

AMENDED IN SENATE MARCH 18, 2014

AMENDED IN SENATE JUNE 25, 2013

AMENDED IN ASSEMBLY MAY 28, 2013

AMENDED IN ASSEMBLY APRIL 22, 2013

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 26**

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**Introduced by Assembly Member Bonilla**

December 3, 2012

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An act to ~~add Section 39714 to the Health and Safety Code~~ *amend Section 8050 of the Civil Code, and to amend Section 1720 of, and to add Section 1720.7 to, the Labor Code, relating to greenhouse gases construction.*

LEGISLATIVE COUNSEL'S DIGEST

AB 26, as amended, Bonilla. ~~California Global Warming Solutions Act of 2006: Greenhouse Gas Reduction Fund. Construction: prevailing wage and mechanics liens.~~

*(1) Existing law defines the term "public works" for purposes of requirements regarding the payment of prevailing wages. Existing law generally defines "public works" to include construction, alteration, demolition, installation, or repair work done under contract and paid in whole or in part out of public funds. Existing law defines "construction" for these purposes to include work performed during the design and preconstruction phases of construction. Existing law*

*makes a willful violation of laws relating to payment of prevailing wages on public works a misdemeanor.*

*This bill would revise the definition of “construction” to also include work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. The bill would also expand the definition of “public works,” for the purposes of requirements regarding the payment of prevailing wages, to also include any task relating to the collecting or sorting, or both, of refuse or recyclable metals, such as copper, steel, and aluminum, performed at a public works jobsite. By expanding the definition of a crime, this bill would impose a state-mandated local program.*

*(2) The California Constitution grants mechanics, persons furnishing materials, artisans, and laborers of every class the right to a lien upon the property upon which he or she has bestowed labor or furnished material for the value of that labor done and material furnished. The California Constitution also requires the Legislature to provide, by law, for the speedy and efficient enforcement of those liens.*

*Existing statutory law governs works of improvement, including mechanics liens. Existing law grants specified persons who provide work authorized for a work of improvement the right to a mechanics lien. Existing law defines “work of improvement” to include, among other things, construction, alteration, repair, demolition, or removal, in whole or in part, of, or addition to, specified infrastructure and generally defines “work of improvement” to mean the entire structure or scheme of improvement as a whole, and includes site improvement.*

*This bill would expand the definition of “work of improvement” to also include all cleanup work performed at the site.*

*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.*

~~The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The act authorizes the state board to include the use of market-based compliance mechanisms. Existing law requires all moneys, except for fines and penalties, collected by the state board from the auction or sale of allowances as part of a market-based compliance mechanism to be~~

deposited in the Greenhouse Gas Reduction Fund and to be available upon appropriation by the Legislature. Existing law requires the Department of Finance, in consultation with the state board and any other relevant state agency, to develop, as specified, a 3-year investment plan for the moneys deposited in the Greenhouse Gas Reduction Fund.

~~This bill would specify that moneys from the Greenhouse Gas Reduction Fund are public funds, as defined. The bill would require that, if moneys from the Greenhouse Gas Reduction Fund are made available to the owner or operator of a refinery to perform work to reduce greenhouse gas emissions, then all work at the refinery related to reducing greenhouse gas emissions that is not performed by the owner’s or operator’s own employees and that falls within an apprenticeable occupation, as defined, shall be performed by skilled journeypersons, as defined, and registered apprentices, as defined. The bill would require that moneys from the Greenhouse Gas Reduction Fund only be made available for work at a refinery if the work is related to complying with a market-based compliance mechanism to reduce greenhouse gas emissions, as specified.~~

~~This bill would require the Chief of the Division of Apprenticeship Standards to approve, no later than January 1, 2016, a curriculum for an apprenticeship program in advanced safety training in performing work processes specific to technology related to the reduction of greenhouse gas emissions, as defined, and would require the chief, in consultation with the California Emergency Management Agency and the Division of Occupational Safety and Health, to periodically revise the curriculum to reflect current best practices. The bill would require an approved apprenticeship program or community college to issue a certificate to a worker who completes the approved curriculum. The bill would prohibit employers from being required to pay for the costs of the training or to pay wages to workers for the time spent in the training unless the employer has agreed to do so.~~

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

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

- 1     SECTION 1. Section 8050 of the Civil Code is amended to
- 2     read:
- 3     8050. (a) “Work of improvement” includes, but is not limited
- 4     to:

1 (1) Construction, alteration, repair, demolition, or removal, in  
2 whole or in part, of, or addition to, a building, wharf, bridge, ditch,  
3 flume, aqueduct, well, tunnel, fence, machinery, railroad, or road.

4 (2) Seeding, sodding, or planting of real property for landscaping  
5 purposes.

6 (3) Filling, leveling, or grading of real property.

