

Date of Hearing: March 22, 2023

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kalra, Chair

AB 338 (Aguiar-Curry) – As Introduced January 30, 2023

SUBJECT: Public works: definition

SUMMARY: Expands the definition of "public works," for the purpose of the payment of prevailing wages, beginning on January 1, 2025, to also include fuel reduction work paid for in whole or in part by public funds performed as part of a fire mitigation project, including, but not limited to, residential chipping, rural road fuel breaks, fire breaks, and vegetation management.

Specifically, **this bill:**

- 1) Specifies that the provisions of this bill apply only to work that falls within an apprenticeship occupation in the building and construction trades for which an apprenticeship program has been approved by the Chief of the Division of Apprenticeship Standards (DAS).
- 2) Specifies that the provisions of this bill to only apply to contracts in excess of one hundred thousand dollars (\$100,000).
- 3) Exempts work performed on Indian lands, as defined, from the provisions of this bill.
- 4) Specifies that the provisions of this bill do not apply to nonprofit organizations until January 1, 2026.

EXISTING LAW:

- 1) Requires that not less than the general prevailing rate of per diem wages be paid to all workers employed on a "public works" project costing over \$1,000 dollars and imposes misdemeanor penalties for violation of this requirement. (Lab. Code, § 1771.)
- 2) 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, except as specified. (Lab. Code, § 1720 (a).)
- 3) Defines "paid for in whole or in part out of public funds" as, among other things, fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations normally required in the execution of a contract that are paid, reduced, charged at less than fair market value, waived or forgiven. (Lab. Code, § 1720 (b).)
- 4) Requires that the applicable general prevailing rate of per diem wages be paid to workers employed on public works projects in California. This rate is determined by the Director of the Department of Industrial Relations (DIR) for each locality in which the public work is to be performed and for each craft, classification, or type of worker needed to execute the public works project. (Lab. Code, § 1773.)
- 5) Provides that a willful violation of laws relating to the payment of prevailing wages on public works is a misdemeanor. (Lab. Code, § 1777.)

FISCAL EFFECT: Unknown

COMMENTS: According to the author, “Catastrophic wildfires have unfortunately become an annual occurrence in California. In 2021 alone the state saw 8,786 active wildfires that burned approximately 2,568,941 acres of land, destroyed 3,629 structures, and, most devastating of all, took the lives of three California citizens. Given this new reality, the state has placed a strong emphasis on wildfire mitigation work as a means to reduce the intensity of wildfire season. While wildfire mitigation is often talked about as a mechanism to protect houses from wildfires, wildfire mitigation is also a critical component of protecting various public works, including transportation infrastructure, public schools, and public buildings. In this sense, wild-fire mitigation can and should be seen as a “maintenance activity” that is desperately needed to ensure the safety and functionality of existing public works. This bill ensures that contracted-out wildfire mitigation work is considered a public works, which guarantees the fair payment of the workers participating in these projects and provides apprenticeship opportunities for aspiring tradesman. In an often dangerous environment, having better-paid and trained workers will prevent injuries and deliver a better, more efficient wildfire prevention.”

In addition, the author points out that [this bill] will promote equity solutions and maximize benefits for underserved and marginalized communities because “expanding prevailing wages for government-funded service sector jobs raises pay standards for female workers and workers of color, who make up a substantial portion of the construction and service workforce.”

Fuel Reduction Projects

According to the National Park Service, “Fuel reduction projects and vegetation treatments have been proven as a means of lessening wildfire hazards, catastrophic fire and its threat to public and firefighter safety, and damage to property. The objective is to remove enough vegetation (fuel) so that when a wildfire burns, it is less severe and can be more easily managed. When vegetation, or fuels, accumulate, they allow fires to burn hotter, faster, and with higher flame lengths. When fire encounters areas of continuous brush or small trees, it can burn these ‘ladder fuels’ and may quickly move from a ground fire into the treetops, creating a crown fire.”¹

According to California Department of Forestry and Fire Protection (CAL FIRE), “Fuels reduction work is done by dedicated CAL FIRE Fuels Reduction Crews, California National Guard, California Conservation Corps, California Department of Corrections and Rehabilitation, and CAL FIRE fire suppression resources including firefighter hand crews and engine crews when they are not responding to other emergencies.”²

“In addition, CAL FIRE funds millions of dollars of local projects through its grant programs. Fuels reduction projects are planned, implemented and funded by several CAL FIRE programs, including: The California Fire Plan, Vegetation Management Program, Forest Health Grants, and Fire Prevention Grants. Some projects may also be completed under the California Vegetation Treatment Program (CalVTP). The CAL FIRE-Office of the State Fire Marshal, Community

¹U.S. National Park Service. *Wildland Fire: What is Hazard Fuel Reduction?* May 2017.

