know."

FISCAL EFFECT : According to the Assembly Appropriations Committee, no state fiscal impact. This bill provides for a civil enforcement remedy.

COMMENTS : "Knowing" standard: The "know" or "should have known" terms are common legal standards by which an ordinary, reasonable person in like or similar circumstances would have known. There are many statutes, contained in various sections of California law, which contain a similar or identical standard as this bill.

This bill defines the terms as follows: 1) the term "knows" includes the knowledge, arising from a familiarity with the normal facts and circumstances of the business activity engaged in, that the contract does not include funds sufficient to allow the contractor to comply with applicable laws; and, 2) the phrase "should know" includes the knowledge of any additional

facts or information, which would make a reasonably prudent person undertake to inquire whether, taken together, such facts suggest that the contract does not include funds sufficient to allow the contractor to comply with applicable laws.

Recent hearing on the underground economy: On March 18, 2003, the Senate Labor and Industrial Relations Committee conducted an extensive hearing on the harmful effects of the underground economy. Among other things, it was ascertained that lawless enterprises deprive state treasuries over \$4 billion in lost tax revenues.

According to the author and supporters, the purpose of this bill is twofold. To declare California state policy regarding financially insufficient contracts in the construction, agricultural, garment, janitorial and security guard industries and to encourage contractors to voluntarily agree to put their contracts in writing. Additionally, this bill attacks the hidden use of unfair economic leverage to influence labor

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Page 4

contractors to enter into contracts that are financially inadequate to permit the contractor to comply with applicable local, state and federal laws.

Analysis Prepared by : Nick Louizos / L. & E. / (916) 319-2091

FN: 0002895

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PART TWO: ASSEMBLY AND SENATE VOTES ON SB 179

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VOTES - ROLL CALL
MEASURE: SB 179
AUTHOR: Alarcon
TOPIC: Contracts for labor or services.
DATE: 03/26/2003
LOCATION: SEN. L. & I.R.

MOTION: Do pass, but re-refer to the Committee on Rules.
(AYES 5. NOES 1.) (PASS)

AYES

Alarcon Dunn Figueroa Kuehl
Romero

NOES

McClintock

ABSENT, ABSTAINING, OR NOT VOTING

+++++++
VOTES - ROLL CALL
MEASURE: SB 179
AUTHOR: Alarcon
TOPIC: Contracts for labor or services.
DATE: 05/08/2003
LOCATION: SEN. FLOOR
MOTION: Senate 3rd Reading SB179 Alarcon
(AYES 21. NOES 14.) (PASS)

AYES

Alarcon Alpert Bowen Burton
Cedillo Chesbro Ducheny Escutia
Figueroa Florez Karnette Kuehl
Murray Ortiz Perata Romero
Sher Speier Torlakson Vasconcellos
Vincent

NOES

Aanestad Ackerman Ashburn Battin
Brulte Denham Johnson Knight
Margett McClintock McPherson Morrow
Oller Pochigian

ABSENT, ABSTAINING, OR NOT VOTING

+++++++

VOTES - ROLL CALL

MEASURE: SB 179

AUTHOR: Alarcon

TOPIC: Contracts for labor or services.

DATE: 07/09/2003

LOCATION: ASM. L. & E.

MOTION: Do pass and be re-referred to the Committee on Appropriations.
(AYES 5. NOES 2.) (PASS)

AYES

Koretz Mullin Hancock Laird
Negrete McLeod

NOES

Shirley Horton Houston

ABSENT, ABSTAINING, OR NOT VOTING

VOTES - ROLL CALL

MEASURE: SB 179

AUTHOR: Alarcon

TOPIC: Contracts for labor or services.

DATE: 08/20/2003

LOCATION: ASM. APPR.

MOTION: Do pass.
(AYES 15. NOES 7.) (PASS)

AYES

Steinberg Berg Calderon Corbett
Correa Diaz Goldberg Leno
Nation Negrete McLeod Nunez Pavley
Ridley-Thomas Simitian Yee

NOES

Bates Daucher Haynes Maldonado
Pacheco Runner Samuelian

ABSENT, ABSTAINING, OR NOT VOTING

Firebaugh Wiggins Vacancy

+++++

VOTES - ROLL CALL

MEASURE: SB 179

AUTHOR: Alarcon

TOPIC: Contracts for labor or services.

DATE: 08/28/2003

LOCATION: ASM. FLOOR

MOTION: SB 179 Alarcon Senate Third Reading By Steinberg
(AYES 45. NOES 32.) (PASS)

AYES

| | | | |
|---------------|-----------|----------|-------------|
| Berg | Bermudez | Calderon | Canciamilla |
| Chan | Chavez | Chu | Cohn |
| Corbett | Correa | Diaz | Dutra |
| Dymally | Frommer | Goldberg | Hancock |
| Jerome | Horton | Jackson | Kehoe |
| Koretz | | | |
| Laird | Leno | Levine | Lieber |
| Longville | Lowenthal | Montanez | Mullin |
| Nakano | Nation | Negrete | McLeod |
| Nunez | | | |
| Oropeza | Parra | Pavley | Reyes |
| Ridley-Thomas | Salinas | Simitian | Steinberg |
| Vargas | Wiggins | Wolk | Yee |
| Wesson | | | |

NOES

| | | | |
|------------|---------|------------|-----------|
| Aghazarian | Bates | Benoit | Bogh |
| Campbell | Cogdill | Cox | Daucher |
| Dutton | Garcia | Harman | Haynes |
| Shirley | Horton | Houston | Keene |
| La Malfa | | | |
| La Suer | Leslie | Maddox | Maldonado |
| Matthews | Maze | McCarthy | Mountjoy |
| Nakanishi | Pacheco | Richman | Runner |
| Samuelian | Spitzer | Strickland | Wyland |

ABSENT, ABSTAINING, OR NOT VOTING

Firebaugh Liu Plescia

PART THREE: TEXT OF SB 179

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BILL NUMBER: SB 179 INTRODUCED

BILL TEXT

INTRODUCED BY Senator Alarcon

FEBRUARY 12, 2003

An act to add Section 2810 to the Labor Code, relating to contracts for labor or services.

LEGISLATIVE COUNSEL'S DIGEST

SB 179, as introduced, Alarcon. Contracts for labor or services.

Existing law imposes various requirements on individuals contracting for labor or services with construction, farm labor, garment, janitorial, or security guard contractors.

This bill would provide that any person or entity who enters into a labor contract for construction, farm labor, garment, janitorial, or security guard services when the person or entity knows or should know that the contract does not provide funds sufficient to allow the labor contractor to comply with all applicable laws or regulations governing the labor or services to be provided under the contract, is subject to liability and specified civil penalties.

The bill would establish a rebuttable presumption that a person or entity entering into such a contract for labor or services does not violate the bill's provisions if the labor contract or material change to the labor contract meets specified requirements. The bill would not apply to persons or entities who have executed certain collective bargaining agreements, or to labor or services to be performed on a person's home residence or residences, under specified conditions.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2810 is added to the Labor Code, to read:

2810. (a) A person or entity may not enter into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, or security guard contractor, where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

(b) There is a rebuttable presumption affecting the burden of proof that there has been no violation of subdivision (a) where the contract or agreement with a construction, farm labor, garment, janitorial, or security guard contractor meets all of the requirements in subdivision (d).

(c) Subdivision (a) does not apply to a person or entity who executes a collective bargaining agreement covering the workers employed under the contract or agreement, or to a person who enters into a contract or agreement for labor or services to be performed on his or her home residences, provided that a family member resides in the residence or residences for which the labor or services are to be performed for at least a part of the year.

(d) To meet the requirements of subdivision (b), a contract or

agreement with a construction, farm labor, garment, janitorial, or security guard contractor for labor or services must be in writing, in a single document, and contain all of the following provisions, in addition to any other provisions that may be required by regulations adopted by the Labor Commissioner from time to time:

(1) The name, address, and telephone number of the person or entity and the construction, farm labor, garment, janitorial, or security guard contractor through whom the labor or services are to be provided.

(2) A description of the labor or services to be provided and a statement of when those services are to be commenced and completed.

(3) The employer identification number for state tax purposes of the construction, farm labor, garment, janitorial, or security guard contractor.

(4) The workers' compensation insurance policy number and the name, address, and telephone number of the insurance carrier of the construction, farm labor, garment, janitorial, or security guard contractor.

(5) The vehicle identification number of any vehicle that is owned by the construction, farm labor, garment, janitorial, or security guard contractor and used for transportation in connection with any service provided pursuant to the contract or agreement, the number of the vehicle liability insurance policy that covers the vehicle, and the name, address, and telephone number of the insurance carrier.

(6) The address of any real property to be used to house workers in connection with the contract or agreement.

(7) The total number of workers to be employed under the contract or agreement, the total amount of all wages to be paid, and the date or dates when those wages are to be paid.

(8) The amount of the commission or other payment made to the construction, farm labor, garment, janitorial, or security guard contractor for services under the contract or agreement.

(9) The total number of persons who will be utilized under the contract or agreement as independent contractors, along with a list of the current local, state, and federal contractor license identification numbers that the independent contractors are required to have under local, state, or federal laws or regulations.

(10) The signatures of all parties, and the date the contract or agreement was signed.

(e) (1) To qualify for the rebuttable presumption set forth in subdivision (b), a material change to the terms and conditions of a contract or agreement between a person or entity and a construction, farm labor, garment, janitorial, or security guard contractor must be in writing, in a single document, and contain all of the provisions listed in subdivision (d) that are affected by the change.

(2) If a provision required to be contained in a contract or agreement pursuant to paragraph (7) or (9) of subdivision (d) is unknown at the time the contract or agreement is executed, the best estimate available at that time is sufficient to satisfy the requirements of subdivision (d). If an estimate is used in place of actual figures in accordance with this paragraph, the parties to the contract or agreement have a continuing duty to ascertain the information required pursuant to paragraph (7) or (9) of subdivision (d) and to reduce that information to writing in accordance with the requirements of paragraph (1) once that information becomes known.

(f) A person or entity who enters into a contract or agreement referred to in subdivisions (d) or (e) shall keep a copy of the

written contract or agreement for a period of not less than four years following the termination of the contract or agreement.

(g) (1) An employee aggrieved by a violation of subdivision (a) may file an action for damages to recover the greater of all of his or her actual damages or two hundred fifty dollars (\$250) per employee per violation for an initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, may recover costs and reasonable attorney's fees. An action under this section may not be maintained unless it is pleaded and proved that an employee was injured as a result of a violation of a labor law or regulation in connection with the performance of the contract or agreement.

(2) An employee aggrieved by a violation of subdivision (a) may also bring an action for injunctive relief and, upon prevailing, may recover costs and reasonable attorney's fees.

(h) The phrase "construction, farm labor, garment, janitorial, or security guard contractor" includes any person, as defined in this code, whether or not licensed, who is acting in the capacity of a construction, farm labor, garment, janitorial, or security guard contractor.

(i) (1) The term "knows" includes the knowledge, arising from familiarity with the normal facts and circumstances of the business activity engaged in, that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable laws.

(2) The phrase "should know" includes the knowledge of any additional facts or information that would make a reasonably prudent person undertake to inquire whether, taken together, the contract or agreement contains sufficient funds to allow the contractor to comply with applicable laws.

(3) A failure by a person or entity to request or obtain any information from the contractor that is required by any applicable statute or by the contract or agreement between them, constitutes knowledge of that information for purposes of this section.

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BILL NUMBER: SB 179 CHAPTERED
BILL TEXT

CHAPTER 908
FILED WITH SECRETARY OF STATE OCTOBER 12, 2003
APPROVED BY GOVERNOR OCTOBER 12, 2003
PASSED THE ASSEMBLY AUGUST 28, 2003
PASSED THE SENATE MAY 8, 2003

INTRODUCED BY Senator Alarcon

FEBRUARY 12, 2003

An act to add Section 2810 to the Labor Code, relating to contracts for labor or services.

LEGISLATIVE COUNSEL'S DIGEST

SB 179, Alarcon. Contracts for labor or services.

Existing law imposes various requirements on individuals contracting for labor or services with construction, farm labor, garment, janitorial, or security guard contractors.

This bill would provide that any person or entity who enters into a labor contract for construction, farm labor, garment, janitorial, or security guard services when the person or entity knows or should know that the contract does not provide funds sufficient to allow the labor contractor to comply with all applicable laws or regulations governing the labor or services to be provided under the contract, is subject to liability and specified civil penalties.

The bill would establish a rebuttable presumption that a person or entity entering into such a contract for labor or services does not violate the bill's provisions if the labor contract or material change to the labor contract meets specified requirements. The bill would not apply to persons or entities who have executed certain collective bargaining agreements, or to labor or services to be performed on a person's home residence or residences, under specified conditions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2810 is added to the Labor Code, to read:

2810. (a) A person or entity may not enter into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, or security guard contractor, where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

(b) There is a rebuttable presumption affecting the burden of proof that there has been no violation of subdivision (a) where the contract or agreement with a construction, farm labor, garment, janitorial, or security guard contractor meets all of the requirements in subdivision (d).

