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# California Prevailing Wage Laws

## EDUCATION CODE

Title 1. General Education Code Provisions  
Division 1. General Education Code Provisions  
Part 10.5. School Facilities  
Chapter 2.5. Design-Build Contracts

### § 17250.30. Bond requirements

(a) Any design-build entity that is selected to design and build a project pursuant to this chapter shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omissions insurance coverage sufficient to cover all design and architectural services provided in the contract. This chapter does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(b) Any payment or performance bond written for the purposes of this chapter shall use a bond form developed by the Department of General Services pursuant to subdivision (g) of Section 14661 of the Government Code. The purpose of this subdivision is to promote uniformity of bond forms to be used on school district design-build projects throughout the state.

(c)(1) All subcontracts that were not listed by the design-build entity in accordance with Section 17250.25 shall be awarded by the design-build entity.

(2) The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted.

(B) Provide a fixed date and time on which the subcontracted work will be awarded.

(3) Subcontractors bidding on contracts pursuant to this subdivision shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(4)(A) If the school district elects to award a project pursuant to this section, retention proceeds withheld by the school district from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(B) In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the school district and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor



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subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the school district and the design-build entity from any payment made by the design-build entity to the subcontractor.

(5) In accordance with the provisions of applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions shall be made in accordance with Section 22300 of the Public Contract Code.

(d)(1) For contracts for public works projects awarded prior to the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, the school district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the school district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.

(2) For contracts for public works projects awarded on or after the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, the school district shall reimburse the department for its reasonable and directly related costs of performing prevailing wage monitoring and enforcement on public works projects pursuant to rates established by the department as set forth in subdivision (h) of Section 1771.5 of the Labor Code. All moneys collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(3) In lieu of reimbursing the Department of Industrial Relations for its reasonable and directly related costs of performing, monitoring, and enforcement on public works projects, the school district may elect to continue operating an existing previously approved labor compliance program to monitor and enforce prevailing wage requirements on the project if it has either not contracted with a third party to conduct its labor compliance program and requests and receives approval from the department to continue its existing program or it enters into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

Title 3. Postsecondary Education  
Division 7. Community Colleges  
Part 49. Community Colleges, Education Facilities  
Chapter 3.5. Design-Build Contracts

**§ 81704. Bonds; awards of additional subcontracts; labor compliance program; cost of performing, monitoring and enforcement (sunsets on 01/01/2020)**

## California Prevailing Wage Laws

(a) Any design-build entity that is selected to design and build a project pursuant to this chapter shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This chapter does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(b) Any payment or performance bond written for the purposes of this chapter shall use a bond form developed by the Department of General Services pursuant to subdivision (i) of Section 14661 of the Government Code. The purpose of this subdivision is to promote uniformity of bond forms to be used on community college district design-build projects throughout the state.

(c)(1) All subcontracts that were not listed by the design-build entity in accordance with Section 81703 shall be awarded by the design-build entity in accordance with the design-build process set forth by the community college district in the design-build package.

(2) The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted.

(B) Provide a fixed date and time on which the subcontracted work will be awarded.

(3) Subcontractors bidding on contracts pursuant to this subdivision shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(4)(A) If the community college district elects to award a project pursuant to this section, retention proceeds withheld by the community college district from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(B) In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the community college district and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the community college district and the design-build entity from any payment made by the design-build entity to the subcontractor.

(5) In accordance with the provisions of applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions shall be made in accordance with Section 22300 of the Public Contract Code.

(d)(1) For contracts for public works projects awarded prior to the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, the community college district shall establish and enforce a labor compliance program

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containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the community college district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.

(2) For contracts for public works projects awarded on or after the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, the community college district shall reimburse the department for its reasonable and directly related costs of performing prevailing wage monitoring and enforcement on public works projects, pursuant to rates established by the department as set forth in subdivision (h) of Section 1771.5 of the Labor Code. All moneys collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(3) In lieu of reimbursing the Department of Industrial Relations for its reasonable and directly related costs of performing monitoring and enforcement on public works projects, the community college district may elect to continue operating an existing previously approved labor compliance program to monitor and enforce prevailing wage requirements on the project if it has either not contracted with a third party to conduct its labor compliance program and requests and receives approval from the department to continue its existing program or it enters into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

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## FISH & GAME CODE

### Chapter 4 – Article 3. Powers and Purposes

#### **§ 1350. Construction of Facilities; Acceptance of Federal Grants and Receipt of Gifts, Donations, and Other Financial Support; Award of Grants or Loans by the Board**

(a) The department shall, when authorized by the board, construct in accordance with law such facilities as are suitable for the purpose for which the real property or rights in real property or water, or water rights were acquired. Each completed project shall be managed and maintained by the department. The department, with the approval of the board, may enter into agreements with any other department or agency of this state, any local agency, or nonprofit organization, to provide for the construction, management, or maintenance of the facilities authorized by the board, and such other department or agency of this state, local agency, or nonprofit organization, and each of them may construct, manage, or maintain those facilities pursuant to the agreement. Work performed by a local agency or nonprofit organization under those agreements is exempt from Chapter 3 (commencing with Section 14250), of Part 5 of Division 3 of Title 2 of the Government Code. However, nothing in this section shall be construed to exempt any work from Part 7 (commencing with Section 1720) of Division 2 of the Labor Code.

(b) The department, when authorized by the board, may apply for and accept federal grants, and receive gifts, donations, and other financial support from public or private sources to be used for fish and wildlife habitat enhancement, including riparian habitat restoration projects on real property or waters for which the state obtains an interest. Funds received from any of those sources shall be deposited in the Wildlife Restoration Fund.

(c) The board may award grants or loans to nonprofit organizations, local governmental agencies, federal agencies, and state agencies for the purposes of fish and wildlife habitat restoration, enhancement, management, protection and improvement of riparian resources, and for development of compatible public access facilities in the same manner and subject to the same terms and conditions as prescribed in Section 31116 of the Public Resources Code. Proceeds from repayment of any loans and the interest thereon shall be deposited in the Wildlife Restoration Fund.

### Division 2. Department of Fish and Game Chapter 5. Fish and Game Management Article 1. Generally

#### **§ 1501.5. Contracts and state aid for fish and wildlife habitat preservation, restoration and enhancement**

(a) The department may enter into contracts for fish and wildlife habitat preservation, restoration, and enhancement with public and private entities whenever the department finds that the contracts will assist in meeting the department's duty to preserve, protect, and restore fish and wildlife.

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(b) The department may grant funds for fish and wildlife habitat preservation, restoration, and enhancement to public agencies, Indian tribes, and nonprofit entities whenever the department finds that the grants will assist it in meeting its duty to preserve, protect, and restore fish and wildlife.

(c) Contracts authorized under this section are contracts for services and are governed by Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code. No work under this section is public work or a public improvement, and is not subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(d) This section does not apply to contracts for any of the following:

- (1) Construction of office, storage, garage, or maintenance buildings.
- (2) Drilling wells and installation of pumping equipment.
- (3) Construction of permanent hatchery facilities, including raceways, water systems, and bird enclosures.
- (4) Construction of permanent surfaced roadways and bridges.
- (5) Any project requiring engineered design or certification by a registered engineer.
- (6) Any contract, except contracts with public agencies, nonprofit organizations, or Indian tribes that exceed fifty thousand dollars (\$50,000) in cost, excluding the cost for gravel, for fish and wildlife habitat preservation, restoration, and enhancement for any one of the following:
  - (A) Fish screens, weirs, and ladders.
  - (B) Drainage or other watershed improvements.
  - (C) Gravel and rock removal or placement.
  - (D) Irrigation and water distribution systems.
  - (E) Earthwork and grading.
  - (F) Fencing.
  - (G) Planting trees or other habitat vegetation.
  - (H) Construction of temporary storage buildings.

# California Prevailing Wage Laws

## GOVERNMENT CODE

Title 1. General – Ch. 6 Public Bonds and Obligations

Ch. 14. Infrastructure Financing

### **§ 5956.1. Legislative Intent; Local Flexibility and Authority**

It is the intent of the Legislature that local governmental agencies have the authority and flexibility to utilize private investment capital to study, plan, design, construct, develop, finance, maintain, rebuild, improve, repair, or operate, or any combination thereof, fee-producing infrastructure facilities. Without the ability to utilize private sector investment capital to study, plan, design, construct, develop, finance, maintain, rebuild, improve, repair, or operate, or any combination thereof, fee-producing infrastructure facilities, the Legislature finds that some local governmental agencies will not be able to adequately, competently, or satisfactorily retrofit, reconstruct, repair, or replace existing infrastructure and will not be able to adequately, competently, or satisfactorily design and construct new infrastructure.

### **§ 5956.8. Plans and Specifications; Standards; Design and Construction; Facilities Leased to Private Entities**

The plans and specifications for each project constructed pursuant to this chapter shall comply with all applicable governmental design standards for that particular infrastructure project. The private entity designing, constructing, operating, and maintaining infrastructure facilities pursuant to this chapter shall utilize private sector design and construction firms to design and construct the infrastructure facilities. However, a facility subject to this chapter and leased to a private entity shall, during the term of the lease, be deemed to be public property for purposes of identification, maintenance, enforcement of laws and for purposes of Division 3.6 (commencing with Section 810). All public works constructed pursuant to this chapter shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

### **§ 5956.9. Private Financing**

In order to use the authority conferred by this chapter to the maximum extent, a governmental agency may use private infrastructure financing pursuant to this chapter as the exclusive revenue source or as a supplemental revenue source with federal or local funds. The governmental agency involved may be a local governmental agency or a combination of local governmental agencies. The governmental agency may work cooperatively with the California Infrastructure and Economic Development Board with regard to the design, construction, operation, and financing of privately financed facilities, but the projects will not be subject to the review or approval of that board.

# California Prevailing Wage Laws

Title 1. General  
Division 7. Miscellaneous  
Chapter 5. Joint Exercise of Powers  
Article 1. Joint Powers Agreements

**§ 6531. San Diego Model School Development Agency; legislative findings and declarations; joint powers agreement relating to development and construction of model school project in City Heights Project Area**

(a) The Legislature finds and declares all of the following:

(1) It is in the best interests of communities located within the City of San Diego for the local public agencies that have jurisdiction within the city to form a joint powers agency to provide for the orderly and coordinated acquisition, construction, and development of model school projects. These projects may include the acquisition of land by negotiation or eminent domain, the construction of schools, the construction of recreational facilities or park sites or both, and the construction of replacement and other housing, including market rate, moderate-income, and low-income housing.

(2) The coordinated construction of these projects by redevelopment agencies, school districts, housing authorities, housing commissions, and the city is of great public benefit and will save public money and time in supplying much needed replacement housing lost when schools are constructed within existing communities.

(3) Legislation is needed to allow redevelopment agencies, school districts, housing authorities, housing commissions, and the city to use their powers to the greatest extent possible to expedite, coordinate, and streamline the construction and eventual operation of such projects.

(b)(1) Notwithstanding any other provision of law, the Redevelopment Agency of the City of San Diego, the Housing Authority of the City of San Diego, the San Diego Housing Commission, the San Diego Unified School District, and the City of San Diego may enter into a joint powers agreement to create and operate a joint powers agency for the development and construction of a model school project located within the City Heights Project Area. The agency created pursuant to this section shall be known as the San Diego Model School Development Agency. The San Diego Model School Development Agency shall have all the powers of a redevelopment agency pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, all of the powers of a housing authority pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code, and all of the powers of the San Diego Unified School District, as well as all the powers of a joint powers agency granted pursuant to this chapter, to acquire property and to construct and improve and finance one or more schools, housing projects, parks, recreational facilities, and any other facilities reasonably necessary for their proper operation. Further, the San Diego Model School Development Agency shall have all of the powers of the City of San Diego pursuant to its charter and state law to acquire property and to finance and operate parks and recreational facilities and any other facilities reasonably necessary for their proper operation.

(2) Notwithstanding paragraph (1), neither the San Diego Model School Development Agency nor the Redevelopment Agency of the City of San Diego shall expend any property tax increment revenues to acquire property, and to construct, improve, and finance a school within the City Heights Project Area.



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(3) Nothing in this section shall relieve the San Diego Model School Development Agency or the Redevelopment Agency of the City of San Diego from its obligations to increase, improve, and preserve the community's supply of low- and moderate-income housing, including, but not limited to, the obligation to provide relocation assistance, the obligation to provide replacement housing, the obligation to meet housing production quotas, and the obligation to set aside property tax increment funds for those purposes.

(4) The San Diego Model School Development Agency shall perform any construction activities in accordance with the applicable provisions of the Public Contract Code, the Education Code, and the Labor Code that apply, respectively, to the redevelopment agency, housing authority, housing commission, school district, or city creating the San Diego Model School Development Agency. Funding pursuant to Proposition MM, a local San Diego County bond measure enacted by the voters for the purpose of school construction, shall be used only for the design, development, construction, and financing of school-related facilities and improvements, including schools, as authorized and to the extent authorized under Proposition MM.

(c) Any member of the joint powers agency, including the school district, may, to the extent permitted by law, transfer and contribute funds to the agency, including bond funds, to be deposited into and to be held in a facility fund to be expended for purposes of the acquisition of property for, and the development and construction of, any school, housing project, or other facility described in this section.