² CAL FIRE Webpage. *Fuel Reduction*. March 2022

Wildfire Preparedness & Mitigation Division also has a role in planning these fuels reduction projects that focus on increasing the protection of people, structures, and communities.”³

Prevailing Wages in the Construction Industry

According to DIR, the wage rate relies upon such factors as “the particular craft, classification or type of work within the locality and in the nearest labor market area (if majorities of such workers are paid at a single rate). If there is no single rate paid to a majority, then the single or modal rate being paid to the greater number of workers is prevailing.”⁴

On the federal level, under the Davis-Bacon Act⁵, contractors and subcontractors who perform work on federally funded contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works must pay a prevailing wage to mechanics and laborers. The prevailing wage must be at least equal to locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The federal Department of Labor is responsible for determining prevailing wages, issuing regulations and standards to be observed by federal agencies that award or fund projects subject to Davis-Bacon labor standards, and overseeing consistent enforcement of the Davis-Bacon labor standards.⁶

The policy behind paying a prevailing wage is to ensure that contractors are not awarded public works contracts by virtue of paying low wages and undercutting competitors who provide higher compensation. Prevailing wage creates a level playing field by requiring an across-the-board rate for all bidders on publically subsidized projects.

According to a joint report by the Illinois Economic Policy Institute and the Project for Middle Class Renewal, “the minimum compensation standard provided by prevailing wage ensures that all workers-regardless of age, race, ethnicity, sex, gender identification, sexual orientation, religious affiliation, marital status, and veteran status-are paid local market rates in the county where they are building a project.”⁷ Additionally this report found that state prevailing wage laws raise the incomes of underprivileged groups, reduce overall inequality without having negative impacts on participation in the trades, and reduce wage discrimination in construction.⁸

Governor’s Veto Message

AB 1717 (Aguiar-Curry) of 2022 proposed language identical to this bill and was vetoed. The Governor’s veto message stated:

“My administration has worked tirelessly to cut red tape and distribute grant money quickly to cities, counties, special districts, and non-profits to fund fire mitigation projects. I wholeheartedly support prevailing wages for industries that do not pay livable wages to people completing public works projects. I am concerned that adding these projects to the definition of

³ Ibid.

⁴ California Department of Industrial Relations Webpage. *Frequently asked questions-Prevailing Wage*. March 2023.

⁵ Pub. Law 107-217-Aug. 21, 2002

⁶ U.S. Department of Labor: Wage and Hour Division Webpage. *Davis-Bacon and Related Acts*, March 2023.

⁷ Illinois Economic Policy Institute and Project for Middle Class Renewal. *State Prevailing Wage Laws Reduce Racial Income Gaps in Construction*, February 2018.

⁸ Ibid.

"public works" would introduce delays to critical fire mitigation projects necessary to protect vulnerable communities in the state. Such delays are a function of the administrative requirements that are imposed when executing a public works project.

I am directing my administration to work with the Legislature and sponsors of this bill to further examine this issue and propose solutions to ensure that we are both paying this critical workforce fairly while not unduly delaying these projects that protect people's lives and livelihoods."

In response to the Governor's veto, the author states, "The author still believes in the policy in AB 1717 but is prepared to amend the language and/or approach to meet the administration's needs. It is urgent to update the process of training, hiring, retaining, and fairly compensating workers in an industry plagued by a transient workforce and contractor and workforce shortages, to deliver critically needed public safety projects."

Arguments in Support

The California-Nevada Conference of Operating Engineers, sponsor of the bill, states, "Wildfire mitigation is dangerous and labor-intensive work that involves the implementation of a variety of precautionary measures to protect communities from the spread of wildfires. Specifically, wildfire mitigation tasks typically include but are not limited residential chipping, rural road fuel breaks, fire breaks, and vegetation management. Simply put, successful wildfire mitigation involves the removal or thinning of natural fuels, including brush, and dead or dying trees in order to limit the uncontrolled spread of a wildfire. These projects are essential to protecting communities. Our organizations have made good faith efforts to ensure that this piece of legislation does not have a negative impact on existing projects that are currently budgeted for, as we know the critical nature of this work should not be interrupted. With that in mind, as introduced, the bill would ensure a delayed implementation for contractors until January 1st of 2025. The bill additionally recognizes the role that non-profits play in performing wildfire mitigation work, specifying that the bill only applies to contracts over \$100,000 and that the Public works requirements don't apply to non-profits until January 1st of 2026."

