

ASSEMBLY BILL

No. 338

Introduced by Assembly Member Aguiar-Curry

January 30, 2023

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

LEGISLATIVE COUNSEL'S DIGEST

AB 338, as introduced, Aguiar-Curry. Public works: definition.

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 the term “public works” for purposes of requirements regarding the payment of prevailing wages to include construction, alteration, demolition, installation, or repair work done under contract and paid for using public funds, except as specified. Existing law makes a willful violation of laws relating to the payment of prevailing wages on public works a misdemeanor.

This bill would, commencing January 1, 2025, expand the definition of “public works” to include fuel reduction work done under contract and paid for in whole or in part out of public funds performed as part of a fire mitigation project, as specified. The bill would limit those provisions to work that falls within an apprenticeship program in the building and construction trades for which an apprenticeship program has been approved and to contracts in excess of \$100,000. The bill would delay the application of those provisions until January 1, 2026, for nonprofits. By expanding the scope of a crime, the 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 all of
 4 the following:
- 5 (1) Construction, alteration, demolition, installation, or repair
 6 work done under contract and paid for in whole or in part out of
 7 public funds, except work done directly by a public utility company
 8 pursuant to order of the Public Utilities Commission or other public
 9 authority. For purposes of this paragraph, “construction” includes
 10 work performed during the design, site assessment, feasibility
 11 study, and other preconstruction phases of construction, including,
 12 but not limited to, inspection and land surveying work, regardless
 13 of whether any further construction work is conducted, and work
 14 performed during the postconstruction phases of construction,
 15 including, but not limited to, all cleanup work at the jobsite. For
 16 purposes of this paragraph, “installation” includes, but is not
 17 limited to, the assembly and disassembly of freestanding and
 18 affixed modular office systems.
- 19 (2) Work done for irrigation, utility, reclamation, and
 20 improvement districts, and other districts of this type. “Public
 21 works” does not include the operation of the irrigation or drainage
 22 system of an irrigation or reclamation district, except as used in
 23 Section 1778 relating to retaining wages.
- 24 (3) Street, sewer, or other improvement work done under the
 25 direction and supervision or by the authority of an officer or public
 26 body of the state, or of a political subdivision or district thereof,
 27 whether the political subdivision or district operates under a
 28 freeholder’s charter or not.
- 29 (4) The laying of carpet done under a building lease-maintenance
 30 contract and paid for out of public funds.

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

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

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

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

11 (8) Tree removal work done in the execution of a project under
12 paragraph (1).

13 (9) (A) *Fuel reduction work done under contract and paid for*
14 *in whole or in part out of public funds performed as part of a fire*
15 *mitigation project, including, but not limited to, residential*
16 *chipping, rural road fuel breaks, fire breaks, and vegetation*
17 *management.*

18 (B) *This paragraph shall apply only to work that falls within*
19 *an apprenticable occupation in the building and construction*
20 *trades for which an apprenticeship program has been approved*
21 *by the Chief of the Division of Apprenticeship Standards pursuant*
22 *to Section 3075.*

23 (C) *This paragraph shall only apply to contracts in excess of*
24 *one hundred thousand dollars (\$100,000).*

25 (D) *This paragraph shall not apply to work performed on Indian*
26 *lands, as defined in Section 2703 of Title 25 of the United States*
27 *Code.*

28 (E) *This paragraph shall not apply to nonprofit organizations*
29 *until January 1, 2026.*

30 (F) *This paragraph shall become operative on January 1, 2025.*

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.

38 (3) Transfer by the state or political subdivision of an asset of
39 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 (c) Notwithstanding subdivision (b), all of the following apply:

11 (1) Private residential projects built on private property are not
12 subject to this chapter unless the projects are built pursuant to an
13 agreement with a state agency, a redevelopment agency, a successor
14 agency to a redevelopment agency when acting in that capacity,
15 or a local public housing authority.

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

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

32 (B) (i) For purposes of subparagraph (A), a public subsidy is
33 de minimis if it is both less than six hundred thousand dollars
34 (\$600,000) and less than 2 percent of the total project cost.

35 (ii) Notwithstanding clause (i), for purposes of subparagraph
36 (A), a public subsidy for a project that consists entirely of
37 single-family dwellings is de minimis if it is less than 2 percent
38 of the total project cost.

1 (iii) This subparagraph shall not apply to a project that was
2 advertised for bid, or a contract that was awarded, before July 1,
3 2021.

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

14 (5) Unless otherwise required by a public funding program, the
15 construction or rehabilitation of privately owned residential projects
16 is not subject to this chapter if one or more of the following
17 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, and
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 are not, solely by reason of this section,
7 subject to 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 (commencing with
12 Section 8869.80) of Division 1 of Title 2 of the Government Code
13 on 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
21 (commencing with Section 8869.80) of Division 1 of Title 2 of
22 the Government Code 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 (commencing with Section
26 50199.4) of Part 1 of Division 31 of the Health and Safety Code,
27 or Section 12206, 17058, or 23610.5 of the Revenue and Taxation
28 Code, on or before December 31, 2003.

29 (e) Notwithstanding paragraph (1) of subdivision (a),
30 construction, alteration, demolition, installation, or repair work on
31 the electric transmission system located in California constitutes
32 a public works project for the purposes of this chapter.

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

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

1 (h) 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.

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