7 (b) Except as otherwise provided in this part, “work of  
8 improvement” means the entire structure or scheme of  
9 improvement as a whole, and includes site improvement *and all*  
10 *cleanup work performed at the site.*

11 *SEC. 2. Section 1720 of the Labor Code is amended to read:*

12 1720. (a) As used in this chapter, “public works” means:

13 (1) Construction, alteration, demolition, installation, or repair  
14 work done under contract and paid for in whole or in part out of  
15 public funds, except work done directly by any public utility  
16 company pursuant to order of the Public Utilities Commission or  
17 other public authority. For purposes of this paragraph,  
18 “construction” includes work performed during the design and  
19 preconstruction phases of construction, including, but not limited  
20 to, inspection and land surveying work, *and work performed during*  
21 *the postconstruction phases of construction, including, but not*  
22 *limited to, all cleanup work at the jobsite.* For purposes of this  
23 paragraph, “installation” includes, but is not limited to, the  
24 assembly and disassembly of freestanding and affixed modular  
25 office systems.

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

31 (3) Street, sewer, or other improvement work done under the  
32 direction and supervision or by the authority of any officer or  
33 public body of the state, or of any political subdivision or district  
34 thereof, whether the political subdivision or district operates under  
35 a freeholder’s charter or not.

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

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

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

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

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

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

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

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

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

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

21 (c) Notwithstanding subdivision (b):

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

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

36 (3) If the state or a political subdivision reimburses a private  
37 developer for costs that would normally be borne by the public,  
38 or provides directly or indirectly a public subsidy to a private  
39 development project that is de minimis in the context of the project,

1 an otherwise private development project shall not thereby become  
2 subject to the requirements of this chapter.

3 (4) The construction or rehabilitation of affordable housing units  
4 for low- or moderate-income persons pursuant to paragraph (5) or  
5 (7) of subdivision (e) of Section 33334.2 of the Health and Safety  
6 Code that are paid for solely with moneys from the Low and  
7 Moderate Income Housing Fund established pursuant to Section  
8 33334.3 of the Health and Safety Code or that are paid for by a  
9 combination of private funds and funds available pursuant to  
10 Section 33334.2 or 33334.3 of the Health and Safety Code do not  
11 constitute a project that is paid for in whole or in part out of public  
12 funds.

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

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

20 (A) The project is a self-help housing project in which no fewer  
21 than 500 hours of construction work associated with the homes  
22 are to be performed by the home buyers.

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

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

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

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

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

11 (1) Qualified residential rental projects, as defined by Section  
12 142(d) of the Internal Revenue Code, financed in whole or in part  
13 through the issuance of bonds that receive allocation of a portion  
14 of the state ceiling pursuant to Chapter 11.8 of Division 1  
15 (commencing with Section 8869.80) of the Government Code on  
16 or before December 31, 2003.

17 (2) Single-family residential projects financed in whole or in  
18 part through the issuance of qualified mortgage revenue bonds or  
19 qualified veterans' mortgage bonds, as defined by Section 143 of  
20 the Internal Revenue Code, or with mortgage credit certificates  
21 under a Qualified Mortgage Credit Certificate Program, as defined  
22 by Section 25 of the Internal Revenue Code, that receive allocation  
23 of a portion of the state ceiling pursuant to Chapter 11.8 of Division  
24 1 (commencing with Section 8869.80) of the Government Code  
25 on or before December 31, 2003.

26 (3) Low-income housing projects that are allocated federal or  
27 state low-income housing tax credits pursuant to Section 42 of the  
28 Internal Revenue Code, Chapter 3.6 of Division 31 (commencing  
29 with Section 50199.4) of the Health and Safety Code, or Section  
30 12206, 17058, or 23610.5 of the Revenue and Taxation Code, on  
31 or before December 31, 2003.

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

36 (f) For purposes of this section, references to the Internal  
37 Revenue Code mean the Internal Revenue Code of 1986, as  
38 amended, and include the corresponding predecessor sections of  
39 the Internal Revenue Code of 1954, as amended.

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

5 *SEC. 3. Section 1720.7 is added to the Labor Code, to read:*  
6 *1720.7. For the limited purposes of Article 2 (commencing*  
7 *with Section 1770), “public works” also means any task relating*  
8 *to the collecting or sorting, or both, of refuse or recyclable metals,*  
9 *such as copper, steel, and aluminum, performed at a public works*  
10 *jobsite.*

11 *SEC. 4. No reimbursement is required by this act pursuant to*  
12 *Section 6 of Article XIII B of the California Constitution because*  
13 *the only costs that may be incurred by a local agency or school*  
14 *district will be incurred because this act creates a new crime or*  
15 *infraction, eliminates a crime or infraction, or changes the penalty*  
16 *for a crime or infraction, within the meaning of Section 17556 of*  
17 *the Government Code, or changes the definition of a crime within*  
18 *the meaning of Section 6 of Article XIII B of the California*  
19 *Constitution.*

