

Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

AB 1669 (Roger Hernández) – As Amended March 8, 2016

SUBJECT: Displaced employees: service contracts: collection and transportation of solid waste.

SUMMARY: Requires any local government agency that awards contracts for the collection and transportation of solid waste to give a 10% preference to any bidder who agrees to retain, for at least 90 days, employees of a previous contractor or subcontractor. Specifically, **this bill:**

- 1) Expands an existing 10% bid preference for public transit service contract bidders who agree to retain, for a period of not less than 90 days, employees of a previous contractor or subcontractor to also apply to contracts for the collection and transportation of solid waste.
- 2) Defines “solid waste” to mean all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes. “Solid waste” does not include any of the following wastes:
 - a) Hazardous waste, as specified;
 - b) Radioactive waste regulated, pursuant to the Radiation Control Law, as specified; and,
 - c) Medical waste regulated, pursuant to the Medical Waste Management Act, as specified.
- 3) Makes findings and declarations regarding the economic impacts when a local agency awards a solid waste contract to a new contractor and the new contractor does not retain employees of the prior contractor, such as unnecessary reliance on unemployment insurance, public social services, and health programs.
- 4) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made, pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

EXISTING LAW:

- 1) Requires all bidders on local agency public transit service contracts to declare as part of the bid whether or not they will retain the employees of the prior contractor or subcontractor for a period of not less than 90 days.
- 2) Requires local agencies that put out a bid for public transit services to provide a 10% bidding preference to any bidder who agrees to retain the employees of the prior contractor or subcontractor for a period of not less than 90 days.

- 3) Requires existing contractors to provide local agencies with specified employee information to assist bidding contractors or subcontractors in costing their bids.
- 4) Exempts contractors or subcontractors from their obligation to retain employees for "cause," as defined.
- 5) Provides that the new contractor or subcontractor is not required to pay the same wages or offer the same benefits as those of the prior contractor or subcontractor.
- 6) Authorizes the new contractor or subcontractor to retain fewer employees than the prior contractor, if necessary. In such a situation, the employees shall be retained by seniority within the given job classification.
- 7) Authorizes employees who have not been offered employment or who have been discharged in violation of the provisions of current law to bring suit against the contractor or subcontractor in superior court, and provides for remedy in the form of reinstatement, back pay, benefits and attorney's fees and costs.
- 8) Requires a local agency, after a public hearing, to terminate a contract substantially breached by a contractor or subcontractor. A terminated contractor or subcontractor is ineligible to bid or be awarded a contract with the terminating local agency for between one and three years, to be determined by the local agency.
- 9) Provides for employment retention protection for employees of janitorial and building maintenance contractors, as specified.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Author's Statement.** According to the author, "Even as the economy shows signs of recovery, many workers who have lost their jobs are finding it difficult or nearly impossible to find new ones. When cities or counties contract for garbage services, they are often focused on the costs of the bids and the level of service provided. In many cases, workers fall through the cracks when contracts change hands. The existing workforce, trained and experienced, is summarily laid off and replaced.

"These mass layoffs hurt individual families, but also impact the local economy. Promoting a stable workforce allows workers to invest in and contribute to their community. It means people can stay in their homes, kids can stay in their schools, and families can retain health insurance. It also means fewer workers are relying on unemployment insurance or other taxpayer-funded programs."

- 2) **Background and Bill Summary.** Current law requires local agencies that put out a bid for public transit services to provide a 10% bidding preference to any bidder who agrees to retain employees of the prior contractor or subcontractor for at least 90 days. The law does not require a new contractor to retain employees of the prior contractor unless the bid preference is granted, nor does it require a new contractor to pay the same wages or offer the same

benefits as the former contractor. The law, which has been in place since 2003, is intended to provide a measure of job security to transit workers when a local agency changes transit service contracts.

This bill would add contracts for the collection and transportation of solid waste to these provisions, thereby offering the same protections to solid waste workers. This bill would apply to any local government agency, including any city, county, special district, transit district, joint powers authority, or nonprofit corporation that awards or otherwise enters into contracts for the collection and transportation of solid waste in California. This bill is sponsored by the California Teamsters Public Affairs Council.

- 3) **Previous Legislation.** SB 158 (Alarcon), Chapter 103, Statutes of 2003, established a bidding preference for public transit service contractors and subcontractors who agree to retain, for a period of at least 90 days, employees of a previous contractor or subcontractor.

AB 2189 (Koretz) of 2002 would have required a public transit contractor to retain the employees of a former contractor during a 60-day transition employment period. AB 2189 was vetoed with the following message:

"Unlike the problems that plague workers in the janitorial industry, workers that labor under public contracts are not subject to the exploitation that motivated me to sign the legislation for janitorial workers."

SB 20 (Alarcon), Chapter 795, Statutes of 2001, created the Displaced Janitor Opportunity Act, which requires successor janitorial contractors with 25 or more employees to retain for 60 days employees of the previous employer performing janitorial or building maintenance service duties with four months or more service.

- 4) **State Mandate.** This bill is keyed a state mandate, which means the state could be required to reimburse local agencies for implementing the bill's provisions if the Commission on State Mandates determines that the bill contains costs mandated by the state.
- 5) **Arguments in Support.** The California Teamsters Public Affairs Council, sponsor of this measure, states, "The current law for transit service contracts has been in effect for nearly fifteen years. It has stabilized the industry, allowing drivers to retain work. There have been no reported cases of litigation on the issue, which is a strong indication of how smoothly this law has functioned. As a practical matter, in the vast majority of cases, all of the bidders take the preference, which results in no difference in the cost to the contracting entity but avoids needless job displacement."
- 6) **Arguments in Opposition.** The Solid Waste Association of North America, in opposition, writes, "This legislation would infringe on local control and flexibility. With limited resources, it is critical that local governments have authority over contracting and employment decisions to provide the most cost effective services. Preference for one contractor or subcontractor over another should not be pre-determined by a requirement that may be inappropriate based on unique contracting, staffing, and economic circumstances that local governments may face. Bidders have the option to retain previous employees and local governments already have the right to put such terms in procurement documents to meet local needs."

- 7) **Double-Referral.** This bill was heard by the Labor and Employment Committee on April 6, 2016, where it passed with a 5-2 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California Teamsters Public Affairs Council
California Labor Federation

Opposition

Inland Empire Disposal Association
Los Angeles County Waste Management Association
Solid Waste Association of North America
Solid Waste Association of Orange County

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