

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 1162 (Cortese)
Version: April 1, 2024
Hearing Date: April 23, 2024
Fiscal: Yes
Urgency: No
AM

SUBJECT

Public contracts: employment compliance reports and payroll records: workers' dates
of birth

DIGEST

This bill additionally requires an existing monthly report related to an enforceable commitment by a contractor, bidder, or other entity to use a skilled and trained workforce to also include the date of birth for each worker. The bill also requires payroll records for employees employed in connection with public works projects to include the date of birth of those employees. The bill provides that the date of birth included in the report or on those payroll records is not be disclosed to the public.

EXECUTIVE SUMMARY

Under existing law public works projects are required to pay no less than the general prevailing rate of per diem wages to all employees and requires payroll reporting to ensure compliance with this requirement. Additionally, public entities are authorized to use a skilled and trained workforce to complete a contract or project and can require reporting of specified employee information to demonstrate compliance with this requirement. This bill seeks to aid in the compliance of these provisions by additionally requiring the date of birth of employees be provide on payroll documents and certain reports, but provides that this information is to be redacted when disclosed to the public.

This bill is sponsored by the California State Association of Electrical Workers, the California State Pipe Trades Council, and the Western States Council of Sheet Metal, Air, Rail and Transportation. No timely opposition was received by the Committee. This bill passed the Senate Labor, Public Employment and Retirement Committee on a vote of 5 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires contractors and subcontractors, when performing public works, to keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the contractor or subcontractor in connection with the public work. (Lab. Code § 1776(a).)
 - a) Requires that not less than the general prevailing rate of per diem wages be paid to all workers employed on a “public works” project costing over \$1,000 dollars and imposes misdemeanor penalties for violation of this requirement. (Lab. Code § 1771.)
 - b) Defines “public works” to include, among other things, construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by a public utility company pursuant to an order of the Public Utilities Commission or other public authority. (Lab. Code § 1720(a).)
- 2) Requires contractors and subcontractors, while performing public works, to furnish specified payroll records at least once a month directly to the Labor Commissioner (Commissioner), as specified. (Lab. Code §1771.4(a)(3).)
 - a) Requires the Department of Industrial Relations (DIR), by July 1, 2024, to develop and implement an online database, accessible only to multiemployer Taft-Hartley trust funds and joint-labor management committees (JLMCs), of electronic certified payroll records submitted in compliance with public works requirements. (Lab. Code, § 1771.4(e).)
 - b) Specifies that any records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement (DLSE) must be marked or obliterated to prevent disclosure of an individual’s name, address, and social security number. (Lab. Code, §1776(e).)
 - c) Specifies that any copy of records made available for inspection by, or furnished to, JLMCs must be marked or obliterated to prevent disclosure of an individual’s social security number. (Lab. Code § 1776(e).)
 - d) Requires, upon request, agencies included in the Joint Enforcement Strike Force on the Underground Economy (JESF) and other law enforcement agencies investigating violations of law, to be provided nonredacted copies of certified payroll records, as specified. (Lab. Code § 1776(f)(1).)
- 3) Authorizes a public entity to require a bidder, contractor, or other entity to use a skilled and trained workforce to complete a contract or project regardless of whether

the public entity is required to do so by a statute or regulation. (Pub. Contract Code § 2600.)

- a) Defines “skilled and trained workforce” to mean, among other requirements, a workforce where all the workers performing work in an apprenticeable occupation, as defined, in the building and construction trades are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the chief of the Division of Apprenticeship Standards (DAS). (Pub. Contract Code § 2601.)
- 4) Requires a contractor, bidder, or other entity to provide to the public entity or other awarding body, on a monthly basis while the project or contract is being performed, a report demonstrating compliance with skilled and trained workforce requirements. (Public Contract Code §2602)
 - 5) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny. (Cal. const. art. I, § 3(b)(1).)
 - a) Requires a statute to be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access. (Cal. const. art. I, § 3(b)(1).)
 - b) Requires a statute that limits the public’s right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)
 - 6) Governs the disclosure of information collected and maintained by public agencies pursuant to the California Public Records Act (CPRA). (Gov. Code §§ 7920.000 et seq.)
 - c) States that the Legislature, mindful of the individual right to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state. (Gov. Code § 7921.000.)
 - d) Defines “public records” as any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code § 7920.530.)
 - e) Provides that all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. (Gov. Code § 7922.530.)

This bill:

- 1) Requires the date of birth of each journeyman, apprentice, worker, or other employee employed by the contractor or subcontractor in connection with the public work to be included on the payroll records described in 1), above.
- 2) Requires the date of birth of each worker to be included in the existing monthly compliance report on projects requiring a skilled and trained workforce described in 5), above.
- 3) Provides that the date of birth on payroll records and reports and on the reports related to projects requiring a skilled and trained workforce are to be redacted and not disclosed to the public.

COMMENTS

1. State need for the bill

The author writes:

SB 1162 enables Labor-Management Cooperation Committees, (LMCCs) to accurately verify workers have the appropriate training to work on a skilled and trained project. The bill requires employers to include a worker's DOB in their monthly certified payroll reports submitted to LMCCs. This information enables LMCCs to search for a worker on the DIR database and use the DOB to verify the correct worker. By ensuring accurate identification, LMCCs can verify whether the worker meets the eligibility criteria to work on skilled and trained projects. This streamlined verification process will strengthen oversight and help LMCCs in enforce wage and labor requirements more efficiently.