20 ~~SECTION 1. Section 39714 is added to the Health and Safety~~  
21 ~~Code, to read:~~

22 ~~39714. (a) For purposes of this section, the following terms~~  
23 ~~have the following meanings:~~

24 ~~(1) “Apprenticeable occupation” means an occupation for which~~  
25 ~~the Chief of the Division of Apprenticeship Standards has approved~~  
26 ~~an apprenticeship program pursuant to Section 3075 of the Labor~~  
27 ~~Code.~~

28 ~~(2) “Approved advanced safety training in performing work~~  
29 ~~processes to reduce greenhouse gas emissions” means a curriculum~~  
30 ~~of in-person classroom and laboratory instruction approved by the~~  
31 ~~Chief of the Division of Apprenticeship Standards in consultation~~  
32 ~~with the California Emergency Management Agency and the~~  
33 ~~Division of Occupational Safety and Health.~~

34 ~~(3) “Registered apprentice” means an apprentice registered in~~  
35 ~~an apprenticeship program approved by the Chief of the Division~~  
36 ~~of Apprenticeship Standards pursuant to Section 3075 of the Labor~~  
37 ~~Code who is performing work covered by the standards of that~~  
38 ~~apprenticeship program and receiving the supervision required by~~  
39 ~~the standards of that apprenticeship program.~~

1 ~~(4) “Skilled journeyperson” means a worker who meets all of~~  
2 ~~the following:~~

3 ~~(A) The worker accomplished either of the following:~~

4 ~~(i) Graduated from an apprenticeship program for the applicable~~  
5 ~~occupation that was approved by the Chief of the Division of~~  
6 ~~Apprenticeship Standards or by the federal Office of~~  
7 ~~Apprenticeship, or by its predecessor agency.~~

8 ~~(ii) Has at least as many hours of on-the-job experience in the~~  
9 ~~applicable occupation that would be required to graduate from an~~  
10 ~~apprenticeship program for the applicable occupation that is~~  
11 ~~approved by the Chief of the Division of Apprenticeship Standards.~~

12 ~~(B) The worker is being paid at least the prevailing hourly wage~~  
13 ~~rate for a journeyperson in the applicable occupation and~~  
14 ~~geographic area.~~

15 ~~(C) The worker has completed within the prior two calendar~~  
16 ~~years at least 20 hours of approved advanced safety training in~~  
17 ~~performing work processes to reduce greenhouse gas emissions.~~  
18 ~~This requirement shall apply only to work performed on or after~~  
19 ~~January 1, 2018.~~

20 ~~(b) Moneys from the fund shall be public funds as that term is~~  
21 ~~used in Article 2 (commencing with Section 1770) of Chapter 1~~  
22 ~~of Part 7 of Division 2 of the Labor Code.~~

23 ~~(c) Insofar as moneys from the fund may be made available to~~  
24 ~~the owner or operator of a refinery pursuant to Section 39716 to~~  
25 ~~perform work to reduce greenhouse gas emissions, then all work~~  
26 ~~at the refinery related to reducing greenhouse gas emissions that~~  
27 ~~is not performed by the owner’s or operator’s own employees and~~  
28 ~~that falls within an apprenticeable occupation shall be performed~~  
29 ~~by skilled journeymen and registered apprentices.~~

30 ~~(d) For purposes of subdivision (c), moneys from the fund shall~~  
31 ~~be made available only for work at a refinery if the work is related~~  
32 ~~to complying with a market-based compliance mechanism~~  
33 ~~established pursuant to the California Global Warming Solutions~~  
34 ~~Act of 2006 (Division 25.5 (commencing with Section 38500)),~~  
35 ~~and is not required by any other law, regulation, or court order.~~

36 ~~(e) Approved advanced safety training in performing work~~  
37 ~~processes specific to the reduction of greenhouse gas emissions~~  
38 ~~may be provided by an apprenticeship program approved by the~~  
39 ~~Chief of the Division of Apprenticeship Standards or by the~~  
40 ~~California Community Colleges. No later than January 1, 2016,~~

1 ~~the Chief of the Division of Apprenticeship Standards shall approve~~  
2 ~~a curriculum, and, in consultation with the California Emergency~~  
3 ~~Management Agency and the Division of Occupational Safety and~~  
4 ~~Health, shall periodically revise the curriculum to reflect current~~  
5 ~~best practices. An apprenticeship program or community college~~  
6 ~~shall issue a certificate to a worker who completes the approved~~  
7 ~~curriculum. Notwithstanding any other law, employers shall not~~  
8 ~~be required to pay for the costs of the training or to pay wages to~~  
9 ~~workers for the time spent in the training unless the employer has~~  
10 ~~agreed to do so.~~

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