

AMENDED IN ASSEMBLY APRIL 6, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 199

Introduced by Assembly Member Chu
(Coauthor: Assembly Member Thurmond)

January 23, 2017

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

LEGISLATIVE COUNSEL'S DIGEST

AB 199, as amended, Chu. Public works: private residential projects.

(1) Existing law requires private residential projects built on private property that are built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority to meet the requirements for projects that are defined as “public works,” including, among other requirements, the payment of prevailing wages. Existing law defines the term “political subdivision” for the purposes of these requirements to include any county, city, district, public housing authority, public agency of the state, and assessment or improvement districts. *exempts private residential projects built on private property from certain requirements for projects that are defined as “public works,” including, among other requirements, the payment of prevailing wages, unless the project is built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority.* Existing law makes a willful violation by any officer, agent, or representative of the state or of any political subdivision of the state of specific laws relating to the payment of prevailing wages and the hours worked on public works projects a misdemeanor.

~~This bill would instead require private residential projects built on private property that are built pursuant to an agreement with the state or a political subdivision to meet the requirements for projects that are defined as “public works,” thus expanding the types of projects that must meet these requirements. By expanding the definition of a crime, this bill would impose a state-mandated local program.~~

This bill would make the above-referenced exemption for private residential projects additionally inapplicable to a project built pursuant to an agreement with a successor agency to a redevelopment agency, as specified. By expanding the scope of a crime to include, among other things, additional officers, agents, or representatives of the state or a political subdivision, this bill would impose a state-mandated local program.

(2) 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:
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.

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

6 (3) Street, sewer, or other improvement work done under the
7 direction and supervision or by the authority of any officer or
8 public body of the state, or of any political subdivision or district
9 thereof, whether the political subdivision or district operates under
10 a freeholder’s charter or not.

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

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

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

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

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

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

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

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

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

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

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

39 (6) Credits that are applied by the state or political subdivision
40 against repayment obligations to the state or political subdivision.

1 (c) Notwithstanding subdivision (b):

2 (1) Private residential projects built on private property are not
3 subject to the requirements of this chapter unless the projects are
4 built pursuant to an agreement with ~~the state or a political~~
5 ~~subdivision: a state agency, a redevelopment agency, a successor~~
6 ~~agency to a redevelopment agency when acting in that capacity,~~
7 ~~or a local public housing authority.~~

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

18 (3) If the state or a political subdivision reimburses a private
19 developer for costs that would normally be borne by the public,
20 or provides directly or indirectly a public subsidy to a private
21 development project that is de minimis in the context of the project,
22 an otherwise private development project shall not thereby become
23 subject to the requirements of this chapter.

24 (4) The construction or rehabilitation of affordable housing units
25 for low- or moderate-income persons pursuant to paragraph (5) or
26 (7) of subdivision (e) of Section 33334.2 of the Health and Safety
27 Code that are paid for solely with moneys from the Low and
28 Moderate Income Housing Fund established pursuant to Section
29 33334.3 of the Health and Safety Code or that are paid for by a
30 combination of private funds and funds available pursuant to
31 Section 33334.2 or 33334.3 of the Health and Safety Code do not
32 constitute a project that is paid for in whole or in part out of public
33 funds.

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

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

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

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

8 (D) The project consists of new construction, expansion, or
9 rehabilitation work associated with a facility developed by a
10 nonprofit organization to be operated on a not-for-profit basis to
11 provide emergency or transitional shelter and ancillary services
12 and assistance to homeless adults and children. The nonprofit
13 organization operating the project shall provide, at no profit, not
14 less than 50 percent of the total project cost from nonpublic
15 sources, excluding real property that is transferred or leased. Total
16 project cost includes the value of donated labor, materials, and
17 architectural and engineering services.

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

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

28 (1) Qualified residential rental projects, as defined by Section
29 142(d) of the Internal Revenue Code, financed in whole or in part
30 through the issuance of bonds that receive allocation of a portion
31 of the state ceiling pursuant to Chapter 11.8 (commencing with
32 Section 8869.80) of Division 1 of Title 2 of the Government Code
33 on or before December 31, 2003.

34 (2) Single-family residential projects financed in whole or in
35 part through the issuance of qualified mortgage revenue bonds or
36 qualified veterans' mortgage bonds, as defined by Section 143 of
37 the Internal Revenue Code, or with mortgage credit certificates
38 under a Qualified Mortgage Credit Certificate Program, as defined
39 by Section 25 of the Internal Revenue Code, that receive allocation
40 of a portion of the state ceiling pursuant to Chapter 11.8

1 (commencing with Section 8869.80) of Division 1 of Title 2 of
2 the Government Code on or before December 31, 2003.

3 (3) Low-income housing projects that are allocated federal or
4 state low-income housing tax credits pursuant to Section 42 of the
5 Internal Revenue Code, Chapter 3.6 (commencing with Section
6 50199.4) of Part 1 of Division 31 of the Health and Safety Code,
7 or Section 12206, 17058, or 23610.5 of the Revenue and Taxation
8 Code, on or before December 31, 2003.

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

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

17 (g) For purposes of this section, references to the Internal
18 Revenue Code mean the Internal Revenue Code of 1986, as
19 amended, and include the corresponding predecessor sections of
20 the Internal Revenue Code of 1954, as amended.

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

25 SEC. 2. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIIIIB of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIIIIB of the California
33 Constitution.