

AMENDED IN SENATE AUGUST 22, 2014

AMENDED IN SENATE AUGUST 19, 2014

AMENDED IN SENATE JUNE 26, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**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 amended, 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 infrastructure project grants from the California Advanced Services Fund. The bill would specify that for purposes of this provision, the

Public Utilities Commission is not the awarding body or body awarding the contract. By expanding the definition of a crime, this bill would impose a state-mandated local program.

*This bill would incorporate additional changes in Section 1720 of the Labor Code, proposed by AB 26, to be operative only if AB 26 and this bill are both enacted and become effective on or before January 1, 2015, and this bill is chaptered last.*

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

1 thereof, whether the political subdivision or district operates under  
2 a freeholder’s charter or not.

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

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

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

9 (7) (A) Infrastructure project grants from the California  
10 Advanced Services Fund pursuant to Section 281 of the Public  
11 Utilities Code.

12 (B) For purposes of this paragraph, the Public Utilities  
13 Commission is not the awarding body or the body awarding the  
14 contract, as defined in Section 1722.

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

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

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

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

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

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

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

33 (c) Notwithstanding subdivision (b):

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

38 (2) If the state or a political subdivision requires a private  
39 developer to perform construction, alteration, demolition,  
40 installation, or repair work on a public work of improvement as a

1 condition of regulatory approval of an otherwise private  
2 development project, and the state or political subdivision  
3 contributes no more money, or the equivalent of money, to the  
4 overall project than is required to perform this public improvement  
5 work, and the state or political subdivision maintains no proprietary  
6 interest in the overall project, then only the public improvement  
7 work shall thereby become subject to this chapter.

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

14 (4) The construction or rehabilitation of affordable housing units  
15 for low- or moderate-income persons pursuant to paragraph (5) or  
16 (7) of subdivision (e) of Section 33334.2 of the Health and Safety  
17 Code that are paid for solely with moneys from the Low and  
18 Moderate Income Housing Fund established pursuant to Section  
19 33334.3 of the Health and Safety Code or that are paid for by a  
20 combination of private funds and funds available pursuant to  
21 Section 33334.2 or 33334.3 of the Health and Safety Code do not  
22 constitute a project that is paid for in whole or in part out of public  
23 funds.

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

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

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

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

38 (D) The project consists of new construction, expansion, or  
39 rehabilitation work associated with a facility developed by a  
40 nonprofit organization to be operated on a not-for-profit basis to

1 provide emergency or transitional shelter and ancillary services  
2 and assistance to homeless adults and children. The nonprofit  
3 organization operating the project shall provide, at no profit, not  
4 less than 50 percent of the total project cost from nonpublic  
5 sources, excluding real property that is transferred or leased. Total  
6 project cost includes the value of donated labor, materials,  
7 architectural, and engineering services.

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

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

18 (1) Qualified residential rental projects, as defined by Section  
19 142(d) of the Internal Revenue Code, financed in whole or in part  
20 through the issuance of bonds that receive allocation of a portion  
21 of the state ceiling pursuant to Chapter 11.8 (commencing with  
22 Section 8869.80) of Division 1 of Title 2 of the Government Code  
23 on or before December 31, 2003.

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

33 (3) Low-income housing projects that are allocated federal or  
34 state low-income housing tax credits pursuant to Section 42 of the  
35 Internal Revenue Code, Chapter 3.6 (commencing with Section  
36 50199.4) of Part 1 of Division 31 of the Health and Safety Code,  
37 or Section 12206, 17058, or 23610.5 of the Revenue and Taxation  
38 Code, on or before December 31, 2003.

39 (e) If a statute, other than this section, or a regulation, other than  
40 a regulation adopted pursuant to this section, or an ordinance or a

1 contract applies this chapter to a project, the exclusions set forth  
2 in subdivision (d) do not apply to that project.

3 (f) For purposes of this section, references to the Internal  
4 Revenue Code mean the Internal Revenue Code of 1986, as  
5 amended, and include the corresponding predecessor sections of  
6 the Internal Revenue Code of 1954, as amended.