(d) Nothing contained in this section shall preclude the joint powers agency from distributing funds, upon completion of construction, the school, housing project, park, recreational facility, or other facility to a member of the agency to operate the school, housing project, park, or other facility that the member is otherwise authorized to operate. These distribution provisions shall be set forth in the joint powers agreement, if applicable.

(e) The San Diego Model School Development Agency may construct a school in the City Heights Project Area pursuant to Chapter 2.5 (commencing with Section 17250.10) of Part 10.5 of the Education Code.

(f)(1) For contracts for public works projects awarded prior to the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, the San Diego Model School Development Agency shall establish and enforce, with respect to construction contracts awarded by the joint powers agency, a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing those requirements. This requirement shall not apply to projects where the agency has entered into a collective bargaining agreement that binds all of the contractors and subcontractors performing work on the project, but nothing shall prevent the joint powers agency from operating a labor compliance program with respect to those projects.

(2) For contracts for public works projects awarded on or after the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, the agency shall reimburse the department for its reasonable and directly related costs of performing prevailing wage monitoring and enforcement on public works projects pursuant to rates established by the department as set forth in subdivision (h) of Section 1771.5 of the Labor Code. All moneys collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement



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Fund created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(3) In lieu of reimbursing the Department of Industrial Relations for its reasonable and directly related costs of performing monitoring and enforcement on public works projects, the San Diego Model School Development Agency may elect to continue operating an existing previously approved labor compliance program to monitor and enforce prevailing wage requirements on the project if it has either not contracted with a third party to conduct its labor compliance program and requests and receives approval from the department to continue its existing program or it enters into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(g) Construction workers employed as apprentices by contractors and subcontractors on contracts awarded by the San Diego Model School Development Agency shall be enrolled in a registered apprenticeship program, approved by the California Apprenticeship Council, that has graduated apprentices in the same craft in each of the preceding five years. This graduation requirement shall be applicable for any craft that was first deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft prior to January 1, 1998. A contractor or subcontractor need not submit contract award information to an apprenticeship program that does not meet the graduation requirements of this subdivision. If no apprenticeship program meets the graduation requirements of this subdivision for a particular craft, the graduation requirements shall not apply for that craft.

### 1. State Departments and Agencies Chapter 3.5. Administrative Regulations and Rulemaking Article 1. General

#### **§ 11340.9. Application of chapter**

This chapter does not apply to any of the following:

- (a) An agency in the judicial or legislative branch of the state government.
- (b) A legal ruling of counsel issued by the Franchise Tax Board or State Board of Equalization.
- (c) A form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation on any requirement that a regulation be adopted pursuant to this chapter when one is needed to implement the law under which the form is issued.
- (d) A regulation that relates only to the internal management of the state agency.
- (e) A regulation that establishes criteria or guidelines to be used by the staff of an agency in performing an audit, investigation, examination, or inspection, settling a commercial dispute, negotiating a

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commercial arrangement, or in the defense, prosecution, or settlement of a case, if disclosure of the criteria or guidelines would do any of the following:

- (1) Enable a law violator to avoid detection.
- (2) Facilitate disregard of requirements imposed by law.
- (3) Give clearly improper advantage to a person who is in an adverse position to the state.
- (f) A regulation that embodies the only legally tenable interpretation of a provision of law.
- (g) A regulation that establishes or fixes rates, prices, or tariffs.
- (h) A regulation that relates to the use of public works, including streets and highways, when the effect of the regulation is indicated to the public by means of signs or signals or when the regulation determines uniform standards and specifications for official traffic control devices pursuant to Section 21400 of the Vehicle Code.
- (i) A regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.

### Title 2. Division 3. Part 5.5. Dept. of General Services Ch. 8 Traffic

#### **§ 14920. Specialized Knowledge; Purposes; Commercial Moving Services Under Competitive Bid Contracts; Definitions**

- (a) The Department of General Services provides for the specialized consideration of all traffic problems of the state; develops specialized knowledge of rates, tariffs, and traffic problems to the end that all state shipments be accomplished in the most expeditious, economical, and efficient manner possible via carrier or carriers whose drivers and supporting personnel are operating under current collective-bargaining agreements or who are maintaining the prevailing wages, standards and conditions of employment for its driver and supporting personnel employees; insures adequate state representation before administrative rate-setting bodies; disseminates traffic information throughout all state agencies.
- (b) In establishing procedures for obtaining commercial moving services under competitive bid contracts the department shall act in accordance with the following: Every contract (and any bid specification therefor) hereby authorized and entered into by the state in excess of two thousand five hundred dollars (\$2,500), the principal purpose of which is to furnish commercial moving services to relocate state offices, facilities and institutions, shall specify that no contractor performing thereunder shall pay any employee actually engaged in the moving or handling of goods being relocated under such contract less than the prevailing wage rate, except consideration may be given to bids not conforming with these employee cost provisions in areas where no such employee wage standards and conditions are reasonably available. The term "prevailing wage rate," as used in this subdivision, means the rate paid to a majority

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of workmen engaged in the particular craft, classification or type of work within the locality if a majority of such workmen be paid at a single rate; if there be no single rate being paid to a majority, then the rate being paid the greater number. The determination required by this subdivision of wage rates prevailing in a given area shall be made by the Department of Industrial Relations.

(c) The term "supporting personnel" for the purposes of this chapter shall include all employees of a carrier who directly participate in the actual moving and handling of goods.

The amendments to this section during the 1975-76 Regular Session, shall not apply to any contract, including those that may be renewed periodically, which affects the wage rates of supporting personnel until the end of the renewal period or the end of the contract, whichever first occurs.

### **§ 14921. Personnel; Duties**

The director, subject to the State Civil Service Act, shall appoint such personnel as is necessary to perform the following duties:

(a) Watch the movements of all state freight.

(b) Audit all freight and other transportation bills involving state shipments in order to determine the most advantageous and economical shipping rates which can be secured via carrier or carriers whose drivers and supporting personnel are operating under current collective-bargaining agreements or who are maintaining the prevailing wages, standards and conditions of employment for its driver and supporting personnel employees and to determine what refunds may be due the state on completed shipments.

(c) Furnish upon request from any state source the proper routing and tariff description of a given shipment in order to assure the state of the lowest applicable freight charge commensurate with the provisions of Section 14920.

(d) Establish and maintain such files as may be necessary to expedite shipments, secure special movements, trace and recover strayed and delayed shipments, and divert and reconsign shipments.

(e) Perform such other duties as may be necessary to the efficient discharge of the rate control function. The amendments to this section during the 1975-76 Regular Session, shall not apply to any contract, including those that may be renewed periodically, which affects the wage rates of supporting personnel until the end of the renewal period or the end of the contract, whichever first occurs.

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## Ch. 11 – Emergencies

### **§ 14974. Accomplishment of Work by Day Labor, Contract; Exemption from Compliance with State Contract Act**

Any work to be done as provided for in this chapter may be accomplished by day labor, negotiated contract, contract made upon informal bids or a combination thereof without the necessity of complying with the State Contract Act or any part thereof.

### **§ 14975. Payment Bond**

Notwithstanding the provisions of Section 9550 of the Civil Code, the contractor under any contract made under this chapter need not provide a payment bond before the commencement of the work but must provide a payment bond as otherwise required by law prior to payment under the contract.

### **§ 14976. Prevailing Wage Rates**

Notwithstanding any provisions to the contrary contained in Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code, the director need not determine the prevailing wage rates before the work under any such contract is commenced. However, such contract shall contain a provision that the contractor shall pay prevailing wages for the crafts or trades so utilized which wage rates shall be ascertained as of the date of such contract by the director as soon thereafter as is reasonably possible.

Title 3. Government of Counties  
Division 2. Officers  
Part 2. Board of Supervisors  
Chapter 13 Miscellaneous Powers

### **§ 26227. Establishment of programs for social needs; property availability; financing**

The board of supervisors of any county may appropriate and expend money from the general fund of the county to establish county programs or to fund other programs deemed by the board of supervisors to be necessary to meet the social needs of the population of the county, including but not limited to, the areas of health, law enforcement, public safety, rehabilitation, welfare, education, and legal services, and the needs of physically, mentally and financially handicapped persons and aged persons.

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The board of supervisors may contract with other public agencies or private agencies or individuals to operate those programs which the board of supervisors determines will serve public purposes. In the furtherance of those programs, the board of supervisors may make available to a public agency, nonprofit corporation, or nonprofit association any real property of the county which is not and, during the time of possession, will not be needed for county purposes, to be used to carry out the programs, upon terms and conditions determined by the board of supervisors to be in the best interests of the county and the general public, and the board of supervisors may finance or assist in the financing of the acquisition or improvement of real property and furnishings to be owned or operated by any public agency, nonprofit corporation, or nonprofit association to carry out the programs, through a lease, installment sale, or other transaction, in either case without complying with any other provisions of this code relating to acquiring, improving, leasing, or granting the use of or otherwise disposing of county property.

A program may consist of a community support program including a charitable fund drive conducted in cooperation with one or more nonprofit charitable organizations if the board of supervisors deems a program will assist in meeting the social needs of the population of the county. If the board establishes a program, the officers and employees of the county shall have the authority to carry out the program, using county funds and property if authorized by the board. During working hours, a program may include direct solicitation by county officers and employees and the assignment of officers and employees to attend or assist in the administration of program activities if authorized by the board.

### Title 6.7 Infrastructure Finance Ch. 2. Cal. Infrastructure and Economic Development Bank

#### **§ 63021. Infrastructure and Economic Development Bank**

- (a) There is within the Business, Transportation and Housing Agency the Infrastructure and Economic Development Bank which shall be responsible for administering this division.
- (b) The bank shall be under the direction of an executive director appointed by the Governor, and who shall serve at the pleasure of the Governor. The appointment shall be subject to confirmation by the Senate.

#### **§ 63036. Coordination with Growth Management Strategies**

It is the intent of the Legislature that the activities of the bank be fully coordinated with any future legislative plan involving growth management strategies designed to protect California's land resource, and ensure its preservation and use it in ways which are economically and socially desirable. Further, all public works financed pursuant to this division, including those projects financed through the use of industrial development bonds under Title 10 (commencing with Section 91500), shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

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## HEALTH & SAFETY CODE

Division 23. Hospital Districts  
Chapter 2. Board of Directors  
Article 2. Powers

### **§ 32132.5. Construction of hospital or health facility building at Sonoma Valley Hospital; design-build procedure that may be used to assign contracts; review standards**

(a) Notwithstanding Section 32132 or any other provision of law, upon approval by the board of directors of the Sonoma Valley Health Care District, the design-build procedure described in Section 20133 of the Public Contract Code may be used to assign contracts for the construction of a building or improvements directly related to construction of a hospital or health facility building at the Sonoma Valley Hospital.

(b) For purposes of this section, all references in Section 20133 of the Public Contract Code to “county” and “board of supervisors” shall mean the Sonoma Valley Health Care District and its board of directors.

(c) A hospital building project utilizing the design-build process authorized by subdivision (a) shall be reviewed and inspected in accordance with the standards and requirements of the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1 (commencing with Section 129675) of Part 7 of Division 107).

Division 31. Housing and Home Finance  
Part 2. Department of Housing and Community Development  
Chapter 6.7 Multifamily Housing Programs

### **§ 50675.4. Loan eligibility**

(a) To be eligible to receive a loan, a proposed project shall involve one or more of the following activities:

- (1) The development and construction of a new transitional or rental housing development.
- (2) The rehabilitation, or acquisition and rehabilitation, of a transitional or rental housing development.
- (3) The conversion of a nonresidential structure to a transitional or rental housing development.

(b) In the case of rehabilitation projects, to be eligible to receive a loan, the loan shall be necessary to avoid increases in monthly debt service that have either of the following effects:

- (1) Result in rent increases causing permanent displacement of persons of lower income residing in the development prior to rehabilitation.

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(2) Make it economically infeasible to accept subsidies available to provide affordable rents to persons of lower income, if the sponsor agrees to accept the subsidies.

(c) To be eligible to receive a loan, the sponsor shall agree to both of the following:

(1) To set and maintain affordable rent levels for assisted units.

(2) To the payment of prevailing wage rates with respect to construction assisted through the program. In implementing this paragraph, it is the intent of the Legislature that this requirement apply to construction work that is dependent on the commitment of program funds in order for construction to proceed. Notwithstanding any other provision of law, the department's enforcement responsibilities shall be limited to the imposition of this requirement through the lending documents. The department shall require, as a condition of loan closing, a signed certificate that prevailing wages have been, or will be, paid in conformance with the requirements of Chapter 1 (commencing with Section 1720) of Part 7 of the Labor Code and that labor records shall be made available to any enforcement agency upon request. The requirements of this paragraph shall not apply to projects for which program funds are used exclusively to achieve lower rents and to pay associated administrative costs.

### **§ 50898.2. Use of funds**

(a) Funds awarded pursuant to Item 2240-107-0001 of Section 2.00 of the Budget Act of 2000 for the purposes of the Downtown Rebound Program established pursuant to this chapter shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code.

(b) The department may use up to 5 percent of the amounts appropriated for this program for administration.

