

AMENDED IN SENATE JUNE 17, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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 amended, 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. *The bill would specify that those provisions do not apply to a project that was advertised for bid, or a contract that was awarded, before January 1, 2014.*

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. For purposes of this
12 paragraph, “installation” includes, but is not limited to, the
13 assembly and disassembly of freestanding and affixed modular
14 office systems.

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

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

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

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

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

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

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

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

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

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

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

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

12 (c) Notwithstanding subdivision (b):

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

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

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

36 *(B) For purposes of subparagraph (A), a public subsidy is de*
37 *minimis if it is both less than ten thousand dollars (\$10,000) and*
38 *less than 1 percent of the total project cost. This subparagraph*
39 *shall not apply to a project that was advertised for bid, or a*
40 *contract that was awarded, before January 1, 2014.*

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

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

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

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

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

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

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

38 (E) The public participation in the project that would otherwise
 39 meet the criteria of subdivision (b) is public funding in the form
 40 of below-market interest rate loans for a project in which

1 occupancy of at least 40 percent of the units is restricted for at
2 least 20 years, by deed or regulatory agreement, to individuals or
3 families earning no more than 80 percent of the area median
4 income.

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

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

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

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

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

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

37 (g) The amendments made to this section by either Chapter 938
38 of the Statutes of 2001 or the act adding this subdivision shall not

- 1 be construed to preempt local ordinances requiring the payment
- 2 of prevailing wages on housing projects.

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