(c) Subdivision (a) does not apply to a person or entity who executes a collective bargaining agreement covering the workers employed under the contract or agreement, or to a person who enters into a contract or agreement for labor or services to be performed on his or her home residences, provided that a family member resides in the residence or residences for which the labor or services are to be performed for at least a part of the year.

(d) To meet the requirements of subdivision (b), a contract or agreement with a construction, farm labor, garment, janitorial, or security guard contractor for labor or services must be in writing, in a single document, and contain all of the following provisions, in addition to any other provisions that may be required by regulations adopted by the Labor Commissioner from time to time:

(1) The name, address, and telephone number of the person or entity and the construction, farm labor, garment, janitorial, or security guard contractor through whom the labor or services are to

be provided.

(2) A description of the labor or services to be provided and a statement of when those services are to be commenced and completed.

(3) The employer identification number for state tax purposes of the construction, farm labor, garment, janitorial, or security guard contractor.

(4) The workers' compensation insurance policy number and the name, address, and telephone number of the insurance carrier of the construction, farm labor, garment, janitorial, or security guard contractor.

(5) The vehicle identification number of any vehicle that is owned by the construction, farm labor, garment, janitorial, or security guard contractor and used for transportation in connection with any service provided pursuant to the contract or agreement, the number of the vehicle liability insurance policy that covers the vehicle, and the name, address, and telephone number of the insurance carrier.

(6) The address of any real property to be used to house workers in connection with the contract or agreement.

(7) The total number of workers to be employed under the contract or agreement, the total amount of all wages to be paid, and the date or dates when those wages are to be paid.

(8) The amount of the commission or other payment made to the construction, farm labor, garment, janitorial, or security guard contractor for services under the contract or agreement.

(9) The total number of persons who will be utilized under the contract or agreement as independent contractors, along with a list of the current local, state, and federal contractor license identification numbers that the independent contractors are required to have under local, state, or federal laws or regulations.

(10) The signatures of all parties, and the date the contract or agreement was signed.

(e) (1) To qualify for the rebuttable presumption set forth in subdivision (b), a material change to the terms and conditions of a contract or agreement between a person or entity and a construction, farm labor, garment, janitorial, or security guard contractor must be in writing, in a single document, and contain all of the provisions listed in subdivision (d) that are affected by the change.

(2) If a provision required to be contained in a contract or agreement pursuant to paragraph (7) or (9) of subdivision (d) is unknown at the time the contract or agreement is executed, the best estimate available at that time is sufficient to satisfy the requirements of subdivision (d). If an estimate is used in place of actual figures in accordance with this paragraph, the parties to the contract or agreement have a continuing duty to ascertain the information required pursuant to paragraph (7) or (9) of subdivision (d) and to reduce that information to writing in accordance with the requirements of paragraph (1) once that information becomes known.

(f) A person or entity who enters into a contract or agreement referred to in subdivisions (d) or (e) shall keep a copy of the written contract or agreement for a period of not less than four years following the termination of the contract or agreement.

(g) (1) An employee aggrieved by a violation of subdivision (a) may file an action for damages to recover the greater of all of his or her actual damages or two hundred fifty dollars (\$250) per employee per violation for an initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, may

recover costs and reasonable attorney's fees. An action under this section may not be maintained unless it is pleaded and proved that an employee was injured as a result of a violation of a labor law or regulation in connection with the performance of the contract or agreement.

(2) An employee aggrieved by a violation of subdivision (a) may also bring an action for injunctive relief and, upon prevailing, may recover costs and reasonable attorney's fees.

(h) The phrase "construction, farm labor, garment, janitorial, or security guard contractor" includes any person, as defined in this code, whether or not licensed, who is acting in the capacity of a construction, farm labor, garment, janitorial, or security guard contractor.

(i) (1) The term "knows" includes the knowledge, arising from familiarity with the normal facts and circumstances of the business activity engaged in, that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable laws.

(2) The phrase "should know" includes the knowledge of any additional facts or information that would make a reasonably prudent person undertake to inquire whether, taken together, the contract or agreement contains sufficient funds to allow the contractor to comply with applicable laws.

(3) A failure by a person or entity to request or obtain any information from the contractor that is required by any applicable statute or by the contract or agreement between them, constitutes knowledge of that information for purposes of this section.

APPENDIX: Legislative History of SB 1466

1. COMMITTEE AND FLOOR ANALYSES

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BILL ANALYSIS

Senate Committee on Labor and Industrial Relations
Richard Alarcon, Chair

| | |
|---|----------------------------|
| Date of Hearing: May 8, 2002 Session | 2001-2002 Regular |
| Consultant: Patrick W. Henning | Fiscal: Yes Urgency: No |

Bill No: SB 1466
Author: Alarcon
Version: May 6, 2002

Subject:

Contracts for labor or services: financially insufficient

Purpose:

To provide that any person or entity that enters into a contract for labor or services, in specified industries, that knows or should know that the contract does not provide sufficient funds to comply with various laws, is guilty of a misdemeanor and subject to civil penalties. Also, to provide a rebuttable presumption that a person or entity that enters into a voluntary written agreement with specified criteria does not violate the proposed law.

Analysis:

Existing law provides a framework of labor law enforcement of, among other things, minimum standards for wages, hours, conditions of employment, and occupational safety and health by the Department of Industrial Relations (DIR). The Employment Development Department administers the unemployment insurance, and state disability insurance programs, and requires that employers pay specified employee payroll taxes.

This Bill has two major provisions. It:

1) provides that any person or entity that enters into a contract for labor or services for construction, farm labor, garment manufacturing, janitorial services, or security guard services, that knows or should know that the contract does not provide sufficient funds to comply with

various local, state, and federal labor laws, or encourages others to do so, is:

- guilty of a misdemeanor punishable by a fine of not more than \$1,000, or imprisonment in the county jail for not more than 6 months, or both; and
- subject to a civil penalty of \$250 per employee for each violation in the initial violation, and \$1,000 per employee for each subsequent violation.

Aggrieved employees would be able to recover the greater of all actual damages or \$250 per employee for each violation in the initial violation, and \$1,000 per employee for each subsequent violation, in a court action and recover costs and reasonable attorney's fees; the same right to fees would apply for injunctive relief. Employment covered by a collective bargaining agreement would be exempt from these provisions.

2) establishes to a rebuttable presumption that a person or entity that enters into a voluntary written agreement with a contractor does not violate these provisions if the written agreement, and successive amendments thereto, is in a single document and contains all the following criteria:

- information identifying the person or entity or contractor performing the services;
- a description of the labor and services to be performed, including a commencement and completion date;
- employer identification number for state tax purposes of the contractor;
- proof of workers' compensation coverage, including insurance contact information;
- for vehicles utilized for transportation in connection with a service, detailed information relating to insurance carrier and coverage;
- the address of any real property to house workers;
- the total number of workers to be employed, total wages to be paid, and the pay dates; and
- amounts of commissions or other payments made to the

Hearing Date: May 8, 2002

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Senate Committee on Labor and Industrial Relations

contractor for services; and
-the number and identification of independent
contractors to be utilized.

Written agreements would be required to be kept by the
person or entity for at least 4 years after termination of
the agreement.

Comments:

1. Proponents argue that this measure attacks the hidden use
of unfair economic leverage to influence labor
contractors to enter into contracts that are financially
inadequate to permit the contractor to comply with
applicable laws. While employers usually claim they are
unaware of abuses committed by their contractors, the
reality is just the opposite. This measure does not
require written contracts, rather it encourages them for
sound business practices.

Some janitorial and security guard industry
representatives state that this measure is necessary to
weed out illegal and unethical employers in their
industries.

Supporters cite federal and state evidence of Underground
Economy enterprises that are unfair competition to
law-abiding employers. These lawless operations pay
little or no taxes, and fail to abide by minimum labor
standards. Industry examples are highlighted:

In the garment industry, the US Department of Labor
estimates that 67% of Los Angeles garment shops violated
minimum wage and overtime laws. Also, many contractors
claim that they were not given sufficient funds by
principal garment manufacturers to pay workers.

In the janitorial industry, industry supporters of this
measure argue that a massive influx of unethical

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contractors have been given the upper hand in competing for cleaning contracts, and are ruining law-abiding businesses.

In agriculture, various surveys show that most growers using farm labor contractors were paying fees so low that either the government was not receiving mandate taxes, or else the farm workers were being paid below the minimum wage.

Construction labor law violations typically involve use of bad checks, cash pay, and no workers' compensation insurance coverage.

2. Opponents from the covered industries argue that this measure would require contracts to include several onerous and burdensome requirements that a normal contract for labor in any other industry would not require. Small companies who are suffering financially at the present time can ill afford additional costs of hiring an attorney to draft a contract every time they use a specialty contractor, just to obtain a rebuttable presumption that there has been no violations of law.

The Western Growers Association calls this measure a back door attempt to make a grower liable for the actions of a farm labor contractor. Growers would have to audit the financial records of their contractors every time to ensure that monies were spent in the proper fashion to be in compliance with labor laws.

The California Farm Bureau Federation states that the supporters wrongly assume that harm necessarily flows from business contracts. This measure would criminalize otherwise lawful business transactions from which no harm results. It would also have the unintended consequence of hurting a contractor's employees by denying them work opportunities in such situations.

Representatives from retailers and building owners argue
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Consultant: Patrick W. Henning

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that the requirement that they "know" or "should have known" is problematic because it places them in a position of possible criminal liability. Most businesses seek the lowest responsible bidder for competitive contracts. They leave it up to the bidding contractor to determine how to deliver the services requested at the most affordable price, and must maintain a belief that the contractor's bid is not based on illegal activities.

A possible amendment suggested by retailers and building owners is to simply require contractual language binding the contractor to be in compliance with all applicable labor laws.

Other opponents argue that some of the criteria required of the safe harbor of a rebuttable presumption is typically not known at the time of contracting, and, as a result, businesses and public agencies would be exposed to criminal and civil liability.

3. "Knowing" Standard : The "know" or "should have known" terms are common legal standards by which an ordinary, reasonable person in like or similar circumstances would have known. This measure defines the terms as follows:

The term "knows" includes the knowledge, arising from a familiarity with the normal facts and circumstances of the business activity engaged in, that the contract does not include funds sufficient to allow the contractor to comply with applicable laws.

The phrase "should know" includes the knowledge of any additional facts or information, which would make a reasonably prudent person undertake to inquire whether, taken together, such facts suggest that the contract does not include funds sufficient to allow the contractor to comply with applicable laws.

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Consultant: Patrick W. Henning
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Support:

California Labor Federation, AFL-CIO (Sponsor)
Service Employees International Union (Sponsor)
Garment Worker Center (Co-Sponsor)
Maintenance Cooperation Trust Fund (Co-Sponsor)
California Rural legal Assistance Foundation (Co-Sponsor)
American Federation of State, County, and Municipal
Employees
Asian Law Caucus
California Association of Licensed Security Agencies,
Guards & Associates
California Conference Board of Amalgamated Transit Union
California Conference of Machinists
California Teamsters Public Affairs Council
Coalition for Humane Immigrant Rights of Los Angeles
Coalition of Immigrant Worker Organizations
Engineers and Scientists of California
Garment Workers Center
Hotel Employees, Restaurant Employees International Union
Jockeys' Guild
Mexican American Legal Defense and Educational Fund
Pacific Association of Building Service Contractors
Region 8 States Council, United Food and Commercial Workers
Union
Service Employees International Union, Local 1877
State Building and Construction Trades Council of
California
Sweatshop Watch
Teamsters Public Affairs Council
United Farm Workers of America
United Food and Commercial Workers Union Region 8 States
Council

Opposition:

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Consultant: Patrick W. Henning
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Senate Committee on Labor and Industrial Relations

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Senate Committee on Labor and Industrial Relations
Richard Alarcon, Chair

| | |
|--|---------------------------|
| Date of Hearing: May 14, 2002 Session | 2001-2002 Regular |
| Consultant: Patrick W. Henning | Fiscal: Yes Urgency:No |

Bill No: SB 1466
Author: Alarcon
Version: As Amended in Committee

Subject:

Contracts for labor or services: financially insufficient

Purpose:

To provide that any person or entity that enters into a contract for labor or services, in specified industries, that knows or should know that the contract does not provide sufficient funds to comply with various laws, violates state law, and employees would be able to recover actual damages through civil action. Also, to provide a rebuttable presumption that a person or entity that enters into a voluntary written agreement with specified criteria does not violate the proposed law.

Analysis:

Existing law provides a framework of labor law enforcement of, among other things, minimum standards for wages, hours, conditions of employment, and occupational safety and health by the Department of Industrial Relations (DIR). The Employment Development Department administers the unemployment insurance, and state disability insurance programs, and requires that employers pay specified employee payroll taxes.