(c) With respect to the appropriation in Item 2240-107-0001 of Section 2.00 of the Budget Act of 2000 for the Downtown Rebound Program established pursuant to this chapter, the following provisions shall apply:

(1) Seventy-six percent of that appropriation shall be used by the department for the purpose of making loans to project sponsors for the adaptive reuse of vacant or underused commercial or industrial structures into residential rental housing units for initial rental to households having an income not exceeding 150 percent of the area median income. Each project shall be located within an elementary school attendance boundary where 50 percent or more of the students are eligible for free meals under the federal school lunch program, as determined by the local school district at the time of application to the Downtown Rebound Program. Each project shall also be subject to the following restrictions:

(A) Loans for units not subject to subparagraph (D) shall be at 5 percent simple interest. Loans for units subject to subparagraph (D) shall be at 3 percent simple interest. All principal and interest shall be due and payable in 20 years.

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(B) Assistance for units not subject to subparagraph (D) shall not exceed thirty-five thousand dollars (\$35,000) per unit. Assistance for units subject to subparagraph (D) shall not exceed fifty-five thousand dollars (\$55,000) per unit.

(C) The amount of the loan, in combination with all debt recorded in a senior position to the loan, shall not exceed 90 percent of the appraised after-rehabilitation value of the security for the loan.

(D) Twenty percent of the units in the project shall be reserved for households having an income equal to 50 percent or less of the area median income, or 40 percent of the units shall be reserved for households having an income equal to 60 percent or less of the area median income. The department shall ensure the continued affordability of all units designated by the sponsor to fulfill these requirements for a period of 20 years. However, notwithstanding subparagraph (A), if assistance is provided for these units through any program funded through Chapter 6.7 (commencing with Section 50675) of Part 2, the units shall be subject to the use restrictions, limitations, and provisions contained in that chapter. These units shall be reasonably distributed within each building contained in the project, with no less than 10 percent of the units in each building fulfilling the requirements of this subdivision.

(E) The sponsor shall agree to the payment of prevailing wage rates with respect to construction assisted through the program. In implementing this subparagraph, it is the intent of the Legislature that this requirement apply to construction work that is dependent on the commitment of program funds in order for construction to proceed. Notwithstanding any other provision of law, the department's enforcement responsibilities shall be limited to the imposition of this requirement through the lending documents. The department shall require, as a condition of loan closing, a signed certificate that prevailing wages have been, or will be, paid in conformance with the requirements of Chapter 1 (commencing with Section 1720) of Part 7 of the Labor Code and that labor records shall be made available to any enforcement agency upon request.

(2) Two million four hundred thousand dollars (\$2,400,000) of that appropriation shall be used by the department for planning grants as specified in subdivision (b) of Section 50898.1.

(3) The balance of that appropriation shall be available for uses authorized by subdivision (a) of Section 50898.1.

(b) An Affected Contractor or Subcontractor may appeal any such notice served between April 1, 2001 and June 30, 2001 by filing a Request for Review with the Enforcing Agency that issued the notice, in the manner and form specified in Rule 22 [Section 17222] above. Any such Request for Review shall be in writing and shall include a statement indicating the date upon which the contractor or subcontractor was served with the notice of withholding or forfeiture.

(c) This Rule shall not extend the time available to appeal the notice under the former law. A Request for Review of a notice issued prior to July 1, 2001 must be filed with the Enforcing Agency within ninety (90) days after service of the notice.

(d) A contractor or subcontractor who has sought review of a notice issued prior to July 1, 2001 by filing a court action under the repealed provisions of Labor Code sections 1731-1733 on or after July 1, 2001, shall, if said action would have been timely under those sections, be afforded the opportunity to dismiss the action without prejudice, after entering into a stipulation that the proceeding be transferred to the Director for hearing in accordance with these Rules. The stipulation shall also provide that the time for



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commencing a hearing under Rule 41 [Section 17241] shall not begin to run until the case has been formally transferred to and received by the Office of the Director.

(e) Any hearing request made pursuant to Labor Code section 1771.7 [repealed effective July 1, 2001] that has not been heard and decided by a Hearing Officer prior to July 1, 2001 shall be handled in accordance with these Rules.

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## LABOR CODE

### Chapter 1. Public Works Article 1: Scope and Operation

#### **§ 1720: Public works defined; paid for in whole or in part out of public funds defined; exception for private residential projects; exclusions**

(a) As used in this chapter, “public works” means:

(1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, “construction” includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work. For purposes of this paragraph, “installation” includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems.

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

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

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

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

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

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

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

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

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

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

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

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

(c) Notwithstanding subdivision (b):

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

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

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

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

(5) "Paid for in whole or in part out of public funds" does not include tax credits provided pursuant to Section 17053.49 or 23649 of the Revenue and Taxation Code.

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

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

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

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

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

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

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

(1) Qualified residential rental projects, as defined by Section 142(d) of the Internal Revenue Code [FN1], financed in whole or in part through the issuance of bonds that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 of Division 1 (commencing with Section 8869.80) of the Government Code on or before December 31, 2003.

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

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

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

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

(g) The amendments made to this section by either Chapter 938 of the Statutes of 2001 or the act adding this subdivision [FN2] shall not be construed to preempt local ordinances requiring the payment of prevailing wages on housing projects.

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### **§ 1720.2: Public works; private contracts; conditions**

For the limited purposes of Article 2 (commencing with Section 1770) of this chapter, “public works” also means any construction work done under private contract when all of the following conditions exist:

- (a) The construction contract is between private persons.
- (b) The property subject to the construction contract is privately owned, but upon completion of the construction work, more than 50 percent of the assignable square feet of the property is leased to the state or a political subdivision for its use.
- (c) Either of the following conditions exist:
  - (1) The lease agreement between the lessor and the state or political subdivision, as lessee, was entered into prior to the construction contract.
  - (2) The construction work is performed according to plans, specifications, or criteria furnished by the state or political subdivision, and the lease agreement between the lessor and the state or political subdivision, as lessee, is entered into during, or upon completion of, the construction work.

### **§ 1720.3: Public works; hauling refuse from public works site**

- (a) For the limited purposes of Article 2 (commencing with Section 1770), “public works” also means the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state.
- (b) For purposes of this section, the “hauling of refuse” includes, but is not limited to, hauling soil, sand, gravel, rocks, concrete, asphalt, excavation materials, and construction debris. The “hauling of refuse” shall not include the hauling of recyclable metals such as copper, steel, and aluminum that have been separated from other materials at the jobsite prior to transportation and that are to be sold at fair market value to a bona fide purchaser.

### **§ 1720.4: Work performed by volunteers, volunteer coordinators, or conservation corps members; exemption from chapter; retroactive application**

- (a) This chapter shall not apply to any of the following work:
  - (1) Any work performed by a volunteer. For purposes of this section, “volunteer” means an individual who performs work for civic, charitable, or humanitarian reasons for a public agency or corporation

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qualified under [FN1] as a tax-exempt organization, without promise, expectation, or receipt of any compensation for work performed.

(A) An individual shall be considered a volunteer only when his or her services are offered freely and without pressure and coercion, direct or implied, from an employer.

(B) An individual may receive reasonable meals, lodging, transportation, and incidental expenses or nominal nonmonetary awards without losing volunteer status if, in the entire context of the situation, those benefits and payments are not a substitute form of compensation for work performed.

(C) An individual shall not be considered a volunteer if the person is otherwise employed for compensation at any time (i) in the construction, alteration, demolition, installation, repair, or maintenance work on the same project, or (ii) by a contractor, other than a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, that receives payment to perform construction, alteration, demolition, installation, repair, or maintenance work on the same project.

(2) Any work performed by a volunteer coordinator. For purposes of this section, “volunteer coordinator” means an individual paid by a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, to oversee or supervise volunteers. An individual may be considered a volunteer coordinator even if the individual performs some nonsupervisory work on a project alongside the volunteers, so long as the individual's primary responsibility on the project is to oversee or supervise the volunteers rather than to perform nonsupervisory work.

(3) Any work performed by the California Conservation Corps or by Community Conservation Corps certified by the California Conservation Corps pursuant to Section 14507.5 of the Public Resources Code.

(b) This section shall apply retroactively to otherwise covered work concluded on or after January 1, 2002, to the extent permitted by law.

(c) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2017, deletes or extends that date.

### **§ 1720.6: Public work defined**

For the limited purposes of Article 2 (commencing with Section 1770) of this chapter, “public work” also means any construction, alteration, demolition, installation, or repair work done under private contract when the following conditions exist:

(a) The work is performed in connection with the construction or maintenance of renewable energy generating capacity or energy efficiency improvements.

(b) The work is performed on the property of the state or a political subdivision of the state.

(c) Either of the following conditions exists:

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(1) More than 50 percent of the energy generated is purchased or will be purchased by the state or a political subdivision of the state.

(2) The energy efficiency improvements are primarily intended to reduce energy costs that would otherwise be incurred by the state or a political subdivision of the state.

### **§ 1721: Political subdivision defined**

“Political subdivision” includes any county, city, district, public housing authority, or public agency of the state, and assessment or improvement districts.

### **§ 1722: Awarding body and body awarding the contract defined**

“Awarding body” or “body awarding the contract” means department, board, authority, officer or agent awarding a contract for public work.

### **§ 1722.1: Contractor; subcontractor defined**

For the purposes of this chapter, “contractor” and “subcontractor” include a contractor, subcontractor, licensee, officer, agent, or representative thereof, acting in that capacity, when working on public works pursuant to this article and Article 2 (commencing with Section 1770).

### **§ 1723: Worker defined**

“Worker” includes laborer, worker, or mechanic.

### **§ 1724: Locality in which public work is performed defined**

“Locality in which public work is performed” means the county in which the public work is done in cases in which the contract is awarded by the State, and means the limits of the political subdivision on whose behalf the contract is awarded in other cases.

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### **§ 1725: Alien defined**

“Alien” means any person who is not a born or fully naturalized citizen of the United States.

### **§ 1726: Cognizance of violations in execution of contracts; reports; withholding procedures; actions to recover wages; costs and attorneys fees**

(a) The body awarding the contract for public work shall take cognizance of violations of this chapter committed in the course of the execution of the contract, and shall promptly report any suspected violations to the Labor Commissioner.

(b) If the awarding body determines as a result of its own investigation that there has been a violation of this chapter and withholds contract payments, the procedures in Section 1771.6 shall be followed.

(c) A contractor may bring an action in a court of competent jurisdiction to recover from an awarding body the difference between the wages actually paid to an employee and the wages that were required to be paid to an employee under this chapter, any penalties required to be paid under this chapter, and costs and attorney's fees related to this action, if either of the following is true:

(1) The awarding body previously affirmatively represented to the contractor in writing, in the call for bids, or otherwise, that the work to be covered by the bid or contract was not a “public work,” as defined in this chapter.

(2) The awarding body received actual written notice from the Department of Industrial Relations that the work to be covered by the bid or contract is a “public work,” as defined in this chapter, and failed to disclose that information to the contractor before the bid opening or awarding of the contract.

### **§ 1727: Withholding to satisfy wage and penalty assessments**

(a) Before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy any civil wage and penalty assessment issued by the Labor Commissioner under this chapter. The amounts required to satisfy a civil wage and penalty assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

(b) If the awarding body has not retained sufficient money under the contract to satisfy a civil wage and penalty assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. These amounts shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.



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### **§ 1728: Acceptance of cash in lieu of withholding**

In cases of contracts with assessment or improvement districts where full payment is made in the form of a single warrant, or other evidence of full payment, after completion and acceptance of the work, the awarding body shall accept from the contractor in cash a sum equal to, and in lieu of, any amount required to be withheld, retained, or forfeited under the provisions of this section, and said awarding body shall then release the final warrant or payment in full.

### **§ 1729: Withholding of amounts from subcontractors**

It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of the subcontractor's failure to comply with the terms of this chapter, and if payment has already been made to the subcontractor the contractor may recover from him the amount of the penalty or forfeiture in a suit at law.

### **§ 1730: List of sections relating to prevailing rate of per diem wage requirements for public work project employees; Internet posting; updating**

The Director of Industrial Relations shall post a list of every California code section and the language of those sections that relate to the prevailing rate of per diem wage requirements for workers employed on a public work project on the Internet Web site of the Department of Industrial Relations on or before June 1, 2013, and shall update that list each February 1 thereafter.

### **§ 1734: Disposition of fines and penalties collected by court**

Any court collecting any fines or penalties under the criminal provisions of this chapter or any of the labor laws pertaining to public works shall as soon as practicable after the receipt thereof deposit same with the county treasurer of the county in which such court is situated. Amounts so deposited shall be paid at least once a month by warrant of the county auditor drawn upon requisition of the judge or clerk of said court, to the State Treasurer for deposit in the General Fund.

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### **§ 1735: Discrimination in employment**

A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter.

### **§ 1736: Investigations; confidentiality of names of employees reporting violations of this chapter**

During any investigation conducted under this part, the Division of Labor Standards Enforcement shall keep confidential the name of any employee who reports a violation of this chapter and any other information that may identify the employee.

### **§ 1740: Public contracts; modification to comply with federal wage schedules without republication**

Notwithstanding any other provision of this chapter or any other law of this State, except limitations imposed by the Constitution, the legislative body of a political subdivision which has received or is to receive a loan or grant of funds from the Federal Government or a federal department or agency for public works of that political subdivision, may provide in its call for bids in connection with such public works that all bid specifications and contracts and other procedures in connection with bids or contracts shall be subject to modification to comply with revisions in federal minimum wage schedules without the necessity of republication or duplication of other formal statutory requirements.