2. Background

a. JLMCs and public works requirements and monitoring

The Senate Labor, Public Employment and Retirement Committee analysis of this bill provides useful background on JLMCs and public works requirements under existing law stating:

[...] In California, JLMCs play a vital role in ensuring compliance with public works and skilled and trained statutes. Specifically, JLMCs are empowered to bring an action in any court of competent jurisdiction against an employer that fails to pay the prevailing wage to its employees or that fails to provide payroll records, as required by public works law.

[...] California's prevailing wage laws ensure that the ability to secure a public works contract is not based on paying lower wages than a competitor. One component of prevailing wage policy is the requirement that contractors and subcontractors register with DIR and submit their payroll records to the [Labor Commissioner] LC to ensure compliance with various pay and records keeping requirements. As noted under existing law, these payroll records, sans an individual's social security number, are available to JLMCs. The additional obligations that accompany a "public work" necessitate monitoring by the LC, awarding bodies, and JLMCs.¹

That analysis further noted that providing a date of birth can help improve the ability of JLMCs to ensure compliance with existing law:

Oftentimes workers with identical or similar names are employed on the same construction site. This can make it difficult for monitoring bodies, like JLMCs, to verify whether a contractor is paying prevailing wage. Including the date of birth of each journeyman, apprentice, worker, or other employee employed on public works projects provides JLMCs a unique identifier to differentiate between individuals with similar names. Additionally, on projects that require registered DAS-apprentices [Division of Apprenticeship Standards], access to an individual's date of birth assists JLMCs in verifying a worker's enrollment in an apprenticeship program approved by DAS.²

b. Skilled and Trained Workforce Requirements and Monitoring

The Senate Labor, Public Employment and Retirement Committee analysis of this bill also provides background on skilled and trained workforce requirements writing:

When a contractor is required to use a skilled and trained workforce to complete a project, they commit to doing so in an enforceable agreement with the public entity or awarding body. The contractor agrees to comply at every tier and is required to complete and submit to the awarding body a monthly report demonstrating compliance. Should a contractor fail to provide the monthly report or fall out of compliance, a list of penalties exist and the LC is notified by the awarding body. Ensuring compliance can be difficult, because on projects that are only subject to skilled and trained requirements, and are not also a public work, it is incumbent upon the awarding body to enforce penalties and notify the LC. The payroll reporting requirements that exist for public works projects do not apply to projects that only require a skilled and trained workforce requirement.

¹ Sen. Comm. on Lab., Pub. Employment and Retirement analysis SB 1162 (2023-24 reg. sess.) as amended April 1, 2024 at p. 3-4.

² *Id.* at 4.

As of now, skilled and trained workforce provisions contain no specifics as to what contractors need to include in their monthly compliance reports. Public Contract Code simply specifies they must contain information sufficient to “demonstrate compliance.” SB 1162 would require that these reports include the date of birth of each worker. As explained above, JLMCs would then be able to use this information to verify a worker’s enrollment in, or graduation from, a DAS-approved apprenticeship program.³

3. Limiting disclosure of information contained in public records – date of birth

California generally recognizes that public access to information concerning the conduct of the people’s business is a fundamental and necessary right.⁴ At the same time, the state recognizes that this right must be balanced against the right to privacy.⁵ The general right of access to public records may, therefore, be limited where records include personal information. In recognition of this, the bill states that in order to protect the privacy of a journeyman, apprentice, worker, or other employee employed by a contractor or subcontractor in connection with the public work, it is necessary to limit the public’s right of access to their personal information. In light of the personal nature of a person’s date of birth and the fact that other personally identifying information is already protected from disclosure, the bill’s findings appear consistent with the state’s right to privacy and limits on disclosure of public records.

4. Statements in support

The sponsors of the bill write in support, stating:

By requiring employers to include the date of birth of each worker in their certified payroll reports, SB 1162 provides JLMCs with a powerful tool to accurately locate individuals within the Department of Industrial Relations (DIR) database. This information is essential for verifying whether workers meet the eligibility criteria to participate in skilled and trained projects, as mandated by state regulations.

Furthermore, the inclusion of date of birth data enables JLMCs to verify whether a worker has successfully completed a state-certified apprenticeship program. This verification process is pivotal in ensuring compliance with labor standards and upholding the integrity of skilled and trained workforce initiatives.

SB 1162 streamlines the verification process for JLMCs, empowering them to enforce regulations more efficiently while maintaining the highest standards of accountability. By accurately identifying individuals and confirming their eligibility

³ *Ibid.*

⁴ Cal. Const., art. I, § 3; Gov. Code, § 7921.000.

⁵ Cal. Const., art. I, § 1.

to work on specific projects, JLMCs can better ensure that skilled and trained workers are employed in accordance with state requirements.

SUPPORT

California State Association of Electrical Workers (sponsor)

California State Pipe Trades Council (sponsor)

Western States Council of Sheet Metal, Air, Rail and Transportation (sponsor)

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 954 (Archuleta, Ch. 824, Stats. 2022) required the DIR to develop and implement an online database of certified payroll records submitted to comply with public works requirements.

SB 2311 (Low, Ch. 347, Stats. 2020) required a public entity to include in all bid documents and construction contracts whether the project is subject to skilled and trained workforce provisions in existing law.

AB 1023 (Flora, Ch. 326, Stats. 2021) revised the requirement to furnish payroll records monthly to require that the contractor or subcontractor furnish those records at least once every 30 days while work is being performed on the project and within 30 days after the final day of work performed on the project, as specified.

AB 3018 (Low, Ch. 882, Stats. 2018) strengthened public agency reporting requirements related to skilled and trained workforce rules by creating penalties for noncompliance, and providing the Commissioner with the authority to issue a civil wage and penalty assessment against a contractor or subcontractor for a violation.

PRIOR VOTES

Senate Labor, Public Employment and Retirement (5 Ayes, 0 Noes)