This Bill has two major provisions. It:

1) provides that any person or entity that enters into a contract for labor or services for construction, farm labor, garment manufacturing, janitorial services, or security guard services, that knows or should know that the

contract does not provide sufficient funds to comply with various local, state, and federal labor laws, violates state law.

Aggrieved employees would be able to recover the greater of all actual damages or \$250 per employee for each violation in the initial violation, and \$1,000 per employee for each subsequent violation, in a court action and recover costs and reasonable attorney's fees; the same right to fees would apply for injunctive relief.

Home owners and employment covered by a collective bargaining agreement would be exempt from these provisions.

2) establishes to a rebuttable presumption that a person or entity that enters into a voluntary written agreement with a contractor does not violate these provisions if the written agreement, and successive amendments thereto, is in a single document and contains all the following criteria:

- information identifying the person or entity or contractor performing the services;
- a description of the labor and services to be performed, including a commencement and completion date;
- employer identification number for state tax purposes of the contractor;
- proof of workers' compensation coverage, including insurance contact information;
- for vehicles utilized for transportation in connection with a service, detailed information relating to insurance carrier and coverage;
- the address of any real property to house workers;
- the estimated number of workers to be employed, total wages to be paid, and the pay dates; and
- amounts of commissions or other payments made to the contractor for services; and
- the estimated number and identification of independent contractors to be utilized.

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Consultant: Patrick W. Henning

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Senate Committee on Labor and Industrial Relations

Written agreements would be required to be kept by the

person or entity for at least 4 years after termination of the agreement.

Comments:

1. Proponents argue that this measure attacks the hidden use of unfair economic leverage to influence labor contractors to enter into contracts that are financially inadequate to permit the contractor to comply with applicable laws. While employers usually claim they are unaware of abuses committed by their contractors, the reality is just the opposite. This measure does not require written contracts, rather it encourages them for sound business practices.

Some janitorial and security guard industry representatives state that this measure is necessary to weed out illegal and unethical employers in their industries.

Supporters cite federal and state evidence of Underground Economy enterprises that are unfair competition to law-abiding employers. These lawless operations pay little or no taxes, and fail to abide by minimum labor standards. Industry examples are highlighted:

In the garment industry, the US Department of Labor estimates that 67% of Los Angeles garment shops violated minimum wage and overtime laws. Also, many contractors claim that they were not given sufficient funds by principal garment manufacturers to pay workers.

In the janitorial industry, industry supporters of this measure argue that a massive influx of unethical contractors have been given the upper hand in competing for cleaning contracts, and are ruining law-abiding businesses.

Hearing Date: May 14, 2002

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Consultant: Patrick W. Henning

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Senate Committee on Labor and Industrial Relations

In agriculture, various surveys show that most growers using farm labor contractors were paying fees so low that either the government was not receiving mandate taxes, or

else the farm workers were being paid below the minimum wage.

Construction labor law violations typically involve use of bad checks, cash pay, and no workers' compensation insurance coverage.

2. Opponents from the covered industries argue that this measure would require contracts to include several onerous and burdensome requirements that a normal contract for labor in any other industry would not require. Small companies who are suffering financially at the present time can ill afford additional costs of hiring an attorney to draft a contract every time they use a specialty contractor, just to obtain a rebuttable presumption that there has been no violations of law.

The Western Growers Association calls this measure a back door attempt to make a grower liable for the actions of a farm labor contractor. Growers would have to audit the financial records of their contractors every time to ensure that monies were spent in the proper fashion to be in compliance with labor laws.

The California Farm Bureau Federation states that the supporters wrongly assume that harm necessarily flows from business contracts. This measure makes law-abiding employers law breakers for engaging in lawful business transactions from which no harm results. It would also have the unintended consequence of hurting a contractor's employees by denying them work opportunities in such situations.

Representatives from retailers and building owners argue that the requirement that they "know" or "should have known" is problematic because it places them in a position of possible liability. Most businesses seek the lowest

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Consultant: Patrick W. Henning

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responsible bidder for competitive contracts. They leave it up to the bidding contractor to determine how to deliver the services requested at the most affordable price, and must maintain a belief that the contractor's bid is not based on illegal activities.

A possible amendment suggested by retailers and building owners is to simply require contractual language binding the contractor to be in compliance with all applicable labor laws.

Other opponents argue that some of the criteria required of the safe harbor of a rebuttable presumption is typically not known at the time of contracting, and, as a result, businesses and public agencies would be exposed to civil liability.

3. "Knowing" Standard : The "know" or "should have known" terms are common legal standards by which an ordinary, reasonable person in like or similar circumstances would have known. This measure defines the terms as follows:

The term "knows" includes the knowledge, arising from a familiarity with the normal facts and circumstances of the business activity engaged in, that the contract does not include funds sufficient to allow the contractor to comply with applicable laws.

The phrase "should know" includes the knowledge of any additional facts or information, which would make a reasonably prudent person undertake to inquire whether, taken together, such facts suggest that the contract does not include funds sufficient to allow the contractor to comply with applicable laws.

Support:

Hearing Date: May 14, 2002

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Consultant: Patrick W. Henning

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Senate Committee on Labor and Industrial Relations

California Labor Federation, AFL-CIO (Sponsor)
Service Employees International Union (Sponsor)
Garment Worker Center (Co-Sponsor)
Maintenance Cooperation Trust Fund (Co-Sponsor)
California Rural legal Assistance Foundation (Co-Sponsor)
American Federation of State, County, and Municipal
Employees

Asian Law Caucus
California Association of Licensed Security Agencies,
Guards & Associates
California Conference Board of Amalgamated Transit Union
California Conference of Machinists
California Teamsters Public Affairs Council
Coalition for Humane Immigrant Rights of Los Angeles
Coalition of Immigrant Worker Organizations
Engineers and Scientists of California
Garment Workers Center
Hotel Employees, Restaurant Employees International Union
Jockeys' Guild
Mexican American Legal Defense and Educational Fund
Pacific Association of Building Service Contractors
Region 8 States Council, United Food and Commercial Workers
Union
Service Employees International Union, Local 1877
State Building and Construction Trades Council of
California
Sweatshop Watch
Teamsters Public Affairs Council
United Farm Workers of America
United Food and Commercial Workers Union Region 8 States
Council

Opposition:

Agricultural Council of California
Hearing Date: May 14, 2002
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Consultant: Patrick W. Henning
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Senate Committee on Labor and Industrial Relations

Building Owners and Managers Association of California
California Association of Sanitation Agencies
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Farm Bureau Federation
California Grape and Tree Fruit League
California Grocers Association
California Manufacturers and Technology Association (CMTA)

California Restaurant Association (CRA)
California Retailers Association
City of Lakewood
County Sanitation Districts of Los Angeles County
East Bay Municipal Utility District
League of California Cities
Western Growers Association

* * *

Hearing Date: May 14, 2002
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Senate Committee on Labor and Industrial Relations

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BILL ANALYSIS

| | |
|---------------------------------|------------|
| SENATE RULES COMMITTEE | SB 1466 |
| Office of Senate Floor Analyses | |
| 1020 N Street, Suite 524 | |
| (916) 445-6614 | Fax: (916) |
| 327-4478 | |

THIRD READING

Bill No: SB 1466
Author: Alarcon (D)
Amended: 5/15/02
Vote: 21

SENATE LABOR & IND. RELATIONS COMMITTEE : 5-2, 5/14/02
AYES: Alarcon, Figueroa, Kuehl, Polanco, Romero
NOES: McClintock, Oller

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SUBJECT : Contracts for labor or services

SOURCE : California Labor Federation, AFL-CIO
Service Employees International Union
Garment Worker Center
Maintenance Cooperation Trust Fund
California Rural legal Assistance Foundation

DIGEST : This bill provides that any person or entity that enters into a contract for labor or services, in specified industries, that knows or should know that the contract does not provide sufficient funds to comply with various laws, violates state law, and employees would be able to recover actual damages through civil action. The bill also provides a rebuttable presumption that a person or entity that enters into a voluntary written agreement with specified criteria does not violate the proposed law.

ANALYSIS : Existing law provides a framework of labor law enforcement of, among other things, minimum standards for
CONTINUED

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wages, hours, conditions of employment, and occupational safety and health by the Department of Industrial Relations (DIR). The Employment Development Department administers the unemployment insurance, and state disability insurance programs, and requires that employers pay specified employee payroll taxes.

This bill has two major provisions. It:

1. Provides that any person or entity that enters into a contract for labor or services for construction, farm labor, garment manufacturing, janitorial services, or

security guard services, that knows or should know that the contract does not provide sufficient funds to comply with various local, state, and federal labor laws, violates state law.

Aggrieved employees would be able to recover the greater of all actual damages or \$250 per employee for each violation in the initial violation, and \$1,000 per employee for each subsequent violation, in a court action and recover costs and reasonable attorney's fees; the same right to fees would apply for injunctive relief.

Home owners and employment covered by a collective bargaining agreement would be exempt from these provisions.

2. Establishes to a rebuttable presumption that a person or entity that enters into a voluntary written agreement with a contractor does not violate these provisions if the written agreement, and successive amendments thereto, is in a single document and contains all the following criteria:
 - A. Information identifying the person or entity or contractor performing the services.
 - B. A description of the labor and services to be performed, including a commencement and completion date.
 - C. Employer identification number for state tax

purposes of the contractor.

- D. Proof of workers' compensation coverage, including insurance contact information.
- E. For vehicles utilized for transportation in connection with a service, detailed information relating to insurance carrier and coverage.
- F. The address of any real property to house workers.
- G. The estimated number of workers to be employed, total wages to be paid, and the pay dates.

H. Amounts of commissions or other payments made to the contractor for services.

I. The estimated number and identification of independent contractors to be utilized.

Written agreements would be required to be kept by the person or entity for at least four years after termination of the agreement.

Comments

" Knowing" Standard : The "know" or "should have known" terms are common legal standards by which an ordinary, reasonable person in like or similar circumstances would have known. This bill defines the terms as follows:

The term "knows" includes the knowledge, arising from a familiarity with the normal facts and circumstances of the business activity engaged in, that the contract does not include funds sufficient to allow the contractor to comply with applicable laws.

The phrase "should know" includes the knowledge of any additional facts or information, which would make a reasonably prudent person undertake to inquire whether, taken together, such facts suggest that the contract does not include funds sufficient to allow the contractor to comply with applicable laws.

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FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

SUPPORT : (Verified 5/20/02)

California Labor Federation, AFL-CIO (co-source)
Service Employees International Union (co-source)
Garment Worker Center (co-source)
Maintenance Cooperation Trust Fund (co-source)
California Rural legal Assistance Foundation (co-source)
American Federation of State, County, and Municipal
Employees
Asian Law Caucus
California Association of Licensed Security Agencies,
Guards and Associates
California Conference Board of Amalgamated Transit Union

California Conference of Machinists
California Teamsters Public Affairs Council
Coalition for Humane Immigrant Rights of Los Angeles
Coalition of Immigrant Worker Organizations
Engineers and Scientists of California
Garment Workers Center
Hotel Employees, Restaurant Employees International Union
Jockeys' Guild
Mexican American Legal Defense and Educational Fund
Pacific Association of Building Service Contractors
Region 8 States Council, United Food and Commercial Workers
Union
Service Employees International Union, Local 1877
State Building and Construction Trades Council of
California
Sweatshop Watch
Teamsters Public Affairs Council
United Farm Workers of America
United Food and Commercial Workers Union Region 8 States
Council

OPPOSITION : (Verified 5/20/02)

Agricultural Council of California
Building Owners and Managers Association of California
California Association of Sanitation Agencies
California Building Industry Association
California Business Properties Association

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California Chamber of Commerce
California Farm Bureau Federation
California Grape and Tree Fruit League
California Grocers Association
California Manufacturers and Technology Association (CMTA)
California Restaurant Association (CRA)
California Retailers Association
City of Lakewood
County Sanitation Districts of Los Angeles County
East Bay Municipal Utility District
League of California Cities
Western Growers Association

ARGUMENTS IN SUPPORT : Proponents argue that this bill attacks the hidden use of unfair economic leverage to influence labor contractors to enter into contracts that are financially inadequate to permit the contractor to comply with applicable laws. While employers usually claim

they are unaware of abuses committed by their contractors, the reality is just the opposite. This bill does not require written contracts, rather it encourages them for sound business practices.

Some janitorial and security guard industry representatives state that this measure is necessary to weed out illegal and unethical employers in their industries.

Supporters cite federal and state evidence of Underground Economy enterprises that are unfair competition to law-abiding employers. These lawless operations pay little or no taxes, and fail to abide by minimum labor standards. Industry examples are highlighted:

In the garment industry, the US Department of Labor estimates that 67 percent of Los Angeles garment shops violated minimum wage and overtime laws. Also, many contractors claim that they were not given sufficient funds by principal garment manufacturers to pay workers.

In the janitorial industry, industry supporters of this measure argue that a massive influx of unethical contractors have been given the upper hand in competing for cleaning contracts, and are ruining law-abiding businesses.