### **§ 1741: Determination of violations; civil wage and penalty assessments; service interest on due and unpaid wages; list of violators**

(a) If the Labor Commissioner or his or her designee determines after an investigation that there has been a violation of this chapter, the Labor Commissioner shall with reasonable promptness issue a civil wage and penalty assessment to the contractor or subcontractor or both. The assessment shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures due and shall include the basis for the assessment. The assessment shall be served not later than 180 days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 180 days after acceptance of the public work, whichever occurs last. However, if the assessment is served after the expiration of this 180-day period, but before the expiration of an additional 180 days, and the awarding body has not yet made full payment to the contractor, the assessment is valid up to the amount of the funds retained. Service of the assessment shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor, subcontractor, and awarding body. The assessment shall advise the contractor and

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subcontractor of the procedure for obtaining review of the assessment. The Labor Commissioner shall, to the extent practicable, ascertain the identity of any bonding company issuing a bond that secures the payment of wages covered by the assessment and any surety on a bond, and shall serve a copy of the assessment by certified mail to the bonding company or surety at the same time service is made to the contractor, subcontractor, and awarding body. However, no bonding company or surety shall be relieved of its responsibilities because it failed to receive notice from the Labor Commissioner.

(b) Interest shall accrue on all due and unpaid wages at the rate described in subdivision (b) of Section 3289 of the Civil Code. The interest shall accrue from the date that the wages were due and payable, as provided in Part 7 (commencing with Section 1720) of Division 2, until the wages are paid.

(c)(1) The Labor Commissioner shall maintain a public list of the names of each contractor and subcontractor who has been found to have committed a willful violation of Section 1775 or to whom a final order, which is no longer subject to judicial review, has been issued.

(2) The list shall include the date of each assessment, the amount of wages and penalties assessed, and the amount collected.

(3) The list shall be updated at least quarterly, and the contractor's or subcontractor's name shall remain on that list until the assessment is satisfied, or for a period of three years beginning from the date of the issuance of the assessment, whichever is later.

### **§ 1742: Review of wage and penalty assessments; hearing procedure**

(a) An affected contractor or subcontractor may obtain review of a civil wage and penalty assessment under this chapter by transmitting a written request to the office of the Labor Commissioner that appears on the assessment within 60 days after service of the assessment. If no hearing is requested within 60 days after service of the assessment, the assessment shall become final.

(b) Upon receipt of a timely request, a hearing shall be commenced within 90 days before the director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The appointed hearing officer shall be an employee of the department, but shall not be an employee of the Division of Labor Standards Enforcement. The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence obtained by the Labor Commissioner subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor.

The contractor or subcontractor shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect. The assessment shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

Within 45 days of the conclusion of the hearing, the director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties and the awarding body pursuant to

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Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the Labor Commissioner. Within 15 days of the issuance of the decision, the director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

The director shall adopt regulations setting forth procedures for hearings under this subdivision.

(c) An affected contractor or subcontractor may obtain review of the decision of the director by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. If no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

(e) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.

(f) An awarding body that has withheld funds in response to a civil wage and penalty assessment under this chapter shall, upon receipt of a certified copy of a final order that is no longer subject to judicial review, promptly transmit the withheld funds, up to the amount of the certified order, to the Labor Commissioner.

(g) This section shall provide the exclusive method for review of a civil wage and penalty assessment by the Labor Commissioner under this chapter or the decision of an awarding body to withhold contract payments pursuant to Section 1771.5.

### **§ 1742.1: Liability of contractor, subcontractor, or surety; settlements**

(a) After 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of Section 1771.6, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment or notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the assessment or notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. Additionally, if the contractor or subcontractor demonstrates to the satisfaction of the director that he or she had substantial grounds for appealing the assessment or notice with respect to a portion of the unpaid wages covered by the assessment or notice, the director may exercise his or her discretion to waive

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payment of the liquidated damages with respect to that portion of the unpaid wages. Any liquidated damages shall be distributed to the employee along with the unpaid wages. Section 203.5 shall not apply to claims for prevailing wages under this chapter.

(b) Notwithstanding subdivision (a), there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the assessment or notice, for the department to hold in escrow pending administrative and judicial review. The department shall release such funds, plus any interest earned, at the conclusion of all administrative and judicial review to the persons and entities who are found to be entitled to such funds.

(c) The Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a civil wage and penalty assessment under Section 1741, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment without the need for formal proceedings. The awarding body shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a notice of withholding under subdivision (a) of Section 1771.6, afford the contractor or subcontractor the opportunity to meet with the designee of the awarding body to attempt to settle a dispute regarding the notice without the need for formal proceedings. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking administrative review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. The assessment or notice shall advise the contractor or subcontractor of the opportunity to request a settlement meeting.

(d) This section shall become operative on January 1, 2007.

### **§ 1743: Joint and several liability; order of collection; application of amounts collected; payment of workers; bonding company liability**

(a) The contractor and subcontractor shall be jointly and severally liable for all amounts due pursuant to a final order under this chapter or a judgment thereon. The Labor Commissioner shall first exhaust all reasonable remedies to collect the amount due from the subcontractor before pursuing the claim against the contractor.

(b) From the amount collected, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers.

(c) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund.

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(d) A final order under this chapter or a judgment thereon shall be binding, with respect to the amount found to be due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. The limitations period of any action on a payment bond shall be tolled pending a final order that is no longer subject to judicial review.

### **§ 1750: Second lowest bidder or legal entity with contract with second lowest bidder; damage due to acceptance of successful bidder who violated provisions of workers' compensation or Unemployment Insurance Code; rebuttable presumption; costs and fees**

(a)(1) The second lowest bidder, and any person, firm, association, trust, partnership, labor organization, corporation, or other legal entity which has, prior to the letting of the bids on the public works project in question, entered into a contract with the second lowest bidder, that suffers damage as a proximate result of a competitive bid for a public works project, as defined in subdivision (b), not being accepted due to the successful bidder's violation, as evidenced by the conviction of the successful bidder therefor, of any provision of Division 4 (commencing with Section 3200) or of the Unemployment Insurance Code, may bring an action for damages in the appropriate state court against the violating person or legal entity.

(2) There shall be a rebuttable presumption that a successful bidder who has been convicted of a violation of any provision of Division 4 (commencing with Section 3200) of this code or of the Unemployment Insurance Code, or of both, was awarded the bid because that successful bidder was able to lower the bid due to this violation or these violations occurring on the contract for public work awarded by the public agency.

(b) For purposes of this article:

(1) "Public works project" means the construction, repair, remodeling, alteration, conversion, modernization, improvement, rehabilitation, replacement, or renovation of a public building or structure.

(2) "Second lowest bidder" means the second lowest qualified bidder deemed responsive by the public agency awarding the contract for public work.

(3) The "second lowest bidder" and the "successful bidder" may include any person, firm, association, corporation, or other legal entity.

(c) In an action brought pursuant to this section, the court may award costs and reasonable attorney's fees, in an amount to be determined in the court's discretion, to the prevailing party.

(d) For purposes of an action brought pursuant to this section, employee status shall be determined pursuant to Division 4 (commencing with Section 3200) with respect to alleged violations of that division, pursuant to the Unemployment Insurance Code with respect to alleged violations of that code, and pursuant to Section 2750.5 with respect to alleged violations of either Division 4 (commencing with Section 3200) or of the Unemployment Insurance Code.

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(e) The right of action established pursuant to this article shall not be construed to diminish rights of action established pursuant to Section 19102 of, and Article 1.8 (commencing with Section 20104.70) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code.

(f) A second lowest bidder who has been convicted of a violation of any provision of Division 4 (commencing with Section 3200) of the Labor Code or of the Unemployment Insurance Code, or both, within one year prior to filing the bid for public work, and who has failed to take affirmative steps to correct that violation or those violations, is prohibited from taking any action authorized by this section.

### **§ 1770: Determination of general prevailing rate**

The Director of the Department of Industrial Relations shall determine the general prevailing rate of per diem wages in accordance with the standards set forth in Section 1773, and the director's determination in the matter shall be final except as provided in Section 1773.4. Nothing in this article, however, shall prohibit the payment of more than the general prevailing rate of wages to any workman employed on public work. Nothing in this act shall permit any overtime work in violation of Article 3 of this chapter.

### **§ 1771: Payment of general prevailing rate**

Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

### **§ 1771.2: Action by joint labor-management committee against employer that fails to pay prevailing wage to its employees**

A joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) may bring an action in any court of competent jurisdiction against an employer that fails to pay the prevailing wage to its employees, as required by this article. This action shall be commenced not later than 180 days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 180 days after acceptance of the public work, whichever last occurs.



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### **§ 1771.3: Monitoring and enforcing compliance with prevailing wage requirements for public works projects paid for out of public funds; exceptions**

(a)(1) The Department of Industrial Relations shall monitor and enforce compliance with applicable prevailing wage requirements for any public works project paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state, and shall charge each awarding body for the reasonable and directly related costs of monitoring and enforcing compliance with the prevailing wage requirements on each project.

(2)(A) The State Public Works Enforcement Fund is hereby created as a special fund in the State Treasury. All moneys received by the department pursuant to this section shall be deposited in the fund. Notwithstanding Section 13340 of the Government Code, all moneys in the fund shall be continuously appropriated to the Department of Industrial Relations, to monitor and enforce compliance with the applicable prevailing wage requirements on public works projects paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state and other projects for which the department provides prevailing wage monitoring and enforcement activities and for which it is to be reimbursed by the awarding body, and shall not be used or borrowed for any other purpose.

(B) Notwithstanding any other law, upon order of the Director of Finance, a loan in the amount of four million three hundred thousand dollars (\$4,300,000) shall be provided from the Uninsured Employers Benefit Trust Fund to the State Public Works Enforcement Fund to meet the startup needs of the Labor Compliance Monitoring Unit.

(3) The Director of Industrial Relations shall adopt regulations implementing this section, specifying the activities, including, but not limited to, monthly review, and audit if appropriate, of payroll records, which the department will undertake to monitor and enforce compliance with applicable prevailing wage requirements on public works projects paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state. The department, with the approval of the Director of Finance, shall determine the rate or rates, which the department may from time to time amend, that the department will charge to recover the reasonable and directly related costs of performing the monitoring and enforcement services for public works projects; provided, however, that the amount charged by the department shall not exceed one-fourth of 1 percent of the state bond proceeds used for the public works projects.

(4) The reasonable and directly related costs of monitoring and enforcing compliance with the prevailing wage requirements on a public works project incurred by the department in accordance with this section are payable by the awarding body of the public works project as a cost of construction. Notwithstanding any other provision of law, but subject to any limitations or restrictions of the bond act, the board, commission, department, agency, or official responsible for the allocation of bond proceeds from the bond funds shall consider and provide for amounts in support of the costs when allocating or approving expenditures of bond proceeds for the construction of the authorized project. The awarding body may elect not to receive or expend amounts from bond proceeds to pay the costs of the project; however, such election does not relieve the awarding body from reimbursing the Department of Industrial Relations for monitoring and enforcing prevailing wage requirements on the project pursuant to Section 1771.3 or any other applicable provision of law.



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(b) Paragraph (1) of subdivision (a) shall not apply to any contract for a public works project paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state if the contract was awarded under any of the following conditions:

- (1) The contract was awarded prior to the effective date of implementing regulations adopted by the department pursuant to paragraph (3) of subdivision (a).
- (2) The contract was awarded on or after the effective date of the regulations described in paragraph (1), if the awarding body had previously initiated a labor compliance program approved by the department for some or all of its public works projects and had not contracted with a third party to conduct such program, and requests and receives approval from the department to continue to operate its existing labor compliance program for its public works projects paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state, in place of the department monitoring and enforcing compliance on projects pursuant to subdivision (a).
- (3) The contract is awarded on or after the effective date of the regulations described in paragraph (1), if the awarding body has entered into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) This section shall not apply to public works projects subject to Section 75075 of the Public Resources Code.

### **§ 1771.5: Election of awarding body to initiate labor compliance program or reimburse costs of monitoring and enforcing compliance with prevailing wage requirements; exemption from general prevailing rate of per diem wages**

(a) Notwithstanding Section 1771, an awarding body may choose not to require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body elects to either:

- (1) Initiate and enforce a labor compliance program pursuant to subdivision (b) for every public works project under the authority of the awarding body as described in subdivision (e).
  - (2) Reimburse the Department of Industrial Relations for the cost of monitoring and enforcing compliance with prevailing wage requirements for every public works project of the awarding body as described in subdivision (f).
- (b) For purposes of this section, a labor compliance program shall include, but not be limited to, the following requirements:

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- (1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.
  - (2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.
  - (3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.
  - (4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.
  - (5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.
  - (6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.
  - (7) The awarding body shall comply with any other prevailing wage monitoring and enforcement activities that are required to be conducted by labor compliance programs by the Department of Industrial Relations.
- (c) For purposes of this chapter, “labor compliance program” means a labor compliance program that is approved, as specified in state regulations, by the Director of Industrial Relations.
- (d) For purposes of this chapter, the Director of Industrial Relations may revoke the approval of a labor compliance program in the manner specified in state regulations.
- (e) An awarding body that elects to use a labor compliance program pursuant to subdivision (a) must use the labor compliance program for all contracts for public works projects awarded prior to the effective date of the regulations adopted by the department as specified in subdivision (g). For contracts for public works projects awarded on or after the effective date of regulations adopted by the department as specified in subdivision (g), the awarding body may also elect to continue operating an existing previously approved labor compliance program in lieu of reimbursing the Department of Industrial Relations for the cost of monitoring and enforcing compliance with prevailing wage requirements on the awarding body's public works projects if it has not contracted with a third party to conduct its labor compliance program and if it requests and receives approval from the department to continue its existing program.
- (f) An awarding body that elects to reimburse the department for the cost of monitoring and enforcing compliance with prevailing wage requirements for public works projects of the awarding body, pursuant to subdivision (a), must, for all of its contracts for public works projects awarded on or after the effective date of the regulations adopted by the department as specified in subdivision (g):
- (1) Ensure that all bid invitations and public works contracts contain appropriate language concerning the requirements of this chapter.

