

ASSEMBLY BILL

No. 251

**Introduced by Assembly Member Levine
(Coauthor: Assembly Member Chau)**

February 9, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 251, as introduced, Levine. 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 the 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 \$25,000 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, 2016.

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, and work performed during
12 the postconstruction phases of construction, including, but not
13 limited to, all cleanup work at the jobsite. For purposes of this
14 paragraph, “installation” includes, but is not limited to, the
15 assembly and disassembly of freestanding and affixed modular
16 office systems.

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

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

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

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

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

33 (7) (A) Infrastructure project grants from the California
34 Advanced Services Fund pursuant to Section 281 of the Public
35 Utilities Code.

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

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) (A) 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 (B) For purposes of subparagraph (A), a public subsidy is de
2 minimis if it is both less than twenty-five thousand dollars
3 (\$25,000) and less than 1 percent of the total project cost. This
4 subparagraph shall not apply to a project that was advertised for
5 bid, or a contract that was awarded, before January 1, 2016.

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

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

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

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

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

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

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

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

11 (1) Qualified residential rental projects, as defined by Section
12 142(d) of the Internal Revenue Code, financed in whole or in part
13 through the issuance of bonds that receive allocation of a portion
14 of the state ceiling pursuant to Chapter 11.8 (commencing with
15 Section 8869.80) of Division 1 of Title 2 of the Government Code
16 on or before December 31, 2003.

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

26 (3) Low-income housing projects that are allocated federal or
27 state low-income housing tax credits pursuant to Section 42 of the
28 Internal Revenue Code, Chapter 3.6 (commencing with Section
29 50199.4) of Part 1 of Division 31 of the Health and Safety Code,
30 or Section 12206, 17058, or 23610.5 of the Revenue and Taxation
31 Code, on or before December 31, 2003.

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

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

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

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