In agriculture, various surveys show that most growers using farm labor contractors were paying fees so low that either the government was not receiving mandate taxes, or else the farm workers were being paid below the minimum wage.

Construction labor law violations typically involve use of bad checks, cash pay, and no workers' compensation insurance coverage.

ARGUMENTS IN OPPOSITION : Opponents from the covered industries argue that this bill would require contracts to include several onerous and burdensome requirements that a normal contract for labor in any other industry would not require. Small companies who are suffering financially at the present time can ill afford additional costs of hiring an attorney to draft a contract every time they use a specialty contractor, just to obtain a rebuttable presumption that there has been no violations of law.

The Western Growers Association calls this bill a back door attempt to make a grower liable for the actions of a farm labor contractor. Growers would have to audit the financial records of their contractors every time to ensure that monies were spent in the proper fashion to be in compliance with labor laws.

The California Farm Bureau Federation states that the supporters wrongly assume that harm necessarily flows from business contracts. This measure makes law-abiding employers law breakers for engaging in lawful business transactions from which no harm results. It would also have the unintended consequence of hurting a contractor's employees by denying them work opportunities in such situations.

Representatives from retailers and building owners argue that the requirement that they "know" or "should have known" is problematic because it places them in a position of possible liability. Most businesses seek the lowest responsible bidder for competitive contracts. They leave it up to the bidding contractor to determine how to deliver the services requested at the most affordable price, and must maintain a belief that the contractor's bid is not

based on illegal activities.

A possible amendment suggested by retailers and building owners is to simply require contractual language binding the contractor to be in compliance with all applicable labor laws.

Other opponents argue that some of the criteria required of the safe harbor of a rebuttable presumption is typically not known at the time of contracting, and, as a result, businesses and public agencies would be exposed to civil liability.

NC:s1 5/22/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

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Date of Hearing: June 26, 2002

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Paul Koretz, Chair

SB 1466 (Alarcon) - As Proposed to be Amended: June 26, 2002

SENATE VOTE : 21 - 14SUBJECT : Contracts for labor or services.

SUMMARY : Provides that any person or entity that enters into a contract for labor or services, in specified industries, that knows or should know that the contract does not provide sufficient funds to comply with various laws, violates state law, and employees would be able to recover actual damages through civil action. The bill also provides a rebuttable presumption that a person or entity that enters into a voluntary written agreement with specified criteria does not violate the proposed law. Specifically, this bill :

- 1) Prohibits a person or entity from entering into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, or security guard contractor, where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.
- 2) Exempts from the above prohibition a person or entity who executes a collective bargaining agreement covering the workers employed under the contract or agreement, or to a person who enters into a contract or agreement for labor or services to be performed on his or her primary residence.
- 3) Creates a rebuttable presumption affecting the burden of proof that there has been no violation where the contract or agreement is in writing, in a single document, and contains all of the following provisions:
 - a) The name, address, and telephone number of the person or entity and the construction, farm labor, garment, janitorial, or security guard contractor through whom the labor or services are to be provided.

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- b) A description of the labor or services to be provided and a statement of when those services are to be commenced and completed.
 - c) The employer identification number for state tax purposes of the construction, farm labor, garment, janitorial, or security guard contractor.
 - d) The workers' compensation insurance policy number and the name, address, and telephone number of the insurance carrier of the construction, farm labor, garment, janitorial, or security guard contractor.
 - e) The vehicle identification number of any vehicle that is owned by the construction, farm labor, garment, janitorial, or security guard contractor and used for transportation in connection with any service provided pursuant to the contract or agreement, the number of the vehicle liability insurance policy that covers the vehicle, and the name, address, and telephone number of the insurance carrier.
 - f) The address of any real property to be used to house workers in connection with the contract or agreement.
 - g) The total number of workers to be employed under the contract or agreement, the total amount of all wages to be paid, and the date or dates when those wages are to be paid.
 - h) The amount of the commission or other payment made to the construction, farm labor, garment, janitorial, or security guard contractor for services under the contract or agreement.
 - i) The total number of persons who will be utilized under the contract or agreement as independent contractors, along with a list of the current local, state, and federal contractor license identification numbers that the independent contractors are required to have under local, state, or federal laws or regulations.
- 4) Clarifies that if a provision required to be contained in a contract or is unknown at the time the contract or agreement is executed, the best estimate available at that time is sufficient to satisfy the requirements.

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- 5) Provides that if an estimate is used in place of actual figures in accordance with this paragraph, the parties to the contract or agreement have a continuing duty to ascertain the information required and to reduce that information to writing in accordance with the requirements once that information becomes known.
 - 6) Requires a person or entity who enters into a contract or agreement to keep a copy of the written contract or agreement for a period of not less than four years following the termination of the contract or agreement.
 - 7) Provides that an employee aggrieved by a violation of may file an action for damages to recover the greater of all of his or her actual damages or two hundred fifty dollars (\$250) per employee per violation for an initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, may recover costs and reasonable attorney's fees.
 - a) Provides however, that such an action may not be maintained, unless it is pleaded and proved that an employee was injured as a result of a violation of a labor law or regulation in connection with the performance of the contract or agreement.
 - 8) Provides that an employee aggrieved by a violation may also bring an action for injunctive relief and, upon prevailing, may recover costs and reasonable attorney's fees.
 - 9) Defines "construction, farm labor, garment, janitorial, or security guard contractor" to include any person, as defined in this code, whether or not licensed, who is acting in the capacity of a construction, farm labor, garment janitorial, or security guard contractor.
 - 10) Defines the term "knows" to include the knowledge, arising from familiarity with the normal facts and circumstances of the business activity engaged in, that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable laws.
 - 11) Defines the term "should know" to include the knowledge of

any additional facts or information that would make a reasonably prudent person undertake to inquire whether, taken together, the contract or agreement contains sufficient funds to allow the contractor to comply with applicable laws.

- 12) Clarifies that failure by a person or entity to request or obtain any information from the contractor that is required by any applicable statute or by the contract or agreement between them, constitutes knowledge of that information for purposes of this section.

EXISTING LAW Existing law provides a framework of labor law enforcement of, among other things, minimum standards for wages, hours, conditions of employment, and occupational safety and health by the Department of Industrial Relations (DIR). The Employment Development Department administers the unemployment insurance, and state disability insurance programs, and requires that employers pay specified employee payroll taxes.

FISCAL EFFECT : Unknown

COMMENTS :

The author contends that California's underground economy produces well over \$60 billion a year in goods and services. Many businesses pay little or no taxes and skirt minimum wage and other labor laws. Accordingly, these businesses are able to turn in unreasonably low bids. These businesses are unfair competition to law-abiding employers, who can not meet the low bid's offered by these law breakers.

According to the author, the purpose of the bill is twofold. To declare California state policy regarding financially insufficient contracts in the construction, agricultural, garment, janitorial and security guard industries and to encourage contractors to voluntarily agree to put their contracts in writing. Additionally, The bill attacks the hidden use of unfair economic leverage to influence labor contractors to enter into contracts that are financially inadequate to permit the contractor to comply with applicable local, state and federal laws.

Supporters, Service Employees International Union (SEIU), states that evidence of labor law violations has mounted over the past two decades in the industries that this bill covers, and that subcontractors compete for work by undercutting their bids so

deeply that they cannot financially comply with the state's existing labor laws. This underpricing of contracts perpetuates the underground economy where scofflaw employers avoid paying minimum wages, overtime pay and contributions to federal and state social insurance programs such as Social Security, Unemployment Insurance and Workers' Compensation.

Co-Sponsors, California Labor Federation, AFL-CIO state that in 2000, the U.S. Department of Labor found that only one in three garment manufacturing shops in the Los Angeles were in compliance with federal minimum wage and overtime law. The Maintenance Cooperation Trust Fund (MCTF), a janitorial industry watchdog, surveyed over 200 retail markets in Southern California, identified 38 subcontractors, of which 31 contracted with a prime contractor. The MCTF identified possible labor law violations in all 31 subcontractors. The most common violations were failure to pay the minimum wage, failure to pay overtime and payment of wages in cash without deductions.

California Labor Federation also cite a recent legislative oversight hearing of the Department of Industrial Relations Enforcement Activities, where the President of Mr. Clean Maintenance Systems, demonstrated how law-abiding employers get undercut in the contracting business. His contract to clean a 50,000 square foot retail space, after meeting minimum wage and federal and state contribution requirements, was estimated at \$1,467 per week. His competitor pays a monthly salary that works out to be less than minimum wage. Pays nothing in worker tax contributions, and bid its work at \$901 per week, undercutting Mr. Clean by nearly 39%.

Arguments in opposition:

According to the Building Owners and Managers Association of California and the California Grocers Association the bill would force building owners and grocers to investigate the business operations of every covered contractor they do business with, or may do business with, in order to avoid prosecution, particularly under the "should have known" standard.

The opposition contends that this bill would preclude them from being able to seek out the lowest responsible bidder for competitive contracts, because in order to comply with this bill, they would have to request information from contractors which "goes way beyond the relationship established."

The opposition suggests, that rather than "placing building owners and grocers in the position of labor cop? it would be more prudent and practical to require building owners and grocers to include statements in the contract they award that the contractor is bound to abide by all pertinent state and federal labor laws."

REGISTERED SUPPORT / OPPOSITION :

Support

American Federation of State, County and Municipal Employees, (AFSCME)
California Association of License Security Agencies, Guards & Associates
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Labor Federation, AFL-CIO
California Rural Legal Assistance Foundation, (CRLA)
California Teamsters Public Affairs Council
Engineers and Scientists of California
Garment Worker Center
Hotel Employees, Restaurant Employees International Union
Maintenance Cooperation Trust Fund
Mexican American Legal Defense and Educational Fund
Pacific Association of Building Service Contractors, (PABSCO)
Service Employees International Union, (Sponsor)
Sweatshop Watch
United Food and Commercial Workers Region 8 States Council
United Steel Workers of America

Opposition

Agricultural Council of California
Building Owners and Managers Association of California
California Association of Sanitation Agencies
California Business Properties Association
California Chamber of Commerce
California Citrus Mutual
California Farm Bureau Federation
California Grape & Tree Fruit League
California Grocers Association
California Manufacturers & Technology Association
California Restaurant Association
California Retailers Association

City of Chula Vista
City of Lakewood
County Sanitation Districts of Los Angeles County
East Bay Municipal Utility District
League of California Cities
Nisei Farmers League
Western Growers Association
Wine Institute

Analysis Prepared by : Liberty Sanchez / L. & E. / (916)
319-2091

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BILL ANALYSIS

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Date of Hearing: August 7, 2002

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Darrell Steinberg, Chair

SB 1466 (Alarcon) - As Amended: July 3, 2002

Policy Committee: Labor and
Employment Vote: 6-1

Urgency: No State Mandated Local Program:
No Reimbursable:

SUMMARY

This bill makes it a violation of state law for any person or entity to enter into a contract for labor or services, in specified industries if the person or entity knows or should know that the contract does not provide sufficient funds to comply with various laws, and allows employees to recover actual damages through civil action. Specifically, this bill:

- 1) Prohibits a person or entity from entering into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, or security guard contractor, where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.
- 2) Requires an employee, to maintain an action under the provisions of this bill, to plead and prove that the employee

was injured as a result of a violation of a labor law or regulation in connection with the performance of the contract or agreement.

3)Creates a rebuttable presumption affecting the burden of proof that there has been no violation where the contract or agreement is in writing,

4)Exempts from the provisions of this bill:

a) A person or entity who executes a collective bargaining agreement covering the workers employed under the contract

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or agreement, or

b) A person who enters into a contract or agreement for labor or services to be performed on his or her primary residence.

FISCAL EFFECT

No state fiscal impact. The bill provides for a civil enforcement remedy.

COMMENTS

1)Rationale . According to the author, the purpose of the bill is twofold. To declare California state policy regarding financially insufficient contracts in the construction, agricultural, garment, janitorial and security guard industries and to encourage contractors to voluntarily agree to put their contracts in writing. Additionally, the bill attacks the hidden use of unfair economic leverage to influence labor contractors to enter into contracts that are financially inadequate to permit the contractor to comply with applicable local, state and federal laws.

2)Opposition . The Building Owners and Managers Association of California and the California Grocers Association contend that the bill forces building owners and grocers to investigate the business operations of every covered contractor with whom they transact business, in order to avoid prosecution, particularly under the "should have known" standard. This may preclude business owners from being able to seek out the lowest responsible bidder for competitive contracts.

3)Prior Legislation . AB 638 (Steinberg) of 2001, which remains

on the Assembly Inactive File, required that a contract between an agricultural grower and a farm labor contractor be in writing.