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(2) Conduct a prejob conference with the contractor and subcontractor to discuss federal and state labor law requirements applicable to the contract.

(3) Enter into an agreement with the department to reimburse the department for its costs of performing the service of monitoring and enforcing compliance with applicable prevailing wage requirements on the awarding bodies' projects.

(g) The Department of Industrial Relations shall adopt regulations implementing this section specifying the activities which the department shall undertake to monitor and enforce compliance with the prevailing wage requirements on the public works projects, including, but not limited to, monthly review, and audit if appropriate, of payroll records.

(h)(1) The Department of Industrial Relations shall determine the rate or rates, which the department may from time to time amend, that the department will charge in obtaining reimbursement from awarding bodies for the reasonable and directly related costs of performing the specified monitoring and enforcement services, provided the amount charged by the department shall not exceed one-fourth of 1 percent of the total public works project costs.

(2) Notwithstanding paragraph (1), for public works projects paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state, the amount charged by the department shall not exceed one-fourth of 1 percent of the state bond proceeds used for the public works project.

(i) All amounts collected by the Department of Industrial Relations for its services pursuant to this section shall be deposited in the State Public Works Enforcement Fund.

### **§ 1771.6: Deposits of penalties or forfeitures withheld from contract payment**

(a) Any awarding body that enforces this chapter in accordance with Section 1726 or 1771.5 shall provide notice of the withholding of contract payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments.

The awarding body shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on a bond, if their identities are known to the awarding body.

(b) The withholding of contract payments in accordance with Section 1726 or 1771.5 shall be reviewable under Section 1742 in the same manner as if the notice of the withholding was a civil penalty order of the Labor Commissioner under this chapter. If review is requested, the Labor Commissioner may intervene to represent the awarding body.

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- (c) Pending a final order, or the expiration of the time period for seeking review of the notice of the withholding, the awarding body shall not disburse any contract payments withheld.
- (d) From the amount recovered, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers.
- (e) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund of the awarding body that has enforced this chapter pursuant to Section 1771.5.

### **§ 1771.7: Awarding body choosing to use funds derived from Kindergarten-University Public Education Facilities Bond Act for public works project; initiating and enforcing labor compliance program**

- (a)(1) For contracts specified in subdivision (f), an awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 [FN1] or the Kindergarten-University Public Education Facilities Bond Act of 2004 [FN2] for a public works project, shall initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in subdivision (b) of Section 1771.5, with respect to that public works project.
- (2) If an awarding body described in paragraph (1) chooses to contract with a third party to initiate and enforce a labor compliance program for a project described in paragraph (1), that third party shall not review the payroll records of its own employees or the employees of its subcontractors, and the awarding body or an independent third party shall review these payroll records for purposes of the labor compliance program.
- (b) This section applies to public works that commence on or after April 1, 2003. For purposes of this subdivision, work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, does not constitute the commencement of a public work.
- (c)(1) For purposes of this section, if any campus of the California State University chooses to use the funds described in subdivision (a), then the “awarding body” is the Chancellor of the California State University. For purposes of this subdivision, if the chancellor is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, a labor compliance program, then in addition to the requirements described in subdivision (b) of Section 1771.5, the Chancellor of the California State University shall review the payroll records on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.
- (2) For purposes of this subdivision, if an awarding body described in subdivision (a) is the University of California or any campus of that university, and that awarding body is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, a labor compliance program, then in addition to the requirements described in subdivision (b) of Section 1771.5, the payroll records

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shall be reviewed on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(d)(1) An awarding body described in subdivision (a) shall make a written finding that the awarding body has initiated and enforced, or has contracted with a third party to initiate and enforce, the labor compliance program described in subdivision (a).

(2)(A) If an awarding body described in subdivision (a) is a school district, the governing body of that district shall transmit to the State Allocation Board, in the manner determined by that board, a copy of the finding described in paragraph (1).

(B) The State Allocation Board shall not release the funds described in subdivision (a) to an awarding body that is a school district until the State Allocation Board has received the written finding described in paragraph (1).

(C) If the State Allocation Board conducts a postaward audit procedure with respect to an award of the funds described in subdivision (a) to an awarding body that is a school district, the State Allocation Board shall verify, in the manner determined by that board, that the school district has complied with the requirements of this subdivision.

(3) If an awarding body described in subdivision (a) is a community college district, the Chancellor of the California State University, or the office of the President of the University of California or any campus of the University of California, that awarding body shall transmit, in the manner determined by the Director of Industrial Relations, a copy of the finding described in paragraph (1) to the director of that department, or the director of any successor agency that is responsible for the oversight of employee wage and employee work hours laws.

(e) Because the reasonable costs directly related to monitoring and enforcing compliance with the prevailing wage requirements are necessary oversight activities, integral to the cost of construction of the public works projects, notwithstanding Section 17070.63 of the Education Code, the grant amounts as described in Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 of the Education Code for the costs of a new construction or modernization project shall include the state's share of the reasonable and directly related costs of the labor compliance program used to monitor and enforce compliance with prevailing wage requirements.

(f) This section shall only apply to contracts awarded prior to the effective date of regulations adopted by the Department of Industrial Relations pursuant to paragraph (3) of subdivision (a) of Section 1771.3.

### **§ 1772: Employees of contractors and subcontractors**

Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work.

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### **§ 1773: Method of determining general prevailing rates; holidays; adoption of rates established by collective bargaining**

The body awarding any contract for public work, or otherwise undertaking any public work, shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification, or type of worker needed to execute the contract from the Director of Industrial Relations. The holidays upon which those rates shall be paid need not be specified by the awarding body, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

In determining the rates, the Director of Industrial Relations shall ascertain and consider the applicable wage rates established by collective bargaining agreements and the rates that may have been predetermined for federal public works, within the locality and in the nearest labor market area. Where the rates do not constitute the rates actually prevailing in the locality, the director shall obtain and consider further data from the labor organizations and employers or employer associations concerned, including the recognized collective bargaining representatives for the particular craft, classification, or type of work involved. The rate fixed for each craft, classification, or type of work shall be not less than the prevailing rate paid in the craft, classification, or type of work.

If the director determines that the rate of prevailing wage for any craft, classification, or type of worker is the rate established by a collective bargaining agreement, the director may adopt that rate by reference as provided for in the collective bargaining agreement and that determination shall be effective for the life of the agreement or until the director determines that another rate should be adopted.

### **§ 1773.1: Employer payments included in per diem wages**

(a) Per diem wages, when the term is used in this chapter or in any other statute applicable to public works, shall be deemed to include employer payments for the following:

- (1) Health and welfare.
- (2) Pension.
- (3) Vacation.
- (4) Travel.
- (5) Subsistence.

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(6) Apprenticeship or other training programs authorized by Section 3093, so long as the cost of training is reasonably related to the amount of the contributions.

(7) Worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code), to the extent that the activities of the programs or committees are directed to the monitoring and enforcement of laws related to public works.

(8) Industry advancement and collective bargaining agreements administrative fees, provided that these payments are required under a collective bargaining agreement pertaining to the particular craft, classification, or type of work within the locality or the nearest labor market area at issue.

(9) Other purposes similar to those specified in paragraphs (1) to (8), inclusive.

(b) Employer payments include all of the following:

(1) The rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program.

(2) The rate of actual costs to the employer reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the workers affected.

(3) Payments to the California Apprenticeship Council pursuant to Section 1777.5.

(c) Employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages. However, no credit shall be granted for benefits required to be provided by other state or federal law. Credits for employer payments also shall not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing. However, an increased employer payment contribution that results in a lower hourly straight time or overtime wage shall not be considered a violation of the applicable prevailing wage determination so long as all of following conditions are met:

(1) The increased employer payment is made pursuant to criteria set forth in a collective bargaining agreement.

(2) The basic hourly rate and increased employer payment are no less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the director's general prevailing wage determination.

(3) The employer payment contribution is irrevocable unless made in error.

(d) The credit for employer payments shall be computed on an annualized basis where the employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer, except where one or more of the following occur:

(1) The employer has an enforceable obligation to make the higher rate of payments on future private construction performed by the employer.



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- (2) The higher rate of payments is required by a project labor agreement.
  - (3) The payments are made to the California Apprenticeship Council pursuant to Section 1777.5.
  - (4) The director determines that annualization would not serve the purposes of this chapter.
- (e)(1) For the purpose of determining those per diem wages for contracts, the representative of any craft, classification, or type of worker needed to execute contracts shall file with the Department of Industrial Relations fully executed copies of the collective bargaining agreements for the particular craft, classification, or type of work involved. The collective bargaining agreements shall be filed after their execution and thereafter may be taken into consideration pursuant to Section 1773 whenever filed 30 days prior to the call for bids. If the collective bargaining agreement has not been formalized, a typescript of the final draft may be filed temporarily, accompanied by a statement under penalty of perjury as to its effective date.
- (2) Where a copy of the collective bargaining agreement has previously been filed, fully executed copies of all modifications and extensions of the agreement that affect per diem wages or holidays shall be filed.
  - (3) The failure to comply with filing requirements of this subdivision shall not be grounds for setting aside a prevailing wage determination if the information taken into consideration is correct.

### **§ 1773.2: Specification of general wage rate in call for bids, in bid specifications and in contract; posting at job site**

The body awarding any contract for public work, or otherwise undertaking any public work, shall specify in the call for bids for the contract, and in the bid specifications and in the contract itself, what the general rate of per diem wages is for each craft, classification, or type of worker needed to execute the contract. In lieu of specifying the rate of wages in the call for bids, and in the bid specifications and in the contract itself, the awarding body may, in the call for bids, bid specifications, and contract, include a statement that copies of the prevailing rate of per diem wages are on file at its principal office, which shall be made available to any interested party on request. The awarding body shall also cause a copy of the determination of the director of the prevailing rate of per diem wages to be posted at each job site.

### **§ 1773.3: Contract awards; copy to department; publication of contract information; discrepancy in ratio**

An awarding agency whose public works contract falls within the jurisdiction of Section 1771.3, 1771.5, or 1777.5, or any other statute providing for the payment of fees to the Department of Industrial Relations for enforcing prevailing wage requirements on that project, shall, within five days of the award, send a copy of the award to the department. In lieu of responding to any specific request for contract award information, the department may make such information available for public review by posting on its Internet Web site. Within five days of a finding of any discrepancy regarding the ratio of apprentices to



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journeymen, pursuant to the certificated fixed number of apprentices to journeymen, the awarding agency shall notify the Division of Labor Standards Enforcement.

### **§ 1773.4. Review of determination of prevailing wages**

Any prospective bidder or his representative, any representative of any craft, classification or type of workman involved, or the awarding body may, within 20 days after commencement of advertising of the call for bids by the awarding body, file with the Director of Industrial Relations a verified petition to review the determination of any such rate or rates upon the ground that they have not been determined in accordance with the provision of Section 1773 of this code. Within two days thereafter, a copy of such petition shall be filed with the awarding body. The petition shall set forth the facts upon which it is based.

The Director of Industrial Relations or his authorized representative shall, upon notice to the petitioner, the awarding body and such other persons as he deems proper, including the recognized collective bargaining representatives for the particular crafts, classifications or types of work involved, institute an investigation or hold a hearing. Within 20 days after the filing of such petition, or within such longer period as agreed upon by the director, the awarding body, and all the interested parties, he shall make a determination and transmit the same in writing to the awarding body and to the interested parties.

Such determination shall be final and shall be the determination of the awarding body. Upon receipt by it of the notice of the filing of such petition the body awarding the contract or authorizing the public work shall extend the closing date for the submission of bids or the starting of work until five days after the determination of the general prevailing rates of per diem wages pursuant to this section.

Upon the filing of any such petition, notice thereof shall be set forth in the next and all subsequent publications by the awarding body of the call for bids. No other notice need be given to bidders by the awarding body by publication or otherwise. The determination of the director shall be included in the contract.

### **§ 1773.5. Rules and regulations**

The Director of Industrial Relations may establish rules and regulations for the purpose of carrying out this chapter, including, but not limited to, the responsibilities and duties of awarding bodies under this chapter.

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### **§ 1773.6: Determination of change in prevailing wages during quarter; availability to awarding body**

If during any quarterly period the Director of Industrial Relations shall determine that there has been a change in any prevailing rate of per diem wages in any locality he shall make such change available to the awarding body and his determination shall be final. Such determination by the Director of Industrial Relations shall not be effective as to any contract for which the notice to bidders has been published.

