Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

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

Policy Committee: Labor and Employment Vote: 6 - 0

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill expands the definition of public works, for which prevailing wage must be paid to workers, to include publicly funded fuel reduction work that is done under contract as part of a fire mitigation project and falls within an apprenticable occupation in the building and construction trades.

The expanded definition applies to contracts in excess of \$100,000 only and does not apply to work performed on Indian lands. This bill takes effect on January 1, 2025, but delays application to nonprofit organizations until January 1, 2026.

FISCAL EFFECT:

- 1) Costs of approximately \$138,000 in the first year and \$127,000 ongoing to the Department of Industrial Relations (DIR) for increased oversight of new public works projects (Labor Enforcement and Compliance Fund). The Division of Labor Standards Enforcement investigates complaints and imposes penalties, while DIR's Office of the Director's Legal Unit hears appeals. Although DIR cannot estimate the number of fuel reduction projects that may become public works as a result of this bill, DIR anticipates additional complaints and resulting enforcement and appeal workload.
- 2) Costs of an unknown, but potentially significant, amount to the Department of Forestry and Fire Protection (CAL FIRE) if CAL FIRE is responsible for ensuring grantees comply with public works law (Greenhouse Gas Reduction Fund (GGRF)). CAL FIRE administers and manages grants for local fuel reduction projects and it is unclear whether CAL FIRE would be responsible for keeping and submitting certified payroll records on behalf of the grantee. Additionally, to the extent prevailing wage requirements increase costs for grantees and result in fewer acres treated, this bill may increase General Fund or GGRF cost pressures to fund more fuel reduction projects.

COMMENTS:

1) **Purpose.** According to the author, wildfire mitigation work is not only a mechanism to protect houses from wildfires, but "also a critical component of protecting various public works, including transportation infrastructure, public schools and public buildings." Thus, the author contends wildfire mitigation is "a 'maintenance activity' that is desperately needed to ensure the safety and functionality of existing public works" and "having better-paid and trained workers will prevent injuries and deliver a better, more efficient wildfire prevention."

2) Support and Opposition. This bill is jointly sponsored by the California-Nevada Conference of Operating Engineers, California State Council of Laborers, State Building and Construction Trades Council, Southern California Contractors Association, and United Contractors, which argue wildfire mitigation is dangerous and labor-intensive work essential to protecting communities. The group notes "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."

This bill is opposed by rural county and timber industry associations. For example, the Rural County Representatives of California (RCRC) argues 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." RCRC also argues prevailing wage "will necessarily shrink the pace and scale of forest resilience acres treated due to dramatically increased costs."

- 3) **Prevailing Wage for Public Works.** Existing law requires payment of prevailing wage to all workers employed on a public works project valued over \$1,000, such as publicly funded construction, alteration, demolition, installation, maintenance, or repair work done under contract. The prevailing wage rate is determined by DIR and generally based on the basic hourly rate paid on public works projects to a majority of workers engaged in a particular craft or classification within a locality. Requiring an across-the-board rate ensures bidders are not awarded public works contracts by virtue of paying low wages and undercutting competitors who provide higher compensation.
- 4) **Fuel Reduction Work.** According to CAL FIRE, state fuel reduction work is undertaken by CAL FIRE's own Fuels Reduction Crews, firefighter hand crews and engine crews, as well as partnerships with the California National Guard, California Conservation Corps and California Department of Corrections and Rehabilitation. CAL FIRE also oversees millions of dollars in grant funds for ongoing local fuel reduction projects, which include the removal or reduction of overgrown vegetation through the use of prescribed fire, tree thinning, pruning, and roadway clearance, amongst other strategies. This bill requires the payment of prevailing wage on publicly funded fuel reduction work falling within an apprenticable occupation in the building and construction trades, for which an apprenticeship program has been approved by the Division of Apprenticeship Standards, and done under a contract in excess of \$100,000.
- 5) **Related Legislation.** SB 830 (Smallwood-Cuevas) expands the definition of public works to include an offsite, custom fabrication of specified sheet metal ducts. SB 830 is pending hearing in the Senate Committee on Labor, Public Employment and Retirement.
- 6) **Prior Legislation.** AB 1717 (Aguiar-Curry), of the 2021-2022 Legislative Session, was substantively identical to this bill. AB 1717 was vetoed by the Governor, who stated:

I am concerned that adding these projects to the definition of "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.

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