Analysis Prepared by : Stephen Shea / APPR. / (916) 319-2081

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BILL ANALYSIS

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SENATE THIRD READING
SB 1466 (Alarcon)
As Amended July 3, 2002
Majority vote

SENATE VOTE :21-14

LABOR AND EMPLOYMENT 6-1 APPROPRIATIONS 14-7

| | | | |
|-------|--|-------|--|
| Ayes: | Koretz, Negrete McLeod, Chu, Havice, Migden, Shelley | Ayes: | Steinberg, Alquist, Aroner, Cohn, Corbett, Diaz, Firebaugh, Goldberg, Negrete McLeod, Papan, Pavley, Simitian, Washington, Wright |
| Nays: | Wyland | Nays: | Bates, Ashburn, Daucher, Maldonado, Robert Pacheco, Dickerson, Zettel |

SUMMARY : Provides that any person or entity that enters into a contract for labor or services, in specified industries, that knows or should know that the contract does not provide sufficient funds to comply with various laws, violates state law, and enables employees to recover actual damages through civil action. Provides a rebuttable presumption that a person or entity that enters into a voluntary written agreement with specified criteria does not violate the proposed law. Specifically, this bill :

- 1)Exempts from this prohibition against entering into such contracts, a person or entity who executes a collective bargaining agreement covering the workers employed under the

contract or agreement, or to a person who enters into a contract or agreement for labor or services to be performed on his or her primary residence.

- 2) Creates a rebuttable presumption affecting the burden of proof that there has been no violation where the contract or agreement is in writing, in a single document, and contains specified provisions, including employer information, a

description of services to be provided, amount of commission paid and workers' compensation information.

- 3) Provides that an employee aggrieved by a violation of may file an action for damages to recover the greater of all of his or her actual damages or two hundred fifty dollars (\$250) per employee per violation for an initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, may recover costs and reasonable attorney's fees.

Provides however, that such an action may not be maintained, unless it is pleaded and proved that an employee was injured as a result of a violation of a labor law or regulation in connection with the performance of the contract or agreement.

- 4) Provides that an employee aggrieved by a violation may also bring an action for injunctive relief and, upon prevailing, may recover costs and reasonable attorney's fees.
- 5) Defines the term "knows" to include the knowledge, arising from familiarity with the normal facts and circumstances of the business activity engaged in, that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable laws.
- 6) Defines the term "should know" to include the knowledge of any additional facts or information that would make a reasonably prudent person undertake to inquire whether, taken together, the contract or agreement contains sufficient funds to allow the contractor to comply with applicable laws.

EXISTING LAW provides a framework of labor law enforcement of, among other things, minimum standards for wages, hours, conditions of employment, and occupational safety and health by the Department of Industrial Relations (DIR). The Employment

Development Department administers the unemployment insurance, and state disability insurance programs, and requires that employers pay specified employee payroll taxes.

FISCAL EFFECT : According to the Assembly Appropriations committee, no state fiscal impact.

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COMMENTS : The author contends that California's underground economy produces well over \$60 billion a year in goods and services. Many businesses pay little or no taxes and skirt minimum wage and other labor laws. Accordingly, these businesses are able to turn in unreasonably low bids. These businesses are unfair competition to law-abiding employers, who can not meet the low bids offered by these law breakers.

According to the author, the purpose of the bill is twofold. To declare California state policy regarding financially insufficient contracts in the construction, agricultural, garment, janitorial and security guard industries and to encourage contractors to voluntarily agree to put their contracts in writing. Additionally, the bill attacks the hidden use of unfair economic leverage to influence labor contractors to enter into contracts that are financially inadequate to permit the contractor to comply with applicable local, state and federal laws.

Supporters state that evidence of labor law violations has mounted over the past two decades in the industries that this bill covers, and that subcontractors compete for work by undercutting their bids so deeply that they cannot financially comply with the state's existing labor laws. This under pricing of contracts perpetuates the underground economy where scofflaw employers avoid paying minimum wages, overtime pay and contributions to federal and state social insurance programs such as Social Security, Unemployment Insurance and Workers' Compensation.

Opponents contend that the bill would force building owners and grocers to investigate the business operations of every covered contractor they do business with, or may do business with, in order to avoid prosecution, particularly under the "should have known" standard.

Additionally, opponents assert that this bill would preclude them from being able to seek out the lowest responsible bidder for competitive contracts, because in order to comply with this

bill, they would have to request information from contractors which "goes way beyond the relationship established."

Analysis Prepared by : Liberty Sanchez / L. & E. / (916)
319-2091 FN: 0006181

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BILL ANALYSIS

SB 1466
Page 1

SENATE THIRD READING
SB 1466 (Alarcon)
As Amended August 20, 2002
Majority vote

SENATE VOTE : 21-14

LABOR AND EMPLOYMENT 6-1 APPROPRIATIONS 14-7

| | | | |
|-------|--|-------|--|
| Ayes: | Koretz, Negrete McLeod, Chu, Havice, Migden, Shelley | Ayes: | Steinberg, Alquist, Aroner, Cohn, Corbett, Diaz, Firebaugh, Goldberg, Negrete McLeod, Papan, Pavley, Simitian, Washington, Wright |
| Nays: | Wyland | Nays: | Bates, Ashburn, Daucher, Maldonado, Robert Pacheco, Dickerson, Zettel |

SUMMARY : Provides that any person or entity that enters into a contract for labor or services, in specified industries, that knows or should know that the contract does not provide sufficient funds to comply with various laws, violates state law, and enables employees to recover actual damages through civil action. Provides a rebuttable presumption that a person or entity that enters into a voluntary written agreement with specified criteria does not violate the proposed law. Specifically, this bill :

- 1)Exempts from the prohibition against entering into such contract:
 - a) A person or entity who executes a collective bargaining

agreement covering the workers employed under the contract or agreement; and,

- b) A person who enters into a contract or agreement for labor or services to be performed on his or her home residence(s), provided that a family member resides in the residence(s) for which the labor or services are to be

performed for at least a part of the year.

2)Creates a rebuttable presumption affecting the burden of proof that there has been no violation where the contract or agreement is in writing, in a single document, and contains specified provisions, including employer information, a description of services to be provided, amount of commission paid and workers' compensation information.

3)Provides that an employee aggrieved by a violation of this bill may file an action for damages.

Provides however, that such an action may not be maintained, unless it is pleaded and proved that an employee was injured as a result of a violation of a labor law or regulation in connection with the performance of the contract or agreement.

4)Provides that an employee aggrieved by a violation may also bring an action for injunctive relief and, upon prevailing, may recover costs and reasonable attorney's fees.

5)Defines the term "should know" to include the knowledge of any additional facts or information that would make a reasonably prudent person undertake to inquire whether, taken together, the contract or agreement contains sufficient funds to allow the contractor to comply with applicable laws.

EXISTING LAW provides a framework of labor law enforcement of, among other things, minimum standards for wages, hours, conditions of employment, and occupational safety and health by the Department of Industrial Relations (DIR). The Employment Development Department administers the unemployment insurance, and state disability insurance programs, and requires that employers pay specified employee payroll taxes.

FISCAL EFFECT : According to the Assembly Appropriations committee, no state fiscal impact.

COMMENTS : The author contends that California's underground economy produces well over \$60 billion a year in goods and services. Many businesses pay little or no taxes and skirt minimum wage and other labor laws. Accordingly, these businesses are able to turn in unreasonably low bids. These businesses are unfair competition to law-abiding employers, who

can not meet the low bids offered by these law breakers.

According to the author, the purpose of the bill is twofold. To declare California state policy regarding financially insufficient contracts in the construction, agricultural, garment, janitorial and security guard industries and to encourage contractors to voluntarily agree to put their contracts in writing. Additionally, the bill attacks the hidden use of unfair economic leverage to influence labor contractors to enter into contracts that are financially inadequate to permit the contractor to comply with applicable local, state and federal laws.

Supporters state that evidence of labor law violations has mounted over the past two decades in the industries that this bill covers, and that subcontractors compete for work by undercutting their bids so deeply that they cannot financially comply with the state's existing labor laws. This under pricing of contracts perpetuates the underground economy where scofflaw employers avoid paying minimum wages, overtime pay and contributions to federal and state social insurance programs such as Social Security, Unemployment Insurance and Workers' Compensation.

Opponents contend that the bill would force building owners and grocers to investigate the business operations of every covered contractor they do business with, or may do business with, in order to avoid prosecution, particularly under the "should have known" standard.

Proponents contend that the legal standard within this bill mirrors at least 16 other provisions within California Code, such as Public Contract Code Section 6108 which requires those contracting with state agencies to certify that no foreign-made equipment or supplies furnished to the state have been made with forced or convict labor, and, allows the state agency to take sanctions against the contractor if the contractor knew or should have known that they were in violation.

Analysis Prepared by : Liberty Sanchez / L. & E. / (916)
319-2091 FN: 0006666

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BILL ANALYSIS

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|---------------------------------|---------|
| SENATE RULES COMMITTEE | SB 1466 |
| Office of Senate Floor Analyses | |
| 1020 N Street, Suite 524 | |
| (916) 445-6614 Fax: (916) | |
| 327-4478 | |

UNFINISHED BUSINESS

Bill No: SB 1466
Author: Alarcon (D)
Amended: 8/20/02
Vote: 21

SENATE LABOR & IND. RELATIONS COMMITTEE : 5-2, 5/14/02
AYES: Alarcon, Figueroa, Kuehl, Polanco, Romero
NOES: McClintock, Oller

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SENATE FLOOR : 21-14, 5/29/02
AYES: Alarcon, Alpert, Bowen, Burton, Chesbro, Dunn,
Escutia, Figueroa, Karnette, Kuehl, Murray, O'Connell,
Ortiz, Perata, Polanco, Romero, Scott, Sher, Soto,
Torlakson, Vasconcellos
NOES: Ackerman, Battin, Costa, Haynes, Johannessen,
Johnson, Knight, Margett, McClintock, McPherson,
Monteith, Morrow, Oller, Poochigian

ASSEMBLY FLOOR : 44-26, 8/23/02 - See last page for vote

SUBJECT : Contracts for labor or services

SOURCE : California Labor Federation, AFL-CIO
Service Employees International Union
Garment Worker Center
Maintenance Cooperation Trust Fund
California Rural legal Assistance Foundation

DIGEST : This bill provides that any person or entity
CONTINUED

SB 1466
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that enters into a contract for labor or services, in specified industries, that knows or should know that the contract does not provide sufficient funds to comply with various laws, violates state law, and employees would be able to recover actual damages through civil action. The bill also provides a rebuttable presumption that a person or entity that enters into a voluntary written agreement with specified criteria does not violate the proposed law.

Assembly amendments (a) provide that an action may not be maintained unless it is pleaded and proved that an employee was injured as a result of a violation of a labor law in connection with the performance of the contract; (b) clarify "home residence"; and (c) add co-authors.

ANALYSIS : Existing law provides a framework of labor law enforcement of, among other things, minimum standards for wages, hours, conditions of employment, and occupational safety and health by the Department of Industrial Relations (DIR). The Employment Development Department administers the unemployment insurance, and state disability insurance programs, and requires that employers pay specified employee payroll taxes.

This bill provides that any person or entity that enters into a contract for labor or services for construction, farm labor, garment manufacturing, janitorial services, or security guard services, that knows or should know that the contract does not provide sufficient funds to comply with various local, state, and federal labor laws, violates state law. The bill enables employees to recover actual damages through civil action. Provides a rebuttable presumption that a person or entity that enters into a voluntary written agreement with specified criteria does not violate the proposed law. Specifically, this bill:

1. Exempts from the prohibition against entering into such contract:
 - A. A person or entity who executes a collective bargaining agreement covering the workers employed under the contract or agreement.
 - B. A person who enters into a contract or agreement

for labor or services to be performed on his or her home residence(s), provided that a family member resides in the residence(s) for which the labor or services are to be performed for at least a part of the year.

