

AMENDED IN SENATE JUNE 15, 2016
AMENDED IN ASSEMBLY JANUARY 4, 2016
AMENDED IN ASSEMBLY APRIL 15, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1233

Introduced by Assembly Member Levine

February 27, 2015

An act to ~~amend Section 1720 of the Labor~~ *add Section 8547.16 to the Government Code*, relating to ~~public works~~ *improper governmental activities*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1233, as amended, Levine. ~~Public works; public subsidies.~~ *Whistleblower investigation policy: state agencies.*

The California Whistleblower Protection Act requires the State Auditor to administer the act and to investigate and report on improper governmental activities, as defined. The act requires the State Auditor to establish a means of submitting allegations of improper governmental activity, and generally requires the State Auditor to keep confidential every investigation, including all investigative files and work product.

The act authorizes the State Auditor to issue a public report of an investigation that has substantiated an improper governmental activity, keeping confidential the identity of the employee or employees involved. The act also authorizes the State Auditor to release any findings or evidence supporting any findings resulting from an investigation whenever the State Auditor determines it necessary to serve the interests of the state.

This bill would require a state agency that utilizes a whistleblower investigation policy separate from the act to publicly report, in the manner in which the State Auditor is authorized to publicly report, any investigation of a whistleblower complaint that has substantiated improper government activities.

~~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 \$250,000 and less than 2% 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 July 1, 2017.~~

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 8547.16 is added to the Government Code,
2 to read:

3 8547.16. Any state agency that utilizes a whistleblower
4 investigation policy separate from this article shall publicly report,
5 in the manner in which the State Auditor is authorized to publicly
6 report pursuant to subdivision (c) of Section 8547.7, any
7 investigation of a whistleblower complaint that has substantiated
8 improper governmental activities.

9 SECTION 1. ~~Section 1720 of the Labor Code is amended to~~
10 read:

11 1720. ~~(a) As used in this chapter, “public works” means:~~
12 (1) ~~Construction, alteration, demolition, installation, or repair~~
13 ~~work done under contract and paid for in whole or in part out of~~
14 ~~public funds, except work done directly by any public utility~~
15 ~~company pursuant to order of the Public Utilities Commission or~~

1 other public authority. For purposes of this paragraph,
2 “construction” includes work performed during the design and
3 preconstruction phases of construction, including, but not limited
4 to, inspection and land surveying work, and work performed during
5 the postconstruction phases of construction, including, but not
6 limited to, all cleanup work at the jobsite. For purposes of this
7 paragraph, “installation” includes, but is not limited to, the
8 assembly and disassembly of freestanding and affixed modular
9 office systems.

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

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

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

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

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

26 (7) (A) Infrastructure project grants from the California
27 Advanced Services Fund pursuant to Section 281 of the Public
28 Utilities Code.

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

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

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

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

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

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

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

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

10 ~~(e) Notwithstanding subdivision (b):~~

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

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

25 ~~(3) (A) If the state or a political subdivision reimburses a private~~
26 ~~developer for costs that would normally be borne by the public,~~
27 ~~or provides directly or indirectly a public subsidy to a private~~
28 ~~development project that is de minimis in the context of the project,~~
29 ~~an otherwise private development project shall not thereby become~~
30 ~~subject to the requirements of this chapter.~~

31 ~~(B) For purposes of subparagraph (A), a public subsidy is de~~
32 ~~minimis if it is both less than two hundred fifty thousand dollars~~
33 ~~(\$250,000) and less than 2 percent of the total project cost. This~~
34 ~~subparagraph shall not apply to a project that was advertised for~~
35 ~~bid, or a contract that was awarded, before July 1, 2017.~~

36 ~~(4) The construction or rehabilitation of affordable housing units~~
37 ~~for low- or moderate-income persons pursuant to paragraph (5) or~~
38 ~~(7) of subdivision (e) of Section 33334.2 of the Health and Safety~~
39 ~~Code that are paid for solely with moneys from the Low and~~
40 ~~Moderate Income Housing Fund established pursuant to Section~~

1 ~~33334.3 of the Health and Safety Code or that are paid for by a~~
2 ~~combination of private funds and funds available pursuant to~~
3 ~~Section 33334.2 or 33334.3 of the Health and Safety Code do not~~
4 ~~constitute a project that is paid for in whole or in part out of public~~
5 ~~funds.~~

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

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

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

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

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

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

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

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

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

16 ~~(3) Low-income housing projects that are allocated federal or~~
 17 ~~state low-income housing tax credits pursuant to Section 42 of the~~
 18 ~~Internal Revenue Code, Chapter 3.6 (commencing with Section~~
 19 ~~50199.4) of Part 1 of Division 31 of the Health and Safety Code,~~
 20 ~~or Section 12206, 17058, or 23610.5 of the Revenue and Taxation~~
 21 ~~Code, on or before December 31, 2003.~~

22 ~~(e) Notwithstanding paragraph (1) of subdivision (a),~~
 23 ~~construction, alteration, demolition, installation, or repair work on~~
 24 ~~the electric transmission system located in California constitutes~~
 25 ~~a public works project for the purposes of this chapter.~~

26 ~~(f) If a statute, other than this section, or a regulation, other than~~
 27 ~~a regulation adopted pursuant to this section, or an ordinance or a~~
 28 ~~contract applies this chapter to a project, the exclusions set forth~~
 29 ~~in subdivision (d) do not apply to that project.~~

30 ~~(g) For purposes of this section, references to the Internal~~
 31 ~~Revenue Code mean the Internal Revenue Code of 1986, as~~
 32 ~~amended, and include the corresponding predecessor sections of~~
 33 ~~the Internal Revenue Code of 1954, as amended.~~

34 ~~(h) The amendments made to this section by either Chapter 938~~
 35 ~~of the Statutes of 2001 or the act adding this subdivision shall not~~
 36 ~~be construed to preempt local ordinances requiring the payment~~
 37 ~~of prevailing wages on housing projects.~~