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

11 *SEC. 1.5. 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~~, *work, and work performed*  
21 *during the postconstruction phases of construction, including, but*  
22 *not 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 (7) (A) *Infrastructure project grants from the California*  
4 *Advanced Services Fund pursuant to Section 281 of the Public*  
5 *Utilities Code.*

6 (B) *For purposes of this paragraph, the Public Utilities*  
7 *Commission is not the awarding body or the body awarding the*  
8 *contract, as defined in Section 1722.*

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

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

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

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

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

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

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

27 (c) Notwithstanding subdivision (b):

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

32 (2) If the state or a political subdivision requires a private  
33 developer to perform construction, alteration, demolition,  
34 installation, or repair work on a public work of improvement as a  
35 condition of regulatory approval of an otherwise private  
36 development project, and the state or political subdivision  
37 contributes no more money, or the equivalent of money, to the  
38 overall project than is required to perform this public improvement  
39 work, and the state or political subdivision maintains no proprietary

1 interest in the overall project, then only the public improvement  
2 work shall thereby become subject to this chapter.

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

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

19 ~~(5) "Paid for in whole or in part out of public funds" does not~~  
20 ~~include tax credits provided pursuant to Section 17053.49 or 23649~~  
21 ~~of the Revenue and Taxation Code.~~

22 ~~(6)~~

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

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

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

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

37 (D) The project consists of new construction, expansion, or  
38 rehabilitation work associated with a facility developed by a  
39 nonprofit organization to be operated on a not-for-profit basis to  
40 provide emergency or transitional shelter and ancillary services

1 and assistance to homeless adults and children. The nonprofit  
2 organization operating the project shall provide, at no profit, not  
3 less than 50 percent of the total project cost from nonpublic  
4 sources, excluding real property that is transferred or leased. Total  
5 project cost includes the value of donated labor, materials,  
6 architectural, and engineering services.

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

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

17 (1) Qualified residential rental projects, as defined by Section  
18 142(d) of the Internal Revenue Code, financed in whole or in part  
19 through the issuance of bonds that receive allocation of a portion  
20 of the state ceiling pursuant to Chapter 11.8 ~~of Division 1~~  
21 (commencing with Section 8869.80) of *Division 1 of Title 2 of the*  
22 *Government Code* on or before December 31, 2003.

23 (2) Single-family residential projects financed in whole or in  
24 part through the issuance of qualified mortgage revenue bonds or  
25 qualified veterans' mortgage bonds, as defined by Section 143 of  
26 the Internal Revenue Code, or with mortgage credit certificates  
27 under a Qualified Mortgage Credit Certificate Program, as defined  
28 by Section 25 of the Internal Revenue Code, that receive allocation  
29 of a portion of the state ceiling pursuant to Chapter 11.8 ~~of Division~~  
30 ~~1~~ (commencing with Section 8869.80) of *Division 1 of Title 2 of*  
31 *the Government Code* on or before December 31, 2003.

32 (3) Low-income housing projects that are allocated federal or  
33 state low-income housing tax credits pursuant to Section 42 of the  
34 Internal Revenue Code, Chapter 3.6 ~~of Division 31~~ (commencing  
35 with Section 50199.4) of *Part 1 of Division 31 of the Health and*  
36 *Safety Code*, or Section 12206, 17058, or 23610.5 of the Revenue  
37 and Taxation Code, on or before December 31, 2003.

38 (e) If a statute, other than this section, or a regulation, other than  
39 a regulation adopted pursuant to this section, or an ordinance or a

1 contract applies this chapter to a project, the exclusions set forth  
2 in subdivision (d) do not apply to that project.

3 (f) For purposes of this section, references to the Internal  
4 Revenue Code mean the Internal Revenue Code of 1986, as  
5 amended, and include the corresponding predecessor sections of  
6 the Internal Revenue Code of 1954, as amended.

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

11 *SEC. 2. Section 1.5 of this bill incorporates amendments to*  
12 *Section 1720 of the Labor Code proposed by both this bill and*  
13 *Assembly Bill 26. It shall only become operative if (1) both bills*  
14 *are enacted and become effective on or before January 1, 2015,*  
15 *(2) each bill amends Section 1720 of the Labor Code, and (3) this*  
16 *bill is enacted after Assembly Bill 26, in which case Section 1 of*  
17 *this bill shall not become operative.*

18 ~~SEC. 2.~~

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

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