### **§ 1773.7. Exemption of special funds of state agencies from charges for services**

The provisions of Section 11250 of the Government Code shall not be applicable to Sections 1773, 1773.4, and 1773.6.

### **§ 1773.8. Employer payment contribution resulting in lower taxable wage**

An increased employer payment contribution that results in a lower taxable wage shall not be considered a violation of the applicable prevailing wage determination so long as all of the following conditions are met:

- (a) The increased employer payment is made pursuant to criteria set forth in a collective bargaining agreement.
- (b) The increased employer payment and hourly straight time and overtime wage combined are no less than the general prevailing rate of per diem wages.
- (c) The employer payment contribution is irrevocable unless made in error.

### **§ 1773.9. General prevailing rate of per diem wages; method of determining; rates established by collective bargaining agreements**

- (a) The Director of Industrial Relations shall use the methodology set forth in subdivision (b) to determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed.
- (b) The general prevailing rate of per diem wages includes all of the following:
  - (1) The basic hourly wage rate being paid to a majority of workers engaged in the particular craft, classification, or type of work within the locality and in the nearest labor market area, if a majority of the workers is paid at a single rate. If no single rate is being paid to a majority of the workers, then the single

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rate being paid to the greatest number of workers, or modal rate, is prevailing. If a modal rate cannot be determined, then the director shall establish an alternative rate, consistent with the methodology for determining the modal rate, by considering the appropriate collective bargaining agreements, federal rates, rates in the nearest labor market area, or other data such as wage survey data.

(2) Other employer payments included in per diem wages pursuant to Section 1773.1 and as included as part of the total hourly wage rate from which the basic hourly wage rate was derived. In the event the total hourly wage rate does not include any employer payments, the director shall establish a prevailing employer payment rate by the same procedure set forth in paragraph (1).

(3) The rate for holiday and overtime work shall be those rates specified in the collective bargaining agreement when the basic hourly rate is based on a collective bargaining agreement rate. In the event the basic hourly rate is not based on a collective bargaining agreement, the rate for holidays and overtime work, if any, included with the prevailing basic hourly rate of pay shall be prevailing.

(c)(1) If the director determines that the general prevailing rate of per diem wages is the rate established by a collective bargaining agreement, and that the collective bargaining agreement contains definite and predetermined changes during its term that will affect the rate adopted, the director shall incorporate those changes into the determination. Predetermined changes that are rescinded prior to their effective date shall not be enforced.

(2) When the director determines that there is a definite and predetermined change in the general prevailing rate of per diem wages as described in paragraph (1), but has not published, at the time of the effective date of the predetermined change, the allocation of the predetermined change as between the basic hourly wage and other employer payments included in per diem wages pursuant to Section 1773.1, a contractor or subcontractor may allocate payments of not less than the amount of the definite and predetermined change to either the basic hourly wage or other employer payments included in per diem wages for up to 60 days following the director's publication of the specific allocation of the predetermined change.

(3) When the director determines that there is a definite and predetermined change in the general prevailing rate of per diem wages as described in paragraph (1), but the allocation of that predetermined change as between the basic hourly wage and other employer payments included in per diem wages pursuant to Section 1773.1 is subsequently altered by the parties to a collective bargaining agreement described in paragraph (1), a contractor or subcontractor may allocate payments of not less than the amount of the definite and predetermined change in accordance with either the originally published allocation or the allocation as altered in the collective bargaining agreement.

### **§ 1773.11. Private entity's employees; prevailing rate of per diem wages and holiday and overtime work; determinations**

(a) Notwithstanding any other provision of law and except as otherwise provided by this section, if the state or a political subdivision thereof agrees by contract with a private entity that the private entity's employees receive, in performing that contract, the general prevailing rate of per diem wages and the

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general prevailing rate for holiday and overtime work, the director shall, upon a request by the state or the political subdivision, do both of the following:

- (1) Determine, as otherwise provided by law, the wage rates for each craft, classification, or type of worker that are needed to execute the contract.
  - (2) Provide these wage rates to the state or political subdivision that requests them.
- (b) This section does not apply to a contract for a public work, as defined in this chapter.
- (c) The director shall determine and provide the wage rates described in this section in the order in which the requests for these wage rates were received and regardless of the calendar year in which they were received. If there are more than 20 pending requests in a calendar year, the director shall respond only to the first 20 requests in the order in which they were received. If the director determines that funding is available in any calendar year to determine and provide these wage rates in response to more than 20 requests, the director shall respond to these requests in a manner consistent with this subdivision.

### **§ 1774: Payment of general prevailing rate**

The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

### **§ 1775. Penalties for violations**

(a)(1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2)(A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

- (i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.
- (ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

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(B)(i) The penalty may not be less than forty dollars (\$40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of this section and Sections 1771, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the

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subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

### **§ 1776. Payroll records; retention; inspection; agencies entitled to receive nonredacted copies of certified records; noncompliance penalties; rules**

(a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and the Division of Labor Standards Enforcement of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

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(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor- management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney' s fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f)(1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(i) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.



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(j) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

### **§ 1777. Violation; misdemeanor**

Any officer, agent, or representative of the State or of any political subdivision who wilfully violates any provision of this article, and any contractor, or subcontractor, or agent or representative thereof, doing public work who neglects to comply with any provision of section 1776 is guilty of a misdemeanor.

### **§ 1777.1. Violations with intent to defraud; willful violations**

(a) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be in violation of this chapter with intent to defraud, except Section 1777.5, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year or more than three years to do either of the following:

- (1) Bid on or be awarded a contract for a public works project.
- (2) Perform work as a subcontractor on a public works project.

(b) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to have committed two or more separate willful violations of this chapter, except Section 1777.5, within a three-year period, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period up to three years to do either of the following:

- (1) Bid on or be awarded a contract for a public works project.
- (2) Perform work as a subcontractor on a public works project.

(c) Whenever a contractor or subcontractor performing a public works project has failed to provide a timely response to a request by the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards, or the awarding body to produce certified payroll records pursuant to Section 1776, the Labor Commissioner shall notify the contractor or subcontractor that, in addition to any other penalties provided by law, the contractor or subcontractor will be subject to debarment under this section if the certified payroll records are not produced within 30 days after receipt of the written notice. If the commissioner finds that the contractor or subcontractor has failed to comply with Section 1776 by that deadline, unless the commissioner finds that the failure to comply was due to circumstances outside the



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contractor's or subcontractor's control, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year and not more than three years to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(d) A willful violation occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions.

(e) The Labor Commissioner shall publish on the commissioner's Internet Web site a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project pursuant to this chapter. The list shall contain the name of the contractor, the Contractors' State License Board license number of the contractor, and the effective period of debarment of the contractor. Contractors shall be added to the list upon issuance of a debarment order and the commissioner shall also notify the Contractors' State License Board when the list is updated. At least annually, the commissioner shall notify awarding bodies of the availability of the list of debarred contractors. The commissioner shall also place advertisements in construction industry publications targeted to the contractors and subcontractors, chosen by the commissioner, that state the effective period of the debarment and the reason for debarment. The advertisements shall appear one time for each debarment of a contractor in each publication chosen by the commissioner. The debarred contractor or subcontractor shall be liable to the commissioner for the reasonable cost of the advertisements, not to exceed five thousand dollars (\$5,000). The amount paid to the commissioner for the advertisements shall be credited against the contractor's or subcontractor's obligation to pay civil fines or penalties for the same willful violation of this chapter.

(f) For purposes of this section, "contractor or subcontractor" means a firm, corporation, partnership, or association and its responsible managing officer, as well as any supervisors, managers, and officers found by the Labor Commissioner to be personally and substantially responsible for the willful violation of this chapter.

(g) For the purposes of this section, the term "any interest" means an interest in the entity bidding or performing work on the public works project, whether as an owner, partner, officer, manager, employee, agent, consultant, or representative. "Any interest" includes, but is not limited to, all instances where the debarred contractor or subcontractor receives payments, whether cash or any other form of compensation, from any entity bidding or performing work on the public works project, or enters into any contracts or agreements with the entity bidding or performing work on the public works project for services performed or to be performed for contracts that have been or will be assigned or sublet, or for vehicles, tools, equipment, or supplies that have been or will be sold, rented, or leased during the period from the initiation of the debarment proceedings until the end of the term of the debarment period. "Any interest" does not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of debarment from an entity bidding or performing work on a public works project.

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(h) For the purposes of this section, the term “entity” is defined as a company, limited liability company, association, partnership, sole proprietorship, limited liability partnership, corporation, business trust, or organization.

(i) The Labor Commissioner shall adopt rules and regulations for the administration and enforcement of this section.

### **§ 1777.5. Employment of registered apprentices; wages; standards; number; apprenticeable craft or trade; exemptions; contributions; compliance program**

(a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. “Apprenticeable craft or trade,” as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, “contractor” includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed

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under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Administrator of Apprenticeship may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

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(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m)(1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Department of Industrial Relations for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship standards and requirements under this code.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all moneys in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Department of Industrial Relations.

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(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

(p) An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of Section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

### **§ 1777.6. Discrimination against apprentices**

An employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of this code and Section 12940 of the Government Code.

### **§ 1777.7. Violations of § 1777.5; civil penalty; denial of right to bid on contracts; procedure; violations by subcontractors**

(a)(1) A contractor or subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Labor Commissioner if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed by the Labor Commissioner, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

(2) In lieu of the penalty provided for in this subdivision, the Labor Commissioner may, for a first-time violation and with the concurrence of an apprenticeship program described in subdivision (d), order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(b) In the event a contractor or subcontractor is determined by the Labor Commissioner to have knowingly committed a serious violation of any provision of Section 1777.5, the Labor Commissioner may also deny to the contractor or subcontractor, and to its responsible officers, the right to bid on or be awarded or perform work as a subcontractor on any public works contract for a period of up to one year

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for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Labor Commissioner becomes a final order.

(c)(1) An affected contractor, subcontractor, or responsible officer may obtain a review of the determination of the Labor Commissioner imposing the debarment or civil penalty by transmitting a written request to the office of the Labor Commissioner that appears on the determination within 60 days after service of the determination of debarment or civil penalty. If no hearing is requested within 60 days after service of the determination, the determination shall become final.

(2) The provisions of Section 1742 shall apply to the review of any determination issued pursuant to subdivision (a) or (b), subject to the following:

(A) The provisions of Section 1742 and any regulations implementing that section shall apply to a responsible officer who requests review of a determination under this section to the same extent as any affected contractor or subcontractor who requests review.

(B) In the review of a determination under this section, the affected contractor, subcontractor, or responsible officer shall have the burden of providing evidence of compliance with Section 1777.5.

(3) For purposes of this section, a determination issued pursuant to subdivision (a) or (b) includes a determination that has been approved by the Labor Commissioner and issued by an awarding body that has been authorized to assist the director in the enforcement of Section 1777.5 pursuant to subdivision (p) of that section. The Labor Commissioner shall have the right to intervene in any proceeding for review of a determination issued by an awarding body. If the involvement of the Labor Commissioner in a labor compliance program enforcement action is limited to a review of the determination and the matter is resolved without litigation by or against the Labor Commissioner or the department, the awarding body shall enforce any applicable penalties, as specified in this section, and shall deposit any penalties and forfeitures collected in the General Fund.

(4) The Labor Commissioner may certify a copy of the final order of the Director of Industrial Relations and file it with the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order. A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by the law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section. An awarding body that has withheld funds in response to a determination imposing a penalty under this section shall, upon receipt of a certified copy of a final order that is no longer subject to judicial review, promptly transmit the withheld funds, up to the amount of the certified order, to the Labor Commissioner.

(d) If a subcontractor is found to have violated Section 1777.5, the prime contractor of the project is not liable for any penalties under subdivision (a), unless the prime contractor had knowledge of the subcontractor's failure to comply with the provisions of Section 1777.5 or unless the prime contractor fails to comply with any of the following requirements:

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(1) The contract executed between the contractor and the subcontractor or the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall continually monitor a subcontractor's use of apprentices required to be employed on the public works project pursuant to subdivision (d) of Section 1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor.

(3) Upon becoming aware of a failure of the subcontractor to employ the required number of apprentices, the contractor shall take corrective action, including, but not limited to, retaining funds due the subcontractor for work performed on the public works project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of apprentices on the public works project.

(e) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(f)(1) The Labor Commissioner shall consider, in setting the amount of a monetary penalty, in determining whether a violation is serious, and in determining whether and for how long a party should be debarred for violating this section, all of the following circumstances:

(A) Whether the violation was intentional.

(B) Whether the party has committed other violations of Section 1777.5.

(C) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.

(D) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.

(E) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

(2) If a party seeks review of a decision by the Labor Commissioner to impose a monetary penalty or period of debarment, the Director of Industrial Relations shall decide de novo the appropriate penalty, by considering the same factors set forth above.

(g) The interpretation of Section 1777.5 and the substantive requirements of this section, including the limitations period for issuing a determination under subdivision (a) or (b), shall be in accordance with the regulations of the California Apprenticeship Council. The Director of Industrial Relations may adopt regulations to establish guidelines for the imposition of monetary penalties and periods of debarment and may designate precedential decisions under Section 11425.60 of the Government Code.



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### **§ 1778. Receipt of portion of wages of workman; felony**

Every person, who individually or as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who takes, receives, or conspires with another to take or receive, for his own use or the use of any other person any portion of the wages of any workman or working subcontractor, in connection with services rendered upon any public work is guilty of a felony.