1. Creates a rebuttable presumption affecting the burden of proof that there has been no violation where the contract or agreement is in writing, in a single document, and contains specified provisions, including employer information, a description of services to be provided, amount of commission paid and workers' compensation information.
2. Provides that an employee aggrieved by a violation of this bill may file an action for damages.
3. Provides however, that such an action may not be maintained, unless it is pleaded and proved that an employee was injured as a result of a violation of a labor law or regulation in connection with the performance of the contract or agreement.
4. Provides that an employee aggrieved by a violation may also bring an action for injunctive relief and, upon prevailing, may recover costs and reasonable attorney's fees.
5. Defines the term "should know" to include the knowledge of any additional facts or information that would make a reasonably prudent person undertake to inquire whether, taken together, the contract or agreement contains sufficient funds to allow the contractor to comply with applicable laws.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

SUPPORT : (Verified 5/20/02) (unable to re-verify at time of writing)

California Labor Federation, AFL-CIO (co-source)
Service Employees International Union (co-source)
Garment Worker Center (co-source)

Maintenance Cooperation Trust Fund (co-source)
 California Rural legal Assistance Foundation (co-source)
 American Federation of State, County, and Municipal
 Employees
 Asian Law Caucus
 California Association of Licensed Security Agencies,
 Guards and Associates
 California Conference Board of Amalgamated Transit Union
 California Conference of Machinists
 California Teamsters Public Affairs Council
 Coalition for Humane Immigrant Rights of Los Angeles
 Coalition of Immigrant Worker Organizations
 Engineers and Scientists of California
 Garment Workers Center
 Hotel Employees, Restaurant Employees International Union
 Jockeys' Guild
 Mexican American Legal Defense and Educational Fund
 Pacific Association of Building Service Contractors
 Region 8 States Council, United Food and Commercial Workers
 Union
 Service Employees International Union, Local 1877
 State Building and Construction Trades Council of
 California
 Sweatshop Watch
 Teamsters Public Affairs Council
 United Farm Workers of America
 United Food and Commercial Workers Union Region 8 States
 Council

OPPOSITION : (Verified 5/20/02) (unable to re-verify at time of writing)

Agricultural Council of California
 Building Owners and Managers Association of California
 California Association of Sanitation Agencies
 California Building Industry Association
 California Business Properties Association
 California Chamber of Commerce
 California Farm Bureau Federation
 California Grape and Tree Fruit League
 California Grocers Association
 California Manufacturers and Technology Association (CMTA)
 California Restaurant Association (CRA)
 California Retailers Association

City of Lakewood
County Sanitation Districts of Los Angeles County
East Bay Municipal Utility District
League of California Cities
Western Growers Association

ARGUMENTS IN SUPPORT : Proponents argue that this bill attacks the hidden use of unfair economic leverage to influence labor contractors to enter into contracts that are financially inadequate to permit the contractor to comply with applicable laws. While employers usually claim they are unaware of abuses committed by their contractors, the reality is just the opposite. This bill does not require written contracts, rather it encourages them for sound business practices.

Some janitorial and security guard industry representatives state that this measure is necessary to weed out illegal and unethical employers in their industries.

Supporters cite federal and state evidence of Underground Economy enterprises that are unfair competition to law-abiding employers. These lawless operations pay little or no taxes, and fail to abide by minimum labor standards. Industry examples are highlighted:

In the garment industry, the US Department of Labor estimates that 67 percent of Los Angeles garment shops violated minimum wage and overtime laws. Also, many contractors claim that they were not given sufficient funds by principal garment manufacturers to pay workers.

In the janitorial industry, industry supporters of this measure argue that a massive influx of unethical contractors have been given the upper hand in competing for cleaning contracts, and are ruining law-abiding businesses.

In agriculture, various surveys show that most growers using farm labor contractors were paying fees so low that either the government was not receiving mandate taxes, or else the farm workers were being paid below the minimum wage.

Construction labor law violations typically involve use of

bad checks, cash pay, and no workers' compensation insurance coverage.

ARGUMENTS IN OPPOSITION : Opponents from the covered industries argue that this bill would require contracts to include several onerous and burdensome requirements that a normal contract for labor in any other industry would not require. Small companies who are suffering financially at the present time can ill afford additional costs of hiring an attorney to draft a contract every time they use a specialty contractor, just to obtain a rebuttable presumption that there has been no violations of law.

The Western Growers Association calls this bill a back door attempt to make a grower liable for the actions of a farm labor contractor. Growers would have to audit the financial records of their contractors every time to ensure that monies were spent in the proper fashion to be in compliance with labor laws.

The California Farm Bureau Federation states that the supporters wrongly assume that harm necessarily flows from business contracts. This measure makes law-abiding employers law breakers for engaging in lawful business transactions from which no harm results. It would also have the unintended consequence of hurting a contractor's employees by denying them work opportunities in such situations.

Representatives from retailers and building owners argue that the requirement that they "know" or "should have known" is problematic because it places them in a position of possible liability. Most businesses seek the lowest responsible bidder for competitive contracts. They leave it up to the bidding contractor to determine how to deliver the services requested at the most affordable price, and must maintain a belief that the contractor's bid is not based on illegal activities.

A possible amendment suggested by retailers and building owners is to simply require contractual language binding the contractor to be in compliance with all applicable labor laws.

Other opponents argue that some of the criteria required of the safe harbor of a rebuttable presumption is typically not known at the time of contracting, and, as a result, businesses and public agencies would be exposed to civil liability.

ASSEMBLY FLOOR :

AYES: Alquist, Aroner, Calderon, Canciamilla, Cardenas, Chan, Chavez, Chu, Cohn, Corbett, Correa, Diaz, Dutra, Firebaugh, Florez, Frommer, Goldberg, Havice, Hertzberg, Horton, Jackson, Keeley, Kehoe, Koretz, Liu, Longville, Lowenthal, Migden, Nakano, Nation, Negrete McLeod, Oropeza, Pavley, Reyes, Shelley, Simitian, Steinberg, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wright, Wesson

NOES: Aanestad, Ashburn, Bogh, Briggs, John Campbell, Cardoza, Cogdill, Cox, Daucher, Dickerson, Harman, Hollingsworth, Kelley, La Suer, Leach, Leonard, Leslie, Maldonado, Robert Pacheco, Rod Pacheco, Papan, Pescetti, Richman, Wyland, Wyman, Zettel

NC:s1 8/26/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

2. TEXT OF ALL AMENDMENTS TO SB 1466

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BILL NUMBER: SB 1466 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Alarcon
(Principal coauthor: Assembly Member Steinberg)

FEBRUARY 15, 2002

An act to add Section 2810 to the Labor Code, relating to contracts for labor or services.

LEGISLATIVE COUNSEL'S DIGEST

SB 1466, as introduced, Alarcon. Contracts for labor or services.

Existing law imposes various requirements on individuals contracting for labor or services with construction, farm labor, garment, or janitorial contractors.

This bill would provide that any person or entity who enters into a labor contract for construction, farm labor, garment, or janitorial services when the person or entity knows or should know that the contract does not provide funds sufficient to allow the labor contractor to comply with all applicable laws or regulations governing the labor or services to be provided under the contract, is guilty of a misdemeanor and subject to specified civil penalties. By establishing a new crime, the bill would impose a state-mandated local program.

The bill would establish a rebuttable presumption that a person or entity entering in such a contract for labor or services does not violate the bill's provisions if the labor contract or material change to the labor contract meets specified requirements. The bill would not apply to persons or entities who have executed certain collective bargaining agreements.

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.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2810 is added to the Labor Code, to read:

2810. (a) A person or entity may not enter into a contract or agreement for labor or services with a construction, farm labor, garment, or janitorial contractor, where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable state and federal laws or regulations governing the labor or services to be provided.

(b) There is a rebuttable presumption affecting the burden of proof that there has been no violation of subdivision (a) where the contract or agreement with a construction, farm labor, garment, or janitorial contractor meets all of the requirements in subdivision (d).

(c) Subdivision (a) does not apply to a person or entity who executes a collective bargaining agreement covering the workers employed under the contract or agreement.

(d) To meet the requirements of subdivision (b), a contract or agreement with a construction, farm labor, garment, or janitorial contractor for labor or services must be in writing, in a single document, and contain all of the following provisions, in addition to any other provisions as may be required by regulations adopted by the Labor Commissioner from time to time:

(1) The name, address, and telephone number of the person or entity and the construction, farm labor, garment, or janitorial contractor through whom the labor or services are to be provided.

(2) A description of the labor or services to be provided and a

statement of when those services are to be commenced and completed.

(3) The employer identification number for state tax purposes of the construction, farm labor, garment, or janitorial contractor.

(4) The workers' compensation insurance policy number and the name, address, and telephone number of the insurance carrier of the construction, farm labor, garment, or janitorial contractor.

(5) The vehicle identification number of any vehicle that is owned by the construction, farm labor, garment, or janitorial contractor and used for transportation in connection with any service provided pursuant to the contract or agreement, the number of the vehicle liability insurance policy that covers the vehicle, and the name, address, and telephone number of the insurance carrier.

(6) The address of any real property to be used to house workers in connection with the contract or agreement.

(7) The total number of workers to be employed under the contract or agreement, the total amount of all wages to be paid, and the date or dates when those wages are to be paid.

(8) The amount of the commission or other payment made to the construction, farm labor, garment, or janitorial contractor for services under the contract or agreement.

(e) To qualify for the rebuttable presumption set forth in subdivision (b), a material change to the terms and conditions of a contract or agreement between a person or entity and a construction, farm labor, garment, or janitorial contractor must be in writing, in a single document, and contain all of the provisions listed in subdivision (d) that are affected by the change.

(f) A person or entity who enters into a contract or agreement referred to in subdivisions (d) or (e) shall keep a copy of the written contract or agreement for a period of not less than four years following the termination of the contract or agreement.

(g) (1) A person or entity who violates subdivision (a), or causes or induces another to violate subdivision (a), is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or imprisonment in the county jail for not more than six months, or both.

(2) A person or entity who violates subdivision (a) is also subject to a civil penalty, enforced by the Labor Commissioner, in the amount of two hundred fifty dollars (\$250) per employee for each violation in an initial citation and one thousand dollars (\$1,000) per employee for each subsequent violation.

(3) An employee aggrieved by a violation of subdivision (a) may recover the greater of all of his or her actual damages or two hundred fifty dollars (\$250) per employee per violation for an initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, may recover costs and reasonable attorney's fees.

(4) An employee aggrieved by a violation of subdivision (a) may also bring an action for injunctive relief and, upon prevailing, may recover costs and reasonable attorney's fees.

(h) The phrase "construction, farm labor, garment, or janitorial contractor" includes any person, as defined in this code, whether or not licensed, who is acting in the capacity of a construction, farm labor, garment or janitorial contractor.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district

will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIIB of the California Constitution.

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BILL NUMBER: SB 1466 AMENDED
BILL TEXT

AMENDED IN SENATE MAY 6, 2002

INTRODUCED BY Senator Alarcon
(Principal coauthor: Assembly Member Steinberg)

FEBRUARY 15, 2002

An act to add Section 2810 to the Labor Code, relating to contracts for labor or services.

LEGISLATIVE COUNSEL'S DIGEST

SB 1466, as amended, Alarcon. Contracts for labor or services.

Existing law imposes various requirements on individuals contracting for labor or services with construction, farm labor, garment, ~~or~~ janitorial , or security guard contractors.

This bill would provide that any person or entity who enters into a labor contract for construction, farm labor, garment, ~~or~~ janitorial , or security guard services when the person or entity knows or should know that the contract does not provide funds sufficient to allow the labor contractor to comply with all applicable laws or regulations governing the labor or services to be provided under the contract, is guilty of a misdemeanor and subject to specified civil penalties. By establishing a new crime, the bill would impose a state-mandated local program.

The bill would establish a rebuttable presumption that a person or entity entering in such a contract for labor or services does not violate the bill's provisions if the labor contract or material change to the labor contract meets specified requirements. The bill would not apply to persons or entities who have executed certain collective bargaining agreements.

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.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2810 is added to the Labor Code, to read:

2810. (a) A person or entity may not enter into a contract or agreement for labor or services with a construction, farm labor, garment, ~~or janitorial~~ janitorial, or security guard contractor, where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable ~~state~~ local, state, and federal laws or regulations governing the labor or services to be provided.

(b) There is a rebuttable presumption affecting the burden of proof that there has been no violation of subdivision (a) where the contract or agreement with a construction, farm labor, garment, ~~or janitorial~~ janitorial, or security guard contractor meets all of the requirements in subdivision (d).

(c) Subdivision (a) does not apply to a person or entity who executes a collective bargaining agreement covering the workers employed under the contract or agreement.

(d) To meet the requirements of subdivision (b), a contract or agreement with a construction, farm labor, garment, ~~or~~ ~~janitorial~~ janitorial, or security guard contractor for labor or services must be in writing, in a single document, and contain all of the following provisions, in addition to any other provisions as may be required by regulations adopted by the Labor Commissioner from time to time:

(1) The name, address, and telephone number of the person or entity and the construction, farm labor, garment, ~~or~~ ~~janitorial~~ janitorial, or security guard contractor through whom the labor or services are to be provided.

(2) A description of the labor or services to be provided and a statement of when those services are to be commenced and completed.

(3) The employer identification number for state tax purposes of the construction, farm labor, garment, ~~or janitorial~~ janitorial, or security guard contractor.

(4) The workers' compensation insurance policy number and the name, address, and telephone number of the insurance carrier of the construction, farm labor, garment, ~~or janitorial~~ janitorial, or security guard contractor.

(5) The vehicle identification number of any vehicle that is owned by the construction, farm labor, garment, ~~or janitorial~~ janitorial, or security guard contractor and used for transportation in connection with any service provided pursuant to the contract or agreement, the number of the vehicle liability insurance policy that covers the vehicle, and the name, address, and telephone number of the insurance carrier.

(6) The address of any real property to be used to house workers in connection with the contract or agreement.

(7) The total number of workers to be employed under the contract or agreement, the total amount of all wages to be paid, and the date or dates when those wages are to be paid.

(8) The amount of the commission or other payment made to the construction, farm labor, garment, ~~or janitorial~~ janitorial, or security guard contractor for services under the contract or agreement.

