

**ASSEMBLY BILL**

**No. 2272**

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**Introduced by Assembly Member Gray**

February 21, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2272, as introduced, Gray. Public works: prevailing wage.

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 for in whole or in part out of public funds. Existing law makes a willful violation of laws relating to the payment of prevailing wages on public works a misdemeanor.

Existing law establishes the California Advanced Services Fund (CASF) and requires the Public Utilities Commission to administer a program using moneys in the fund to encourage deployment of high-quality advanced communication services to all Californians by providing funding for infrastructure projects to provide broadband access to households that are unserved or underserved, as specified.

This bill would revise the definition of “public works” to also include projects funded by the California Advanced Services Fund. By expanding the definition of a crime, this bill would impose a state-mandated local program.

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 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 (7) *California Advanced Services Fund projects pursuant to*
- 32 *Section 281 of the Public Utilities Code.*

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

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

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

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

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

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

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

19 (c) Notwithstanding subdivision (b):

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

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

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

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  
39 be construed to preempt local ordinances requiring the payment  
40 of prevailing wages on housing projects.

1     SEC. 2. No reimbursement is required by this act pursuant to  
2 Section 6 of Article XIII B of the California Constitution because  
3 the only costs that may be incurred by a local agency or school  
4 district will be incurred because this act creates a new crime or  
5 infraction, eliminates a crime or infraction, or changes the penalty  
6 for a crime or infraction, within the meaning of Section 17556 of  
7 the Government Code, or changes the definition of a crime within  
8 the meaning of Section 6 of Article XIII B of the California  
9 Constitution.

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