

Introduced by Senator PerataFebruary 22, 2008

An act to amend Section 1720 of, and to add Section 1720.1 to, the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 1719, as introduced, Perata. Public works: utility workers: wage protection.

Existing law generally requires the payment of the general prevailing rate of per diem wages to workers employed on public works projects costing over \$1,000, unless the awarding body, as defined, elects to initiate and enforce a labor compliance program, as defined, for every public works project under the authority of that awarding body. Existing law generally defines "public works" to include construction, alteration, demolition, installation, or repair work done under contract and paid for, in whole or in part, out of public funds, but exempts from that definition, among other projects, work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority.

This bill would delete that exemption and would, thus, define "public works" to include any construction, alteration, demolition, installation, or repair work done under contract and paid for, in whole or in part, by a public utility, as defined. This bill would also specify that a public utility, defined as a "public entity" for those limited purposes, must require the payment bond of its contractors, as provided, and must submit, upon request, copies of those payment bonds to the Public Utilities Commission or any worker or member of the public. This bill would also declare the intent of the Legislature to extend the protections offered to workers employed on public works projects to workers

employed on construction projects for public utilities, and would endorse and approve the reasoning of the specified Public Utilities Commission decisions.

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

The people of the State of California do enact as follows:

1 SECTION 1. Section 1720 of the Labor Code is amended to
 2 read:

3 1720. (a) As used in this chapter, “public works” means:

4 (1) Construction, alteration, demolition, installation, or repair
 5 work done under contract and paid for in whole or in part out of
 6 public funds, ~~except work done directly by any public utility~~
 7 ~~company pursuant to order of the Public Utilities Commission or~~
 8 ~~other public authority.~~ For purposes of this paragraph,
 9 “construction” includes work performed during the design and
 10 preconstruction phases of construction including, but not limited
 11 to, inspection and land surveying work.

12 (2) Work done for irrigation, utility, reclamation, and
 13 improvement districts, and other districts of this type. “Public
 14 work” does not include the operation of the irrigation or drainage
 15 system of any irrigation or reclamation district, except as used in
 16 Section 1778 relating to retaining wages.

17 (3) Street, sewer, or other improvement work done under the
 18 direction and supervision or by the authority of any officer or
 19 public body of the state, or of any political subdivision or district
 20 thereof, whether the political subdivision or district operates under
 21 a freeholder’s charter or not.

22 (4) The laying of carpet done under a building lease-maintenance
 23 contract and paid for out of public funds.

24 (5) The laying of carpet in a public building done under contract
 25 and paid for in whole or in part out of public funds.

26 (6) Public transportation demonstration projects authorized
 27 pursuant to Section 143 of the Streets and Highways Code.

28 (b) For purposes of this section, “paid for in whole or in part
 29 out of public funds” means all of the following:

30 (1) The payment of money or the equivalent of money by the
 31 state or political subdivision directly to or on behalf of the public
 32 works contractor, subcontractor, or developer.

1 (2) Performance of construction work by the state or political
2 subdivision in execution of the project.

3 (3) Transfer by the state or political subdivision of an asset of
4 value for less than fair market price.

5 (4) Fees, costs, rents, insurance or bond premiums, loans, interest
6 rates, or other obligations that would normally be required in the
7 execution of the contract, that are paid, reduced, charged at less
8 than fair market value, waived, or forgiven by the state or political
9 subdivision.

10 (5) Money loaned by the state or political subdivision that is to
11 be repaid on a contingent basis.

12 (6) Credits that are applied by the state or political subdivision
13 against repayment obligations to the state or political subdivision.

14 (c) Notwithstanding subdivision (b):

15 (1) Private residential projects built on private property are not
16 subject to the requirements of this chapter unless the projects are
17 built pursuant to an agreement with a state agency, redevelopment
18 agency, or local public housing authority.

19 (2) If the state or a political subdivision requires a private
20 developer to perform construction, alteration, demolition,
21 installation, or repair work on a public work of improvement as a
22 condition of regulatory approval of an otherwise private
23 development project, and the state or political subdivision
24 contributes no more money, or the equivalent of money, to the
25 overall project than is required to perform this public improvement
26 work, and the state or political subdivision maintains no proprietary
27 interest in the overall project, then only the public improvement
28 work shall thereby become subject to this chapter.

29 (3) If the state or a political subdivision reimburses a private
30 developer for costs that would normally be borne by the public,
31 or provides directly or indirectly a public subsidy to a private
32 development project that is de minimis in the context of the project,
33 an otherwise private development project shall not thereby become
34 subject to the requirements of this chapter.

35 (4) The construction or rehabilitation of affordable housing units
36 for low- or moderate-income persons pursuant to paragraph (5) or
37 (7) of subdivision (e) of Section 33334.2 of the Health and Safety
38 Code that are paid for solely with moneys from a Low and
39 Moderate Income Housing Fund established pursuant to Section
40 33334.3 of the Health and Safety Code or that are paid for by a

1 combination of private funds and funds available pursuant to
2 Section 33334.2 or 33334.3 of the Health and Safety Code do not
3 constitute a project that is paid for in whole or in part out of public
4 funds.

5 (5) “Paid for in whole or in part out of public funds” does not
6 include tax credits provided pursuant to Section 17053.49 or 23649
7 of the Revenue and Taxation Code.

8 (6) Unless otherwise required by a public funding program, the
9 construction or rehabilitation of privately owned residential projects
10 is not subject to the requirements of this chapter if one or more of
11 the following conditions are met:

12 (A) The project is a self-help housing project in which no fewer
13 than 500 hours of construction work associated with the homes
14 are to be performed by the homebuyers.