(9) The total number of persons who will be utilized under the contract or agreement as independent contractors, along with a list

of the current local, state, and federal contractor license identification numbers that the independent contractors are required to have under local, state, or federal laws or regulations.

(e) To qualify for the rebuttable presumption set forth in subdivision (b), a material change to the terms and conditions of a contract or agreement between a person or entity and a construction, farm labor, garment, ~~or janitorial~~ *janitorial, or security guard* contractor must be in writing, in a single document, and contain all of the provisions listed in subdivision (d) that are affected by the change.

(f) A person or entity who enters into a contract or agreement referred to in subdivisions (d) or (e) shall keep a copy of the written contract or agreement for a period of not less than four years following the termination of the contract or agreement.

(g) (1) A person or entity who violates subdivision (a), or causes or induces another to violate subdivision (a), is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or imprisonment in the county jail for not more than six months, or both.

(2) A person or entity who violates subdivision (a) is also subject to a civil penalty, enforced by the Labor Commissioner, in the amount of two hundred fifty dollars (\$250) per employee for each violation in an initial citation and one thousand dollars (\$1,000) per employee for each subsequent violation.

(3) An employee aggrieved by a violation of subdivision (a) may recover the greater of all of his or her actual damages or two hundred fifty dollars (\$250) per employee per violation for an initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, may recover costs and reasonable attorney's fees.

(4) An employee aggrieved by a violation of subdivision (a) may also bring an action for injunctive relief and, upon prevailing, may recover costs and reasonable attorney's fees.

(h) The phrase "construction, farm labor, garment, ~~or janitorial~~ *janitorial, or security guard* contractor" includes any person, as defined in this code, whether or not licensed, who is acting in the capacity of a construction, farm labor, garment ~~or janitorial~~ *janitorial, or security guard* contractor.

(i) (1) The term "knows" includes the knowledge, arising from familiarity with the normal facts and circumstances of the business activity engaged in, that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable laws.

(2) The phrase "should know" includes the knowledge of any additional facts or information that would make a reasonably prudent person undertake to inquire whether, taken together, the contract or agreement contains sufficient funds to allow the contractor to comply with applicable laws.

(3) A failure by a person or entity to request or obtain any information from the contractor that is required by any applicable statute or by the contract or agreement between them, constitutes knowledge of that information for purposes of this section.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school

district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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BILL NUMBER: SB 1466 AMENDED
BILL TEXT

AMENDED IN SENATE MAY 15, 2002
AMENDED IN SENATE MAY 6, 2002

INTRODUCED BY Senator Alarcon
(Principal coauthor: Assembly Member Steinberg)

FEBRUARY 15, 2002

An act to add Section 2810 to the Labor Code, relating to contracts for labor or services.

LEGISLATIVE COUNSEL'S DIGEST

SB 1466, as amended, Alarcon. Contracts for labor or services.

Existing law imposes various requirements on individuals contracting for labor or services with construction, farm labor, garment, janitorial, or security guard contractors.

This bill would provide that any person or entity who enters into a labor contract for construction, farm labor, garment, janitorial, or security guard services when the person or entity knows or should know that the contract does not provide funds sufficient to allow the labor contractor to comply with all applicable laws or regulations governing the labor or services to be provided under the contract, is ~~guilty of a misdemeanor and~~ subject to *liability and* specified civil penalties. ~~By establishing a new crime, the bill would impose a state mandated local program.~~

The bill would establish a rebuttable presumption that a person or entity entering in such a contract for labor or services does not violate the bill's provisions if the labor contract or material change to the labor contract meets specified requirements. The bill would not apply to persons or entities who have executed certain collective bargaining agreements , *or to labor or services to be performed on a person's primary residence* .

~~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.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~yes~~ no .

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2810 is added to the Labor Code, to read:

2810. (a) A person or entity may not enter into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, or security guard contractor, where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

(b) There is a rebuttable presumption affecting the burden of proof that there has been no violation of subdivision (a) where the contract or agreement with a construction, farm labor, garment, janitorial, or security guard contractor meets all of the requirements in subdivision (d).

(c) Subdivision (a) does not apply to a person or entity who executes a collective bargaining agreement covering the workers employed under the contract or agreement , or to a person who enters into a contract or agreement for labor or services to be performed on his or her primary residence .

(d) To meet the requirements of subdivision (b), a contract or agreement with a construction, farm labor, garment, janitorial, or security guard contractor for labor or services must be in writing, in a single document, and contain all of the following provisions, in addition to any other provisions as may be required by regulations adopted by the Labor Commissioner from time to time:

(1) The name, address, and telephone number of the person or entity and the construction, farm labor, garment, janitorial, or security guard contractor through whom the labor or services are to be provided.

(2) A description of the labor or services to be provided and a statement of when those services are to be commenced and completed.

(3) The employer identification number for state tax purposes of the construction, farm labor, garment, janitorial, or security guard contractor.

(4) The workers' compensation insurance policy number and the name, address, and telephone number of the insurance carrier of the construction, farm labor, garment, janitorial, or security guard contractor.

(5) The vehicle identification number of any vehicle that is owned by the construction, farm labor, garment, janitorial, or security guard contractor and used for transportation in connection with any service provided pursuant to the contract or agreement, the number of the vehicle liability insurance policy that covers the vehicle, and the name, address, and telephone number of the insurance carrier.

(6) The address of any real property to be used to house workers in connection with the contract or agreement.

(7) The total number of workers to be employed under the contract or agreement, the total amount of all wages to be paid, and the date or dates when those wages are to be paid.

(8) The amount of the commission or other payment made to the construction, farm labor, garment, janitorial, or security guard contractor for services under the contract or agreement.

(9) The total number of persons who will be utilized under the contract or agreement as independent contractors, along with a list of the current local, state, and federal contractor license identification numbers that the independent contractors are required to have under local, state, or federal laws or regulations.

(e) (1) To qualify for the rebuttable presumption set forth in subdivision (b), a material change to the terms and conditions of a contract or agreement between a person or entity and a construction, farm labor, garment, janitorial, or security guard contractor must be in writing, in a single document, and contain all of the provisions listed in subdivision (d) that are affected by the change.

(2) *If a provision required to be contained in a contract or agreement pursuant to paragraph (7) or (9) of subdivision (d) is unknown at the time the contract or agreement is executed, the best estimate available at that time is sufficient to satisfy the requirements of subdivision (d). If an estimate is used in place of actual figures in accordance with this paragraph, the parties to the contract or agreement have a continuing duty to ascertain the information required pursuant to paragraph (7) or (9) of subdivision (d) and to reduce that information to writing in accordance with the requirements of paragraph (1) once that information becomes known.*

(f) A person or entity who enters into a contract or agreement referred to in subdivisions (d) or (e) shall keep a copy of the written contract or agreement for a period of not less than four years following the termination of the contract or agreement.

~~(g) (1) A person or entity who violates subdivision (a), or causes or induces another to violate subdivision (a), is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or imprisonment in the county jail for not more than six months, or both.~~

~~(2) A person or entity who violates subdivision (a) is also subject to a civil penalty, enforced by the Labor Commissioner, in the amount of two hundred fifty dollars (\$250) per employee for each violation in an initial citation and one thousand dollars (\$1,000) per employee for each subsequent violation.~~

~~(3) An employee aggrieved by a violation of subdivision (a) may file an action for damages to recover the greater of all of his or her actual damages or two hundred fifty dollars (\$250) per employee per violation for an initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, may recover costs and reasonable attorney's fees.~~

~~(4)~~

(2) An employee aggrieved by a violation of subdivision (a) may also bring an action for injunctive relief and, upon prevailing, may recover costs and reasonable attorney's fees.

(h) The phrase "construction, farm labor, garment, janitorial, or security guard contractor" includes any person, as defined in this code, whether or not licensed, who is acting in the capacity of a construction, farm labor, garment janitorial, or security guard contractor.

(i) (1) The term "knows" includes the knowledge, arising from familiarity with the normal facts and circumstances of the business activity engaged in, that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable

laws.

(2) The phrase "should know" includes the knowledge of any additional facts or information that would make a reasonably prudent person undertake to inquire whether, taken together, the contract or agreement contains sufficient funds to allow the contractor to comply with applicable laws.

(3) A failure by a person or entity to request or obtain any information from the contractor that is required by any applicable statute or by the contract or agreement between them, constitutes knowledge of that information for purposes of this section.

~~SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

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BILL NUMBER: SB 1466 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JULY 3, 2002
AMENDED IN SENATE MAY 15, 2002
AMENDED IN SENATE MAY 6, 2002

INTRODUCED BY Senator Alarcon
(Principal ~~coauthor: Assembly Member~~
coauthors: Assembly Members Koretz and Steinberg)

FEBRUARY 15, 2002

An act to add Section 2810 to the Labor Code, relating to contracts for labor or services.

LEGISLATIVE COUNSEL'S DIGEST

SB 1466, as amended, Alarcon. Contracts for labor or services.

Existing law imposes various requirements on individuals contracting for labor or services with construction, farm labor, garment, janitorial, or security guard contractors.

This bill would provide that any person or entity who enters into a labor contract for construction, farm labor, garment, janitorial, or security guard services when the person or entity knows or should know that the contract does not provide funds sufficient to allow the labor contractor to comply with all applicable laws or regulations governing the labor or services to be provided under the contract, is subject to liability and specified civil penalties.

The bill would establish a rebuttable presumption that a person or entity entering in such a contract for labor or services does not

violate the bill's provisions if the labor contract or material change to the labor contract meets specified requirements. The bill would not apply to persons or entities who have executed certain collective bargaining agreements, or to labor or services to be performed on a person's primary residence.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2810 is added to the Labor Code, to read:

2810. (a) A person or entity may not enter into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, or security guard contractor, where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

(b) There is a rebuttable presumption affecting the burden of proof that there has been no violation of subdivision (a) where the contract or agreement with a construction, farm labor, garment, janitorial, or security guard contractor meets all of the requirements in subdivision (d).

(c) Subdivision (a) does not apply to a person or entity who executes a collective bargaining agreement covering the workers employed under the contract or agreement, or to a person who enters into a contract or agreement for labor or services to be performed on his or her primary residence.

(d) To meet the requirements of subdivision (b), a contract or agreement with a construction, farm labor, garment, janitorial, or security guard contractor for labor or services must be in writing, in a single document, and contain all of the following provisions, in addition to any other provisions as may be required by regulations adopted by the Labor Commissioner from time to time:

(1) The name, address, and telephone number of the person or entity and the construction, farm labor, garment, janitorial, or security guard contractor through whom the labor or services are to be provided.

(2) A description of the labor or services to be provided and a statement of when those services are to be commenced and completed.

(3) The employer identification number for state tax purposes of the construction, farm labor, garment, janitorial, or security guard contractor.

(4) The workers' compensation insurance policy number and the name, address, and telephone number of the insurance carrier of the construction, farm labor, garment, janitorial, or security guard contractor.

(5) The vehicle identification number of any vehicle that is owned by the construction, farm labor, garment, janitorial, or security guard contractor and used for transportation in connection with any service provided pursuant to the contract or agreement, the number of the vehicle liability insurance policy that covers the vehicle, and the name, address, and telephone number of the insurance carrier.

(6) The address of any real property to be used to house workers in connection with the contract or agreement.

(7) The total number of workers to be employed under the contract or agreement, the total amount of all wages to be paid, and the date or dates when those wages are to be paid.

(8) The amount of the commission or other payment made to the construction, farm labor, garment, janitorial, or security guard contractor for services under the contract or agreement.

(9) The total number of persons who will be utilized under the contract or agreement as independent contractors, along with a list of the current local, state, and federal contractor license identification numbers that the independent contractors are required to have under local, state, or federal laws or regulations.

(e) (1) To qualify for the rebuttable presumption set forth in subdivision (b), a material change to the terms and conditions of a contract or agreement between a person or entity and a construction, farm labor, garment, janitorial, or security guard contractor must be in writing, in a single document, and contain all of the provisions listed in subdivision (d) that are affected by the change.

(2) If a provision required to be contained in a contract or agreement pursuant to paragraph (7) or (9) of subdivision (d) is unknown at the time the contract or agreement is executed, the best estimate available at that time is sufficient to satisfy the requirements of subdivision (d). If an estimate is used in place of actual figures in accordance with this paragraph, the parties to the contract or agreement have a continuing duty to ascertain the information required pursuant to paragraph (7) or (9) of subdivision (d) and to reduce that information to writing in accordance with the requirements of paragraph (1) once that information becomes known.

(f) A person or entity who enters into a contract or agreement referred to in subdivisions (d) or (e) shall keep a copy of the written contract or agreement for a period of not less than four years following the termination of the contract or agreement.

