

Date of Hearing: July 2, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

SB 1162 (Cortese) – As Amended June 10, 2024

PROPOSED CONSENT

SENATE VOTE: 39-0

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

SYNOPSIS

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 payroll reporting must 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 to be provided on payroll documents and certain reports in order to assist in verifying the identity of the employee and whether or not they have successfully completed an apprenticeship program. Current law provides that this information is to be redacted when disclosed to the public, therefore protecting the privacy of the employee.

California recognizes the right of individuals to seek and obtain privacy. This includes protecting personal information, including home addresses, telephone numbers, social security numbers, and dates of birth, from being shared with the public. However, state law also recognizes that public access to information concerning the conduct of the people's business is a fundamental and necessary right. Therefore, the right of access to public records may be limited where records include personal information. In order to balance the two fundamental rights, the statute that this bill seeks to amend requires that any personal information be redacted from all records being provided to the public. Nothing in this bill changes that protection.

This bill is co-sponsored by the California State Association of Electrical Workers, the California State Pipe Trades Council, and the Western States Council of Sheet Metal Workers and has no registered opposition. The bill passed the Labor and Employment Committee on a 7-0 vote.

SUMMARY: Requires contractors and subcontractors on public works projects to include a worker's date of birth in public works payroll records and in monthly compliance reports made to the public entity or awarding body for projects with a skilled and trained workforce requirement, as well as requires the Division of Labor Standards Enforcement (DLSE) to accept and investigate in a timely manner complaints from a joint labor-management committee, as specified, alleging that a contractor or subcontractor failed to use a skilled and trained workforce. Specifically, **this bill:**

- 1) Requires each contractor and subcontractor on public works projects to include in payroll records the date of birth of each journeyman, apprentice, worker, or other employee employed by the contractor or subcontractor in connection with the work.
- 2) Adds date of birth to the list of information required to be redacted in any payroll records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or DLSE.
- 3) Adds date of birth to the list of information required to be redacted in any payroll records made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy (JESF) or by a law enforcement agency investigating a violation of law.
- 4) Requires a contractor, bidder or other entity to include the date of birth of each worker in the monthly compliance report furnished to the public entity or other awarding body.
- 5) Requires the DLSE to accept and investigate in a timely manner a complaint from a joint labor-management committee, as specified, alleging that a contractor or subcontractor failed to use a skilled and trained workforce as required.
- 6) Finds and declares that, to protect the privacy of a journeyman, apprentice, worker or other employee employed by a contractor or subcontractor in connection with a public work, it is necessary to limit the public's right of access to their personal information.

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).)
- 2) 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).)
- 3) Requires contractors and subcontractors, while performing public works, to furnish specified payroll records at least once a month directly to the Labor Commissioner (LC), as specified. (Lab. Code §1771.4(a)(3).)
- 4) 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).)
- 5) 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).)

- 6) 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).)
- 7) 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. Con. Code § 2600.)
- 8) 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 journeymen or apprentices registered in an apprenticeship program approved by the chief of the Division of Apprenticeship Standards (DAS). (Pub. Con. Code § 2601.)
- 9) 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. (Pub. Con. Code § 2602)
- 10) Provides, pursuant to the California Constitution, that all people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const. art. I, § 1.)
- 11) 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).)
- 12) 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.)

FISCAL EFFECT: As currently in print, this bill is keyed fiscal.

COMMENTS:

1) The purpose of this bill. 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 payroll reporting must 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 provided on payroll documents and certain reports. Current law provides that this information is to be redacted when disclosed to the public, therefore protecting the privacy of the employee.

According to the co-sponsors of the bill, the California State Association of Electrical Workers, the California State Pipe Trades Council, and the Western States Council of Sheet Metal Workers, 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 helps ensure compliance with labor standards and uphold the integrity of skilled and trained workforce initiatives.