15 (B) The project consists of rehabilitation or expansion work
16 associated with a facility operated on a not-for-profit basis as
17 temporary or transitional housing for homeless persons with a total
18 project cost of less than twenty-five thousand dollars (\$25,000).

19 (C) Assistance is provided to a household as either mortgage
20 assistance, downpayment assistance, or for the rehabilitation of a
21 single-family home.

22 (D) The project consists of new construction, or expansion, or
23 rehabilitation work associated with a facility developed by a
24 nonprofit organization to be operated on a not-for-profit basis to
25 provide emergency or transitional shelter and ancillary services
26 and assistance to homeless adults and children. The nonprofit
27 organization operating the project shall provide, at no profit, not
28 less than 50 percent of the total project cost from nonpublic
29 sources, excluding real property that is transferred or leased. Total
30 project cost includes the value of donated labor, materials,
31 architectural, and engineering services.

32 (E) The public participation in the project that would otherwise
33 meet the criteria of subdivision (b) is public funding in the form
34 of below-market interest rate loans for a project in which
35 occupancy of at least 40 percent of the units is restricted for at
36 least 20 years, by deed or regulatory agreement, to individuals or
37 families earning no more than 80 percent of the area median
38 income.

1 (d) Notwithstanding any provision of this section to the contrary,
2 the following projects shall not, solely by reason of this section,
3 be subject to the requirements of this chapter:

4 (1) Qualified residential rental projects, as defined by Section
5 142 (d) of the Internal Revenue Code, financed in whole or in part
6 through the issuance of bonds that receive allocation of a portion
7 of the state ceiling pursuant to Chapter 11.8 of Division 1
8 (commencing with Section 8869.80) of the Government Code on
9 or before December 31, 2003.

10 (2) Single-family residential projects financed in whole or in
11 part through the issuance of qualified mortgage revenue bonds or
12 qualified veterans' mortgage bonds, as defined by Section 143 of
13 the Internal Revenue Code, or with mortgage credit certificates
14 under a Qualified Mortgage Credit Certificate Program, as defined
15 by Section 25 of the Internal Revenue Code, that receive allocation
16 of a portion of the state ceiling pursuant to Chapter 11.8 of Division
17 1 (commencing with Section 8869.80) of the Government Code
18 on or before December 31, 2003.

19 (3) Low-income housing projects that are allocated federal or
20 state low-income housing tax credits pursuant to Section 42 of the
21 Internal Revenue Code, Chapter 3.6 of Division 31 (commencing
22 with Section 50199.4) of the Health and Safety Code, or Section
23 12206, 17058, or 23610.5 of the Revenue and Taxation Code, on
24 or before December 31, 2003.

25 (e) If a statute, other than this section, or a regulation, other than
26 a regulation adopted pursuant to this section, or an ordinance or a
27 contract applies this chapter to a project, the exclusions set forth
28 in subdivision (d) do not apply to that project.

29 (f) For purposes of this section, references to the Internal
30 Revenue Code mean the Internal Revenue Code of 1986, as
31 amended, and include the corresponding predecessor sections of
32 the Internal Revenue Code of 1954, as amended.

33 (g) The amendments made to this section by either Chapter 938
34 of the Statutes of 2001 or the act adding this subdivision shall not
35 be construed to preempt local ordinances requiring the payment
36 of prevailing wages on housing projects.

37 SEC. 2. Section 1720.1 is added to the Labor Code, to read:

38 1720.1. (a) For purposes of Article 2 (commencing with
39 Section 1770) and Article 3 (commencing with Section 1810),
40 both of the following definitions apply:

1 (1) “Public works” also includes any construction, alteration,
2 demolition, installation, or repair work done under contract and
3 paid for, in whole or in part, by a public utility.

4 (2) “Awarding body” also includes a public utility contracting
5 the public work when the work is performed by a contractor or
6 subcontractor of that public utility.

7 (b) (1) For purposes of Chapter 7 (commencing with Section
8 3247) of Title 15 of the Civil Code, a public utility is deemed to
9 be a public entity and shall require its contractors to post a payment
10 bond, as specified in Sections 3247 and 3248 of the Civil Code.

11 (2) A bond payment required by a public utility pursuant to this
12 section and Chapter 7 (commencing with Section 3247) of Title
13 15 of the Civil Code shall be enforced in the same manner as the
14 payment bond for public works specified in that chapter.

15 (3) A copy of the payment bond shall be made available to the
16 Public Utilities Commission, upon its request, and shall also be
17 made available by the public utility to any worker or member of
18 the public, upon request and without charge. A public utility that
19 fails to require a payment bond, or fails, upon request, to make a
20 copy of the bond available to a worker or member of the public,
21 shall be liable for the same obligations, and to the same extent, as
22 its contractor or subcontractor, as guaranteed by the payment bond,
23 without any limitations on the time period to make a claim or bring
24 an action, except that an action to enforce this liability against a
25 public utility must be brought within four years after completion
26 of the project.

27 (c) For purposes of this section, “public utility” means any
28 person or entity, as defined in Section 216 of the Public Utilities
29 Code, and any electrical provider, as defined in Section 218.3 of
30 the Public Utilities Code, that is subject to rate regulation by the
31 Public Utilities Commission.

32 (d) This section does not modify, expand, or limit any existing
33 requirements applicable to public works.

34 SEC. 3. (a) The Legislature finds that the amendments made
35 to existing law by this bill are intended to implement the provisions
36 of Sections 1 and 3 of Article XIV of the California Constitution,
37 and to extend to workers employed on construction projects for
38 public utilities the same protections that are offered to workers
39 employed on public works projects.

1 (b) The Legislature also declares that it endorses and approves
2 the reasoning of the Public Utilities Commission Decision
3 4-12-056, as corrected by its Decision 04-12-063.

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