(g) (1) An employee aggrieved by a violation of subdivision (a) may file an action for damages to recover the greater of all of his or her actual damages or two hundred fifty dollars (\$250) per employee per violation for an initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, may recover costs and reasonable attorney's fees. *An action under this section may not be maintained unless it is pleaded and proved that an employee was injured as a result of a violation of a labor law or regulation in connection with the performance of the contract or agreement.*

(2) An employee aggrieved by a violation of subdivision (a) may also bring an action for injunctive relief and, upon prevailing, may recover costs and reasonable attorney's fees.

(h) The phrase "construction, farm labor, garment, janitorial, or security guard contractor" includes any person, as defined in this code, whether or not licensed, who is acting in the capacity of a construction, farm labor, garment janitorial, or security guard contractor.

(i) (1) The term "knows" includes the knowledge, arising from familiarity with the normal facts and circumstances of the business activity engaged in, that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable laws.

(2) The phrase "should know" includes the knowledge of any additional facts or information that would make a reasonably prudent

person undertake to inquire whether, taken together, the contract or agreement contains sufficient funds to allow the contractor to comply with applicable laws.

(3) A failure by a person or entity to request or obtain any information from the contractor that is required by any applicable statute or by the contract or agreement between them, constitutes knowledge of that information for purposes of this section.

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BILL NUMBER: SB 1466 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY AUGUST 20, 2002
AMENDED IN ASSEMBLY JULY 3, 2002
AMENDED IN SENATE MAY 15, 2002
AMENDED IN SENATE MAY 6, 2002

INTRODUCED BY Senator Alarcon
(Principal coauthors: Assembly Members Koretz and Steinberg)

FEBRUARY 15, 2002

An act to add Section 2810 to the Labor Code, relating to contracts for labor or services.

LEGISLATIVE COUNSEL'S DIGEST

SB 1466, as amended, Alarcon. Contracts for labor or services.

Existing law imposes various requirements on individuals contracting for labor or services with construction, farm labor, garment, janitorial, or security guard contractors.

This bill would provide that any person or entity who enters into a labor contract for construction, farm labor, garment, janitorial, or security guard services when the person or entity knows or should know that the contract does not provide funds sufficient to allow the labor contractor to comply with all applicable laws or regulations governing the labor or services to be provided under the contract, is subject to liability and specified civil penalties.

The bill would establish a rebuttable presumption that a person or entity entering in such a contract for labor or services does not violate the bill's provisions if the labor contract or material change to the labor contract meets specified requirements. The bill would not apply to persons or entities who have executed certain collective bargaining agreements, or to labor or services to be performed on a person's ~~primary residence~~ *home residence or residences, under specified conditions* .

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2810 is added to the Labor Code, to read:

2810. (a) A person or entity may not enter into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, or security guard contractor, where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

(b) There is a rebuttable presumption affecting the burden of proof that there has been no violation of subdivision (a) where the contract or agreement with a construction, farm labor, garment, janitorial, or security guard contractor meets all of the requirements in subdivision (d).

(c) Subdivision (a) does not apply to a person or entity who executes a collective bargaining agreement covering the workers employed under the contract or agreement, or to a person who enters into a contract or agreement for labor or services to be performed on his or her ~~primary residence~~ *home residences, provided that a family member resides in the residence or residences for which the labor or services are to be performed for at least a part of the year* .

(d) To meet the requirements of subdivision (b), a contract or agreement with a construction, farm labor, garment, janitorial, or security guard contractor for labor or services must be in writing, in a single document, and contain all of the following provisions, in addition to any other provisions as may be required by regulations adopted by the Labor Commissioner from time to time:

(1) The name, address, and telephone number of the person or entity and the construction, farm labor, garment, janitorial, or security guard contractor through whom the labor or services are to be provided.

(2) A description of the labor or services to be provided and a statement of when those services are to be commenced and completed.

(3) The employer identification number for state tax purposes of the construction, farm labor, garment, janitorial, or security guard contractor.

(4) The workers' compensation insurance policy number and the name, address, and telephone number of the insurance carrier of the construction, farm labor, garment, janitorial, or security guard contractor.

(5) The vehicle identification number of any vehicle that is owned by the construction, farm labor, garment, janitorial, or security guard contractor and used for transportation in connection with any service provided pursuant to the contract or agreement, the number of the vehicle liability insurance policy that covers the vehicle, and the name, address, and telephone number of the insurance carrier.

(6) The address of any real property to be used to house workers in connection with the contract or agreement.

(7) The total number of workers to be employed under the contract or agreement, the total amount of all wages to be paid, and the date or dates when those wages are to be paid.

(8) The amount of the commission or other payment made to the construction, farm labor, garment, janitorial, or security guard contractor for services under the contract or agreement.

(9) The total number of persons who will be utilized under the contract or agreement as independent contractors, along with a list

of the current local, state, and federal contractor license identification numbers that the independent contractors are required to have under local, state, or federal laws or regulations.

(10) *The signatures of all parties, and the date the contract or agreement was signed.*

(e) (1) To qualify for the rebuttable presumption set forth in subdivision (b), a material change to the terms and conditions of a contract or agreement between a person or entity and a construction, farm labor, garment, janitorial, or security guard contractor must be in writing, in a single document, and contain all of the provisions listed in subdivision (d) that are affected by the change.

(2) If a provision required to be contained in a contract or agreement pursuant to paragraph (7) or (9) of subdivision (d) is unknown at the time the contract or agreement is executed, the best estimate available at that time is sufficient to satisfy the requirements of subdivision (d). If an estimate is used in place of actual figures in accordance with this paragraph, the parties to the contract or agreement have a continuing duty to ascertain the information required pursuant to paragraph (7) or (9) of subdivision (d) and to reduce that information to writing in accordance with the requirements of paragraph (1) once that information becomes known.

(f) A person or entity who enters into a contract or agreement referred to in subdivisions (d) or (e) shall keep a copy of the written contract or agreement for a period of not less than four years following the termination of the contract or agreement.

(g) (1) An employee aggrieved by a violation of subdivision (a) may file an action for damages to recover the greater of all of his or her actual damages or two hundred fifty dollars (\$250) per employee per violation for an initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, may recover costs and reasonable attorney's fees. An action under this section may not be maintained unless it is pleaded and proved that an employee was injured as a result of a violation of a labor law or regulation in connection with the performance of the contract or agreement.

(2) An employee aggrieved by a violation of subdivision (a) may also bring an action for injunctive relief and, upon prevailing, may recover costs and reasonable attorney's fees.

(h) The phrase "construction, farm labor, garment, janitorial, or security guard contractor" includes any person, as defined in this code, whether or not licensed, who is acting in the capacity of a construction, farm labor, garment janitorial, or security guard contractor.

(i) (1) The term "knows" includes the knowledge, arising from familiarity with the normal facts and circumstances of the business activity engaged in, that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable laws.

(2) The phrase "should know" includes the knowledge of any additional facts or information that would make a reasonably prudent person undertake to inquire whether, taken together, the contract or agreement contains sufficient funds to allow the contractor to comply with applicable laws.

(3) A failure by a person or entity to request or obtain any information from the contractor that is required by any applicable statute or by the contract or agreement between them, constitutes

knowledge of that information for purposes of this section.

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BILL NUMBER: SB 1466 ENROLLED
BILL TEXT

PASSED THE SENATE AUGUST 30, 2002
PASSED THE ASSEMBLY AUGUST 23, 2002
AMENDED IN ASSEMBLY AUGUST 20, 2002
AMENDED IN ASSEMBLY JULY 3, 2002
AMENDED IN SENATE MAY 15, 2002
AMENDED IN SENATE MAY 6, 2002

INTRODUCED BY Senator Alarcon
(Principal coauthors: Assembly Members Koretz and Steinberg)

FEBRUARY 15, 2002

An act to add Section 2810 to the Labor Code, relating to contracts for labor or services.

LEGISLATIVE COUNSEL'S DIGEST

SB 1466, Alarcon. Contracts for labor or services.

Existing law imposes various requirements on individuals contracting for labor or services with construction, farm labor, garment, janitorial, or security guard contractors.

This bill would provide that any person or entity who enters into a labor contract for construction, farm labor, garment, janitorial, or security guard services when the person or entity knows or should know that the contract does not provide funds sufficient to allow the labor contractor to comply with all applicable laws or regulations governing the labor or services to be provided under the contract, is subject to liability and specified civil penalties.

The bill would establish a rebuttable presumption that a person or entity entering in such a contract for labor or services does not violate the bill's provisions if the labor contract or material change to the labor contract meets specified requirements. The bill would not apply to persons or entities who have executed certain collective bargaining agreements, or to labor or services to be performed on a person's home residence or residences, under specified conditions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2810 is added to the Labor Code, to read:

2810. (a) A person or entity may not enter into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, or security guard contractor, where the person

or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

(b) There is a rebuttable presumption affecting the burden of proof that there has been no violation of subdivision (a) where the contract or agreement with a construction, farm labor, garment, janitorial, or security guard contractor meets all of the requirements in subdivision (d).

(c) Subdivision (a) does not apply to a person or entity who executes a collective bargaining agreement covering the workers employed under the contract or agreement, or to a person who enters into a contract or agreement for labor or services to be performed on his or her home residences, provided that a family member resides in the residence or residences for which the labor or services are to be performed for at least a part of the year.

(d) To meet the requirements of subdivision (b), a contract or agreement with a construction, farm labor, garment, janitorial, or security guard contractor for labor or services must be in writing, in a single document, and contain all of the following provisions, in addition to any other provisions as may be required by regulations adopted by the Labor Commissioner from time to time:

(1) The name, address, and telephone number of the person or entity and the construction, farm labor, garment, janitorial, or security guard contractor through whom the labor or services are to be provided.

(2) A description of the labor or services to be provided and a statement of when those services are to be commenced and completed.

(3) The employer identification number for state tax purposes of the construction, farm labor, garment, janitorial, or security guard contractor.

(4) The workers' compensation insurance policy number and the name, address, and telephone number of the insurance carrier of the construction, farm labor, garment, janitorial, or security guard contractor.

(5) The vehicle identification number of any vehicle that is owned by the construction, farm labor, garment, janitorial, or security guard contractor and used for transportation in connection with any service provided pursuant to the contract or agreement, the number of the vehicle liability insurance policy that covers the vehicle, and the name, address, and telephone number of the insurance carrier.

(6) The address of any real property to be used to house workers in connection with the contract or agreement.

(7) The total number of workers to be employed under the contract or agreement, the total amount of all wages to be paid, and the date or dates when those wages are to be paid.

(8) The amount of the commission or other payment made to the construction, farm labor, garment, janitorial, or security guard contractor for services under the contract or agreement.

(9) The total number of persons who will be utilized under the contract or agreement as independent contractors, along with a list of the current local, state, and federal contractor license identification numbers that the independent contractors are required to have under local, state, or federal laws or regulations.

(10) The signatures of all parties, and the date the contract or agreement was signed.

(e) (1) To qualify for the rebuttable presumption set forth in

subdivision (b), a material change to the terms and conditions of a contract or agreement between a person or entity and a construction, farm labor, garment, janitorial, or security guard contractor must be in writing, in a single document, and contain all of the provisions listed in subdivision (d) that are affected by the change.

(2) If a provision required to be contained in a contract or agreement pursuant to paragraph (7) or (9) of subdivision (d) is unknown at the time the contract or agreement is executed, the best estimate available at that time is sufficient to satisfy the requirements of subdivision (d). If an estimate is used in place of actual figures in accordance with this paragraph, the parties to the contract or agreement have a continuing duty to ascertain the information required pursuant to paragraph (7) or (9) of subdivision (d) and to reduce that information to writing in accordance with the requirements of paragraph (1) once that information becomes known.

(f) A person or entity who enters into a contract or agreement referred to in subdivisions (d) or (e) shall keep a copy of the written contract or agreement for a period of not less than four years following the termination of the contract or agreement.

(g) (1) An employee aggrieved by a violation of subdivision (a) may file an action for damages to recover the greater of all of his or her actual damages or two hundred fifty dollars (\$250) per employee per violation for an initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, may recover costs and reasonable attorney's fees. An action under this section may not be maintained unless it is pleaded and proved that an employee was injured as a result of a violation of a labor law or regulation in connection with the performance of the contract or agreement.

(2) An employee aggrieved by a violation of subdivision (a) may also bring an action for injunctive relief and, upon prevailing, may recover costs and reasonable attorney's fees.

(h) The phrase "construction, farm labor, garment, janitorial, or security guard contractor" includes any person, as defined in this code, whether or not licensed, who is acting in the capacity of a construction, farm labor, garment janitorial, or security guard contractor.

(i) (1) The term "knows" includes the knowledge, arising from familiarity with the normal facts and circumstances of the business activity engaged in, that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable laws.

(2) The phrase "should know" includes the knowledge of any additional facts or information that would make a reasonably prudent person undertake to inquire whether, taken together, the contract or agreement contains sufficient funds to allow the contractor to comply with applicable laws.

(3) A failure by a person or entity to request or obtain any information from the contractor that is required by any applicable statute or by the contract or agreement between them, constitutes knowledge of that information for purposes of this section.