### **§ 1779. Fee for registering or placing person in public work; misdemeanor**

Any person or agent or officer thereof who charges, collects, or attempts to charge or collect, directly or indirectly, a fee or valuable consideration for registering any person for public work, or for giving information as to where such employment may be procured, or for placing, assisting in placing, or attempting to place, any person in public work, whether the person is to work directly for the State, or any political subdivision or for a contractor or subcontractor doing public work is guilty of a misdemeanor.

### **§ 1780. Placement of order for employment of workman; misdemeanor**

Any person acting on behalf of the State or any political subdivision, or any contractor or subcontractor or agent or representative thereof, doing any public work who places any order for the employment of a workman on public work where the filling of the order for employment involves the charging of a fee, or the receiving of a valuable consideration from any applicant for employment is guilty of a misdemeanor.

### **§ 1781. Actions to recover increased costs incurred; liability; public works; definitions; penalties**

(a)(1) Notwithstanding any other provision of law, a contractor may, subject to paragraphs (2) and (3), bring an action in a court of competent jurisdiction to recover from the body awarding a contract for a public work or otherwise undertaking any public work any increased costs incurred by the contractor as a result of any decision by the body, the Department of Industrial Relations, or a court that classifies, after the time at which the body accepts the contractor's bid or awards the contractor a contract in circumstances where no bid is solicited, the work covered by the bid or contract as a "public work," as defined in this chapter, to which Section 1771 applies, if that body, before the bid opening or awarding of the contract, failed to identify as a "public work," as defined in this chapter, in the bid specification or in the contract documents that portion of the work that the decision classifies as a "public work."

(2) The body awarding a contract for a public work or otherwise undertaking any public work is not liable for increased costs in an action described in paragraph (1) if all of the following conditions are met:

(A) The contractor did not directly submit a bid to, or directly contract with, that body.



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(B) The body stated in the contract, agreement, ordinance, or other written arrangement by which it undertook the public work that the work described in paragraph (1) was a “public work,” as defined in this chapter, to which Section 1771 applies, and obligated the party with whom the body makes its written arrangement to cause the work described in paragraph (1) to be performed as a “public work.”

(C) The body fulfilled all of its duties, if any, under the Civil Code or any other provision of law pertaining to the body providing and maintaining bonds to secure the payment of contractors, including the payment of wages to workers performing the work described in paragraph (1).

(3) If a contractor did not directly submit a bid to, or directly contract with a body awarding a contract for, or otherwise undertaking a public work, the liability of that body in an action commenced by the contractor under subdivision (a) is limited to that portion of a judgment, obtained by that contractor against the body that solicited the contractor's bid or awarded the contract to the contractor, that the contractor is unable to satisfy. For purposes of this paragraph, a contractor may not be deemed to be unable to satisfy any portion of a judgment unless, in addition to other collection measures, the contractor has made a good faith attempt to collect that portion of the judgment against a surety bond, guarantee, or some other form of assurance.

(b) When construction has not commenced at the time a final decision by the Department of Industrial Relations or a court classifies all or part of the work covered by the bid or contract as a “public work,” as defined in this chapter, the body that solicited the bid or awarded the contract shall rebid the “public work” covered by the contract as a “public work,” any bid that was submitted and any contract that was executed for this work are null and void, and the contractor may not be compensated for any nonconstruction work already performed unless the body soliciting the bid or awarding the contract has agreed to compensate the contractor for this work.

(c) For purposes of this section:

(1) “Awarding body” does not include the Department of General Services, the Department of Transportation, or the Department of Water Resources.

(2) “Increased costs” includes, but is not limited to:

(A) Labor cost increases required to be paid to workers who perform or performed work on the “public work” as a result of the events described in subdivision (a).

(B) Penalties for a violation of this article for which the contractor is liable, and which violation is the result of the events described in subdivision (a).

### **§ 1810. Legal day's work**

Eight hours labor constitutes a legal day's work in all cases where the same is performed under the authority of any law of this State, or under the direction, or control, or by the authority of any officer of this State acting in his official capacity, or under the direction, or control or by the authority of any

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municipal corporation, or of any officer thereof. A stipulation to that effect shall be made a part of all contracts to which the State or any municipal corporation therein is a party.

### **§ 1811. Maximum hours per day and per week**

The time of service of any workman employed upon public work is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week, except as hereinafter provided for under Section 1815.

### **§ 1812. Record of hours of employment; inspection**

Every contractor and subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the public work. The record shall be kept open at all reasonable hours to the inspection of the awarding body and to the Division of Labor Standards Enforcement.

### **§ 1813. Forfeiture for violations; contract stipulation; report of violations**

The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

### **§ 1814. Violation; misdemeanor**

Any officer, agent, or representative of the State or any political subdivision who violates any provision of this article and any contractor or subcontractor or agent or representative thereof doing public work who neglects to comply with any provision of Section 1812 is guilty of a misdemeanor.

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### **§ 1815. Overtime**

Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

### **§ 1816. Renumbered § 1814 and amended by Stats.1961, c. 238, p. 1257, § 6**

### **§ 1817. Renumbered § 1815 and amended by Stats.1961, c. 238, p. 1257, § 7**

### **§ 1860. Required contract provision**

The awarding body shall cause to be inserted in every public works contract a clause providing that, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees.

### **§ 1861. Certification by contractor**

Each contractor to whom a public works contract is awarded shall sign and file with the awarding body the following certification prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

### **§ 1861. Certification by contractor**

Each contractor to whom a public works contract is awarded shall sign and file with the awarding body the following certification prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

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### **§ 1900. Employees entitled to time off for meals**

Every employee of a city whose hours of labor exceed 120 in a week is entitled to be off duty at least three hours during every twenty-four hours for the purpose of procuring meals. No deduction of salary shall be made by reason thereof.

### **§ 1901. Violation; misdemeanor**

Any officer or agent of a city having supervision and control of employees covered by this article who violates any provision hereof is guilty of a misdemeanor.

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## PENAL CODE

### **§ 2717.8. Compensation of Inmate Workers; Deductions**

The compensation of prisoners engaged in programs pursuant to contract between the Department of Corrections and joint venture employers for the purpose of conducting programs which use inmate labor shall be comparable to wages paid by the joint venture employer to non-inmate employees performing similar work for that employer. If the joint venture employer does not employ such non-inmate employees in similar work, compensation shall be comparable to wages paid for work of a similar nature in the locality in which the work is to be performed. Such wages shall be subject to deductions, as determined by the Director of Corrections, which shall not, in the aggregate, exceed 80 percent of gross wages and shall be limited to the following:

- (1) Federal, state, and local taxes.
- (2) Reasonable charges for room and board, which shall be remitted to the Director of Corrections.
- (3) Any lawful restitution fine or contributions to any fund established by law to compensate the victims of crime of not more than 20 percent, but not less than 5 percent, of gross wages, which shall be remitted to the Director of Corrections for disbursement.
- (4) Allocations for support of family pursuant to state statute, court order, or agreement by the prisoner.

### **§ 7010. Lease or Lease-Purchase Agreements for Establishment of Prison Facility for Los Angeles County; Solicitation of Bids, Review and Approval; Compliance with Public Works Provisions**

- (a) The Director of Corrections may solicit bids for any lease or lease-purchase for the establishment of a prison facility for a site in Los Angeles County.
- (b) The director may not accept any lease or lease-purchase bid or execute any lease or lease-purchase agreement unless and until the bid or agreement is submitted for review and approval under the procedure described in Section 7003.
- (c) Any lease or lease-purchase agreement executed pursuant to this section shall contain, as a condition of the agreement, stipulations requiring compliance with the provisions of Chapter 1 (commencing with Section 1720) of Part 7 of the Labor Code in the construction of any facility within the scope of the agreement.

# California Prevailing Wage Laws

## PUBLIC CONTRACT CODE

Division 2. General Provisions  
Part 1. Administrative Provisions  
Chapter 6.5. The Design-Build Demonstration Program

**§ 6804. Labor compliance program; cost reimbursement; deposit of moneys collected and use of funds; election to continue operating preexisting approved program (sunsets on 01/01/2014)**

(a) For contracts for public works projects awarded prior to the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, a transportation entity authorized to use the design-build method of procurement shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the transportation entity or design-build entity has entered into any collective bargaining agreement that binds all of the contractors performing work on the projects.

(b) For contracts for public works projects awarded on or after the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, the transportation entity shall reimburse the department for its reasonable and directly related costs of performing prevailing wage monitoring and enforcement on public works projects pursuant to rates established by the department as set forth in subdivision (h) of Section 1771.5 of the Labor Code. All moneys collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund, created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(c) In lieu of reimbursing the Department of Industrial Relations for its reasonable and directly related costs of performing monitoring and enforcement on public works projects, the transportation entity may elect to continue operating an existing previously approved labor compliance program to monitor and enforce prevailing wage requirements on the project if it has either not contracted with a third party to conduct its labor compliance program and requests and receives approval from the department to continue its existing program or it enters into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

# California Prevailing Wage Laws

Division 2. General Provisions  
Part 1. Administrative Provisions  
Chapter 6.6. Alternative Project Delivery Program:  
Construction Manager/General Contractor Authority

**§ 6953. Reimbursement of costs of performing prevailing wage monitoring and enforcement on public works projects; rates; deposit; collective bargaining agreement**

(a) Except as specified in subdivision (b), the San Diego Association of Governments shall comply with subdivision (f) of Section 1771.5 of the Labor Code and shall reimburse the Department of Industrial Relations for its reasonable and directly related costs of performing prevailing wage monitoring and enforcement on public works projects pursuant to rates established by the department as set forth in subdivision (h) of that section on projects using an alternative project delivery method under this chapter.

All moneys collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund, created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(b) In lieu of complying with subdivision (a), the San Diego Association of Governments may elect to enter into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

## Local Agency Public Construction Act

**§ 20133. [Excerpt] Alternative Bidding Procedure; Four-Step Process for Design-Build projects; Labor Compliance Program (sunsets 07/01/2014)**

(a) A county, with approval of the board of supervisors, may utilize an alternative procedure for bidding on construction projects in the county in excess of two million five hundred thousand dollars (\$2,500,000) and may award the project using either the lowest responsible bidder or by best value.

(b) (3) (A) For contracts for public works projects awarded prior to the effective date of regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, if the board of supervisors elects to proceed under this section, the board of supervisors shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to any projects where the county or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the projects. . . .

## California Prevailing Wage Laws

(r) This section shall remain in effect only until July 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2014, deletes or extends that date.

### **§ 20175.2. [Excerpt] Design-build Contracts; Approval of Appropriate City Council (sunsets 01/01/2016)**

(a) (1) A city, with approval of the appropriate city council, may utilize an alternative procedure for bidding on building construction projects in the city in excess of one million dollars (\$1,000,000), except as provided in subdivision (p). . . .

(b) (5) (A) For contracts for public works projects awarded prior to the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, if a city council elects to proceed under this section, the city council shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to any project where the city or the design-build entity has entered into a collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(r) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

## Waste & Recycling Facilities

### **§ 20193. [Excerpt] Qualified Entity; Operates Wastewater, Solid Waste Management and Recycling Facilities; Design-Build Contract; Labor Compliance Program (sunsets on 01/01/2020)**

(a) (1) Notwithstanding any other law and subject to the limitations of this article, a qualified entity, with approval of its governing body, may utilize an alternative procedure on bidding on projects in excess of two million five hundred thousand dollars (\$2,500,000). . . .

(b) (1) For contracts for public works projects awarded prior to the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, if a qualified entity elects to proceed under this section, the qualified entity shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the qualified entity or the design-build entity has entered into a collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.



## California Prevailing Wage Laws

### **§ 20209.7. [Excerpt] Design-Build Projects; Progress in Three-Step Process; Labor Compliance Program (sunsets on 01/01/2015)**

Design-build projects shall progress in a three-step process, as follows: . . .

(c) (1) For contracts for public works projects awarded prior to the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, the transit operator shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate this labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the transit operator or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project, or to any other project of the transit operator that is not design-build.

(e) (1) The transit operator shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the Director of Industrial Relations. The standardized questionnaire shall not require prospective bidders to disclose any violations of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code committed prior to January 1, 1998, if the violation was based on a subcontractor's failure to comply with these provisions and the bidder had no knowledge of the subcontractor's violations and the bidder complied with the conditions set forth in subdivision (b) of Section 1775 of the Labor Code. In preparing the questionnaire, the director shall consult with the construction industry, building trades, transit operators, and other affected parties. This questionnaire shall require information relevant to the architecture or engineering firm that will be the lead on the design-build project.

Los Angeles County Transportation Commission

### **§ 20360. Application of Article**

This article applies to contracts by the Los Angeles County Transportation Commission for rail transit facilities.

### **§ 20368. Projects as Public Works Projects**

A project constructed pursuant to this article is a public works project for purposes of Section 1720 of the Labor Code.

## California Prevailing Wage Laws

### **§ 20670. Application of Article; Public Entities**

The provisions of this article shall apply to contracts by public entities as provided by Division 5 (commencing with Section 4000) of the Government Code.

### **§ 20671. Definitions**

As used in this chapter:

(a) "Public leaseback" means any lease by a public entity, as lessee, of buildings, structures, or other facilities which are permanently attached to land, where the lease is between the public entity and a public leaseback corporation, as lessor, and the lease is executed before the buildings, structures, or facilities have been built.