2) Author's statement. According to the author:

SB 1162 enables JLMCs 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 JLMCs. This information enables JLMCs to search for a worker on the DIR database and use the DOB to verify the correct worker. By ensuring accurate identification, JLMCs 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 JLMCs in enforce wage and labor requirements more efficiently.

3) Background. The Labor and Employment Committee analysis of this bill provides useful background on JLMCs and public works requirements under existing law:

Public works law requires that, among other things, prevailing wage is paid to workers on publicly-funded projects, as specified. In California, the prevailing wage rate is an hourly rate paid on public works projects that is often set in the terms of a collective bargaining agreement. . . .

Prevailing wage laws are intended to ensure that contractors are not awarded public works contracts by paying low wages and undercutting competitors who provide higher compensation. In this way, these laws create a level playing field by requiring an across-the-board rate for all bidders on publicly-subsidized projects.

[. . .]

To ensure compliance with various pay requirements under public works law, contractors and subcontractors are required to submit their payroll records to the LC.

[. . .]

When a contractor, bidder or other entity is required to provide an enforceable commitment that a skilled and trained workforce will be used to complete a contract or project, they must commit to the awarding body that: 1) The contractor, bidder, or other entity, and its contractors and subcontractors at every tier will comply with the skilled and trained workforce requirements; and 2) the contractor, bidder, or other entity will 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 requirements.

[. . .]

In addition to the LC's oversight of prevailing wage and skilled and trained laws, joint-labor management committees (JLMCs) play a critical role in enforcing these requirements. JLMCs verify the accuracy and thoroughness of payroll records, and file complaints with the LC for suspected violations of prevailing wage law. JLMCs are also authorized 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.

JLMCs also verify that workers on projects requiring a skilled and trained workforce meet the criteria under the law. JLMCs have access to an online database containing the payroll records submitted to the LC, as well as an online database through DAS that includes information about workers' apprenticeship status and safety certification. This allows JLMCs to cross reference the information from the payroll records to ensure that the workers also have the appropriate training to work on a skilled and trained project.

4) **Analysis of this bill.** The question before this Committee is whether or not the addition of birth date information to the existing reporting requirements for including an individual's name, address, and social security number, represents an unnecessary risk to Californian's right to privacy. California recognizes the right of individuals to seek and obtain privacy. This includes protecting personal information from being shared with the public. However, it also recognizes that public access to information concerning the conduct of the people's business is a fundamental and necessary right. Therefore, the right of access to public records may be limited where records include personal information. In order to balance the two fundamental rights, the current law that this bill seeks to amend requires that any personal information be redacted from all records being provided to the public. Nothing in this bill changes that protection.

5) **Related 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.

AB 1023 (Flora; Ch. 326, Stats. 2021) allowed the LC to impose a penalty on a contractor or subcontractor on a public works project if they fail to furnish payroll records to the LC, as specified.

AB 2311 (Low; Ch. 347, Stats. 2020) required a public entity, when the use of a skilled and trained workforce to complete a contract or project is required, to include in all bid documents

and construction contracts a notice that the project is subject to the skilled and trained workforce requirement. Further stated that the failure to provide such notice does not excuse a public entity, bidder, or contractor from complying with the skilled and trained workforce requirement.

AB 3018 (Low; Ch. 882, Stats. 2018) enhanced compliance with skilled and trained workforce rules by strengthening public agency reporting requirements, creating penalties for noncompliance, and providing the LC with the authority to issue a civil wage and penalty assessment against a contractor or subcontractor found in violation of state law.

ARGUMENTS IN SUPPORT: According to the co-sponsors of the bill, the California State Association of Electrical Workers, the California State Pipe Trades Council, and the Western States Council of Sheet Metal Workers:

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.

[. . .]

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

REGISTERED SUPPORT / OPPOSITION:

Support

California State Association of Electrical Workers (co-sponsor)
California State Pipe Trades Council (co-sponsor)
Western States Council Sheet Metal, Air, Rail and Transportation (co-sponsor)

Opposition

None on file.

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