

AMENDED IN SENATE JUNE 3, 2014
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

Introduced by Assembly Member Bonilla

December 3, 2012

An act to 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 construction.~~ *prevailing wage.*

LEGISLATIVE COUNSEL'S DIGEST

AB 26, as amended, Bonilla. Construction: ~~prevailing wage and mechanics liens.~~ *wage.*

~~(1) Existing~~

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.

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

1 8050. ~~(a) “Work of improvement” includes, but is not limited~~
2 ~~to:~~

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

6 ~~(2) Seeding, sodding, or planting of real property for landscaping~~
7 ~~purposes.~~

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

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

13 ~~SEC. 2.~~

14 *SECTION 1.* Section 1720 of the Labor Code is amended to
15 read:

16 1720. (a) As used in this chapter, “public works” means:

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

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

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

- 1 (4) The laying of carpet done under a building lease-maintenance
2 contract and paid for out of public funds.
- 3 (5) The laying of carpet in a public building done under contract
4 and paid for in whole or in part out of public funds.
- 5 (6) Public transportation demonstration projects authorized
6 pursuant to Section 143 of the Streets and Highways Code.
- 7 (b) For purposes of this section, “paid for in whole or in part
8 out of public funds” means all of the following:
 - 9 (1) The payment of money or the equivalent of money by the
10 state or political subdivision directly to or on behalf of the public
11 works contractor, subcontractor, or developer.
 - 12 (2) Performance of construction work by the state or political
13 subdivision in execution of the project.
 - 14 (3) Transfer by the state or political subdivision of an asset of
15 value for less than fair market price.
 - 16 (4) Fees, costs, rents, insurance or bond premiums, loans, interest
17 rates, or other obligations that would normally be required in the
18 execution of the contract, that are paid, reduced, charged at less
19 than fair market value, waived, or forgiven by the state or political
20 subdivision.
 - 21 (5) Money loaned by the state or political subdivision that is to
22 be repaid on a contingent basis.
 - 23 (6) Credits that are applied by the state or political subdivision
24 against repayment obligations to the state or political subdivision.
- 25 (c) Notwithstanding subdivision (b):
 - 26 (1) Private residential projects built on private property are not
27 subject to the requirements of this chapter unless the projects are
28 built pursuant to an agreement with a state agency, redevelopment
29 agency, or local public housing authority.
 - 30 (2) If the state or a political subdivision requires a private
31 developer to perform construction, alteration, demolition,
32 installation, or repair work on a public work of improvement as a
33 condition of regulatory approval of an otherwise private
34 development project, and the state or political subdivision
35 contributes no more money, or the equivalent of money, to the
36 overall project than is required to perform this public improvement
37 work, and the state or political subdivision maintains no proprietary
38 interest in the overall project, then only the public improvement
39 work shall thereby become subject to this chapter.

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

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

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

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

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

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

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

34 (D) The project consists of new construction, expansion, or
35 rehabilitation work associated with a facility developed by a
36 nonprofit organization to be operated on a not-for-profit basis to
37 provide emergency or transitional shelter and ancillary services
38 and assistance to homeless adults and children. The nonprofit
39 organization operating the project shall provide, at no profit, not
40 less than 50 percent of the total project cost from nonpublic

1 sources, excluding real property that is transferred or leased. Total
2 project cost includes the value of donated labor, materials,
3 architectural, and engineering services.

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

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

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

20 (2) Single-family residential projects financed in whole or in
21 part through the issuance of qualified mortgage revenue bonds or
22 qualified veterans' mortgage bonds, as defined by Section 143 of
23 the Internal Revenue Code, or with mortgage credit certificates
24 under a Qualified Mortgage Credit Certificate Program, as defined
25 by Section 25 of the Internal Revenue Code, that receive allocation
26 of a portion of the state ceiling pursuant to Chapter 11.8 of Division
27 1 (commencing with Section 8869.80) of the Government Code
28 on or before December 31, 2003.

29 (3) Low-income housing projects that are allocated federal or
30 state low-income housing tax credits pursuant to Section 42 of the
31 Internal Revenue Code, Chapter 3.6 of Division 31 (commencing
32 with Section 50199.4) of the Health and Safety Code, or Section
33 12206, 17058, or 23610.5 of the Revenue and Taxation Code, on
34 or before December 31, 2003.

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

39 (f) For purposes of this section, references to the Internal
40 Revenue Code mean the Internal Revenue Code of 1986, as

1 amended, and include the corresponding predecessor sections of
2 the Internal Revenue Code of 1954, as amended.

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

7 ~~SEC. 3.~~

8 *SEC. 2.* Section 1720.7 is added to the Labor Code, to read:

9 1720.7. For the limited purposes of Article 2 (commencing
10 with Section 1770), “public works” also means any task relating
11 to the collecting or sorting, or both, of refuse or recyclable metals,
12 such as copper, steel, and aluminum, performed at a public works
13 jobsite.

14 ~~SEC. 4.~~

15 *SEC. 3.* No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.