

ASSEMBLY BILL

No. 302

Introduced by Assembly Member Chau

February 12, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 302, as introduced, Chau. Public works: public subsidies.

Existing law requires that, except as specified, not less than the general prevailing rate of per diem wages, determined by the Director of Industrial Relations, be paid to workers employed on public works projects. Existing law 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, but exempts from that definition, among other projects, an otherwise private development project if the state or political subdivision provides, directly or indirectly, a public subsidy to a private development project that is de minimis in the context of the project.

This bill would provide that a public subsidy is de minimis if it is both less than \$10,000 and less than 1% of the total project cost.

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:

(1) 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 any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, “construction” includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work. For purposes of this paragraph, “installation” includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems.

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

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

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

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

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

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

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

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

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

(4) Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less

1 than fair market value, waived, or forgiven by the state or political
2 subdivision.

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

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

7 (c) Notwithstanding subdivision (b):

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

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

22 (3) If the state or a political subdivision reimburses a private
23 developer for costs that would normally be borne by the public,
24 or provides directly or indirectly a public subsidy to a private
25 development project that is *de minimis* in the context of the project,
26 an otherwise private development project shall not thereby become
27 subject to the requirements of this chapter. *For purposes of this*
28 *paragraph, a public subsidy is de minimis if it is both less than*
29 *ten thousand dollars (\$10,000) and less than 1 percent of the total*
30 *project cost.*

31 (4) The construction or rehabilitation of affordable housing units
32 for low- or moderate-income persons pursuant to paragraph (5) or
33 (7) of subdivision (e) of Section 33334.2 of the Health and Safety
34 Code that are paid for solely with moneys from the Low and
35 Moderate Income Housing Fund established pursuant to Section
36 33334.3 of the Health and Safety Code or that are paid for by a
37 combination of private funds and funds available pursuant to
38 Section 33334.2 or 33334.3 of the Health and Safety Code do not
39 constitute a project that is paid for in whole or in part out of public
40 funds.

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

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

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

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

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

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

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

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

38 (1) Qualified residential rental projects, as defined by Section
39 142(d) of the Internal Revenue Code, financed in whole or in part
40 through the issuance of bonds that receive allocation of a portion

1 of the state ceiling pursuant to Chapter 11.8 of Division 1
2 (commencing with Section 8869.80) of the Government Code on
3 or before December 31, 2003.

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

13 (3) Low-income housing projects that are allocated federal or
14 state low-income housing tax credits pursuant to Section 42 of the
15 Internal Revenue Code, Chapter 3.6 of Division 31 (commencing
16 with Section 50199.4) of the Health and Safety Code, or Section
17 12206, 17058, or 23610.5 of the Revenue and Taxation Code, on
18 or before December 31, 2003.

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

23 (f) For purposes of this section, references to the Internal
24 Revenue Code mean the Internal Revenue Code of 1986, as
25 amended, and include the corresponding predecessor sections of
26 the Internal Revenue Code of 1954, as amended.

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