Arguments in Opposition

The Rural County Representatives of California (RCRC), in opposition, state, "Experience has shown that, as written, [this bill], would have the unintended consequence of eliminating local jobs rather than creating them by placing small, local contractors at a competitive disadvantage for fuels reduction work in rural areas. The requirements to become a prevailing wage employer are both resource- and labor-intensive, making it difficult for many small contractors to obtain and maintain prevailing wage status. By requiring prevailing wage for fuels reduction projects, we expect to see local contractors priced out of projects while large, out-of-area contractors dominate the bidding. This exact scenario has occurred in rural communities with other prevailing wage sectors such as construction, and it has often served to restrict the affordability of projects while limiting availability of contractors to a small pool from outside the community. [This bill], while well-intended, would likely eliminate local jobs in the forestry workforce rather than creating them in communities like Lassen County, where hasty state policies have already created a cavernous need for new jobs."

Prior Legislation

AB 1717 (Aguiar-Curry) of 2022 would have expanded the definition of "public works," for the purpose of the payment of prevailing wages, beginning on January 1, 2024, to also include fuel reduction work paid for in whole or in part by public funds performed as part of a fire mitigation project, including, but not limited to, residential chipping, rural road fuel breaks, fire breaks, and vegetation management. This bill was vetoed by Governor Newsom.

AB 1851 (R. Rivas) Chapter 764, Statutes of 2022, expanded the definition of "public works," for the purpose of the payment of prevailing wages, to also include the on-hauling of materials used for paving, grading, and fill onto a public works site.

AB 1886 (Cooper) of 2022 would have expand the definition of public works for the purpose of the payment of prevailing wages to include street sweeping maintenance performed for the preservation, protection, and keeping of any publicly owned or publicly operated street, road, or highway done under contract and paid for in whole or in part out of public funds. This bill failed passage on the Assembly Floor.

AB 2231 (Kalra) Chapter 346, Statutes of 2020, defined a public subsidy as de minimis for the purpose of paying the prevailing wage in private projects if it is both less than \$600,000 and less than 2% of the total project cost for bids advertised or contracts awarded after July 1, 2021. If the subsidy is for a residential project consisting entirely of single family dwellings, the subsidy is de minimis so long as it is less than 2 % of the total project cost.

AB 2765 (O'Donnell) Chapter 355, Statutes of 2020, expanded the definition of "public works," for the purpose of the payment of prevailing wages, to also include any construction, alteration, demolition, installation, or repair work done under private contract on a project for a charter school, as defined, when it is paid for, in whole or in part, with the proceeds of conduit revenue bonds issued on or after January 1, 2021.

AB 1768 (Carrillo) Chapter 719, Statutes of 2019, expanded the definition of "public works" to include work performed during construction site assessments and feasibility studies, and specifies that preconstruction work is a part of "public works," regardless of whether any further construction work is conducted.

AB 1066 (Aguiar-Curry) Chapter 616, Statutes of 2017, expanded the meaning of the term "public works" to include specific types of tree removal work.

AB 852 (Burke) Chapter 745, Statutes of 2015, expanded the definition of public works projects to include any construction, alteration, demolition, installation, or repair work done under private contract on a project for a general acute care hospital funded in whole or in part by conduit revenue bonds.

AB 26 (Bonilla) Chapter 864, Statutes of 2014, expanded the definition of "public works" to include work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, and work performed during the post-construction phases of construction, including, but not limited to, all cleanup work at the jobsite.

AB 514 (Roger Hernández) Chapter 676, Statutes of 2011, expanded the definition of “public works” to include the hauling of refuse, as defined, from a public works site to an outside disposal location.

REGISTERED SUPPORT / OPPOSITION:

Support

International Union of Operating Engineers, Cal-Nevada Conference (Sponsor)
California State Council of Laborers (Co-Sponsor)
Southern California Contractors Association (Co-Sponsor)
State Building and Construction Trades Council (Co-Sponsor)
United Contractors (Co-Sponsor)
California Labor Federation

Oppose

Associated California Loggers
California Forestry Association
County of Kern
Mountain Counties Water Resources Association
Rural County Representatives of California (RCRC)

Other

California Association of Resource Conservation Districts

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