(b) "Public entity" means any city, charter city, city and county, county, district, public corporation, or political subdivision of the state.

(c) "Public leaseback corporation" means any corporation or nonprofit corporation organized or controlled by a public entity which constructs or arranges for the construction of buildings, structures, or other facilities which are permanently attached to land for public leaseback.

(d) "Public projects" means the construction of buildings, structures, or other facilities which are permanently attached to land.

### **§ 20672. Public Projects in Excess of \$3,000; Requirement of Payment of Prevailing Wages**

Any public project by a public leaseback corporation in excess of three thousand dollars (\$3,000) shall be constructed under contract awarded to the lowest responsible bidder, and such contract shall require the payment of prevailing wages as determined by the public leaseback corporation in the manner and form provided in Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code.

# California Prevailing Wage Laws

Division 2. General Provisions  
Part 3. Contracting by Local Agencies  
Chapter 1. Local Agency Public Construction Act  
Article 43.1. Redevelopment Agencies

**§ 20688.6. Alternative elective procedure for bidding on building construction projects in excess of one million dollars; number of design-build projects; legislative intent; labor compliance program; cost reimbursement; four-step process; bonding; subcontractors; performance criteria and design standards; retention proceeds; reporting (sunsets on 01/01/2016)**

(a)(1) Notwithstanding any other law, an agency, with approval of its duly constituted board in a public hearing, may utilize an alternative procedure for bidding on projects in the community in excess of one million dollars (\$1,000,000) and may award the project using either the lowest responsible bidder or by best value.

(2) Only 10 design-build projects shall be authorized under this section.

(b)(1) It is the intent of the Legislature to enable entities as provided in Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code to utilize design-build for those infrastructure improvements authorized in Sections 33421, 33445, and 33445.1 of the Health and Safety Code and subject to the limitations on that authority described in Section 33421.1 of the Health and Safety Code.

(2) The Legislature also finds and declares that utilizing a design-build contract requires a clear understanding of the roles and responsibilities of each participant in the design-build process.

(3)(A) For contracts for public works projects awarded prior to the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, if the board elects to proceed under this section, the board shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the agency or the design-build entity has entered into a collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(B) For contracts for public works projects awarded on or after the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, the board shall reimburse the department for its reasonable and directly related costs of performing prevailing wage monitoring and enforcement on public works projects pursuant to rates established by the department as set forth in subdivision (h) of Section 1771.5 of the Labor Code. All moneys collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund, created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(C) In lieu of reimbursing the Department of Industrial Relations for its reasonable and directly related costs of performing monitoring and enforcement on public works projects, the board may elect to continue operating an existing previously approved labor compliance program to monitor and enforce prevailing wage requirements on the project if it has either not contracted with a third party to conduct its

## California Prevailing Wage Laws

labor compliance program and requests and receives approval from the department to continue its existing program or it enters into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) As used in this section:

(1) “Best value” means a value determined by objective criteria related to price, features, functions, and life-cycle costs.

(2) “Design-build” means a procurement process in which both the design and construction of a project are procured from a single entity.

(3) “Design-build entity” means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(4) “Project” means those infrastructure improvements authorized in Sections 33421, 33445, and 33445.1 of the Health and Safety Code and subject to the limitations and conditions on that authority described in Article 10 (commencing with Section 33420) and Article 11 (commencing with Section 33430) of Chapter 4 of Part 1 of Division 24 of the Health and Safety Code.

(d) Design-build projects shall progress in a four-step process, as follows:

(1)(A) The agency shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type, and desired design character of the public improvement, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the agency's needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(B) Any architect or engineer retained by the agency to assist in the development of the project specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.

(2)(A) Based on the documents prepared as described in paragraph (1), the agency shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the agency. The request for proposals shall include, but is not limited to, the following elements:

(i) Identification of the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the agency to inform interested parties of the contracting opportunity, to include the methodology that will be used by the agency to evaluate proposals and specifically if the contract will be awarded to the lowest responsible bidder.

(ii) Significant factors that the agency reasonably expects to consider in evaluating proposals, including cost or price and all nonprice-related factors.

## California Prevailing Wage Laws

(iii) The relative importance of the weight assigned to each of the factors identified in the request for proposals.

(B) With respect to clause (iii) of subparagraph (A), if a nonweighted system is used, the agency shall specifically disclose whether all evaluation factors other than cost or price when combined are:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(C) If the agency chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the agency to ensure that any discussions or negotiations are conducted in good faith.

(3)(A) The agency shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the agency. In preparing the questionnaire, the agency shall consult with the construction industry, including representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:

(i) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members known at the time of bid submission who will participate in the design-build contract, including, but not limited to, mechanical subcontractors.

(ii) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, as well as a financial statement that assures the agency that the design-build entity has the capacity to complete the project.

(iii) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.

(iv) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, or the federal Occupational Safety and Health Act of 1970 (Public Law 91-596), [FN1] settled against any member of the design-build entity, and information concerning workers' compensation experience history and worker safety program.

(vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance in which an entity, its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

## California Prevailing Wage Laws

(vii) Any instance in which the entity, or its owners, officers, or managing employees, defaulted on a construction contract.

(viii) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), including alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA) withholding requirements settled against any member of the design-build entity.

(ix) Information concerning the bankruptcy or receivership of any member of the design-build entity, including information concerning any work completed by a surety.

(x) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five years preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000). Information shall also be provided concerning any work completed by a surety during this period.

(xi) In the case of a partnership, joint venture, or an association that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all general partners, joint venturers, or association members agree to be fully liable for the performance under the design-build contract.

(B) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(4) The agency shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(A) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Awards shall be made to the lowest responsible bidder.

(B) An agency may use a design-build competition based upon best value and other criteria set forth in paragraph (2). The design-build competition shall include the following elements:

(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight of consideration given to all criteria factors: price, technical design and construction expertise, life-cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

## California Prevailing Wage Laws

(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the agency shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the agency's second- and third-ranked design-build entities.

(v) For purposes of this paragraph, skilled labor force availability shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

(vi) For purposes of this paragraph, a bidder's safety record shall be deemed acceptable if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury/illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(e)(1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the agency.

(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the agency in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

(1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the agency.

(2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.

(g) The minimum performance criteria and design standards established pursuant to paragraph (1) of subdivision (d) shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the agency.

(h) The agency may retain the services of a design professional or construction project manager, or both, throughout the course of the project in order to ensure compliance with this section.



## California Prevailing Wage Laws

- (i) Contracts awarded pursuant to this section shall be valid until the project is completed.
- (j) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.
- (k)(1) If the agency elects to award a project pursuant to this section, retention proceeds withheld by the agency from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.
  - (2) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the agency and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the agency and the design-build entity from any payment made by the design-build entity to the subcontractor.
  - (l) Each agency that elects to proceed under this section and uses the design-build method on a public works project shall submit to the Legislative Analyst's Office before December 1, 2014, a report containing a description of each public works project procured through the design-build process after January 1, 2010, and before November 1, 2014. The report shall include, but shall not be limited to, all of the following information:
    - (1) The type of project.
    - (2) The gross square footage of the project.
    - (3) The design-build entity that was awarded the project.
    - (4) Where appropriate, the estimated and actual length of time to complete the project.
    - (5) The estimated and actual project costs.
    - (6) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.
    - (7) An assessment of the prequalification process and criteria.
    - (8) An assessment of the effect of retaining 5-percent retention on the project.
    - (9) A description of the labor force compliance program and an assessment of the project impact, where required.
    - (10) A description of the method used to award the contract. If best value was the method, the report shall describe the factors used to evaluate the bid, including the weighting of each factor and an assessment of the effectiveness of the methodology.



## California Prevailing Wage Laws

(11) An assessment of the project impact of skilled labor force availability.

(12) An assessment of the design-build dollar limits on agency projects. This assessment shall include projects where the agency wanted to use design-build and was precluded by the dollar limitation. This assessment shall also include projects where the best value method was not used due to dollar limitations.

(13) An assessment of the most appropriate uses for the design-build approach.

(m)(1) In order to comply with paragraph (2) of subdivision (a), the State Public Works Board is required to maintain the list of agencies that have applied and are eligible to be qualified for this authority.

(2) Each agency that is interested in proceeding under the authority in this section must apply to the State Public Works Board. The application to proceed shall be in writing and contain such information that the State Public Works Board may require.

(3) The State Public Works Board shall approve or deny an application, in writing, within 90 days of the submission of a complete application. The authority to deny an application shall only be exercised if the condition set forth in paragraph (2) of subdivision (a) has been satisfied.

(4) An agency that has applied for this authorization shall, after it determines it no longer is interested in using this authority, notify the State Public Works Board in writing within 30 days of its determination. Upon notification, the State Public Works Board may contact any previous applicants, denied pursuant to paragraph (2) of subdivision (a), to inform them of the availability to proceed under this section.

(5) The State Public Works Board may authorize no more than 10 projects. The board shall not authorize or approve more than two projects for any one eligible redevelopment agency that submits a completed application.

(6) The State Public Works Board shall notify the Legislative Analyst's Office when 10 projects have been approved.

(n) On or before January 1, 2015, the Legislative Analyst shall report to the Legislature on the use of the design-build method by agencies pursuant to this section, including the information listed in subdivision (l). The report may include recommendations for modifying or extending this section.

(o) Except as provided in this section, nothing in this act shall be construed to affect the application of any other law.

(p) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

Contracting by Local Agencies

## California Prevailing Wage Laws

### **§ 20919.3. Labor Compliance Program; Execution Plan; Interim Report (sunsets on 12/31/2020)**

(a) (1) For contracts for public works projects awarded prior to the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, the unified school district shall establish and enforce for job order contracts a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in that provision. This requirement does not apply to any project where the unified school district or the job order contractor has entered into a collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(2) For contracts for public works projects awarded on or after the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, the unified school district shall reimburse the department for its reasonable and directly related costs of performing prevailing wage monitoring and enforcement on public works projects pursuant to rates established by the department as set forth in subdivision (h) of Section 1771.5 of the Labor Code. All moneys collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(3) In lieu of reimbursing the Department of Industrial Relations for its reasonable and directly related costs of performing monitoring and enforcement on public works projects, the unified school district may elect to continue operating an existing previously approved labor compliance program to monitor and enforce prevailing wage requirements on the project if it has either not contracted with a third party to conduct its labor compliance program and requests and receives approval from the department to continue its existing program or it enters into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(b) The unified school district shall prepare an execution plan for all modernization projects that may be eligible for job order contracting pursuant to this article. The unified school district shall select from that plan a sufficient number of projects to be initiated as job order contracts during each calendar year and shall determine for each selected project that job order contracting will reduce the total cost of that project. Job order contracting shall not be used if the unified school district finds that it will increase the total cost of the project.

(c) No later than June 30, 2017, the unified school district shall submit an interim report on all job order contract projects completed by December 31, 2016, to the Office of Public School Construction in the Department of General Services and the Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business, Professions and Consumer Protection and the Senate and Assembly Committees on Education. The interim report shall be prepared by an independent third party and the unified school district shall pay for the cost of the report. The report shall include the information specified in subdivisions (a) through (h) of Section 20919.12.

## California Prevailing Wage Laws

### § 20919.7. Prevailing Wages

(a) A job order contract shall set forth in the general conditions of the job order contract the party or parties responsible for seeing that the provisions of Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code are complied with.

(b) For purposes of job order contracting, prevailing wages when required to be paid shall apply to all work ordered under the job order contract regardless of thresholds set forth in Section 1771.5 of the Labor Code.

(c) The job order contractor shall pay the prevailing wage in effect at the time the job order is issued by the unified school district and all increases as published by the Department of Industrial Relations for the term of the job order contract, including all overtime, holiday, and shift provisions published by the Department of Industrial Relations.

(d) The unified school district shall designate one individual within its labor compliance office to act as a monitor to inspect job sites for labor compliance violations at the request of the designated labor representative.

Division 2. General Provisions  
Part 3. Contracting by Local Agencies  
Chapter 1.5. Water District Acts  
Article 83. Santa Clara Valley Water District

**§ 21162. Use of procedures in § 20133 by a district for building construction contracts; conditions**  
Notwithstanding any other provision of law, upon the approval of the board of directors, and without the approval of the board of supervisors, the district may use, for building construction contracts, the procedures described in Section 20133, as that section reads on January 1, 2002 or as it may be amended after that date.

# California Prevailing Wage Laws

## PUBLIC RESOURCES CODE

### Solid Waste Handling and Disposal

#### **§43501. Certification of Financial Arrangements; Submission of Closure and Postclosure Maintenance Plan**

(a) A person owning or operating a solid waste landfill, as defined in Section 40195.1, shall do both of the following:

(1) Upon application to become an operator of a solid waste facility pursuant to Section 44001, certify to the board and the local enforcement agency that all of the following have been accomplished:

(A) The owner or operator has prepared an initial estimate of closure and postclosure maintenance costs.

(i) The board shall adopt regulations that provide for an increase in the initial closure and postclosure maintenance cost estimates to account for cost overruns due to unforeseeable circumstances, and to provide a reasonable contingency comparable to that which is built into cost estimates for other, similar public works projects.

(ii) The board shall adopt regulations on or before January 1, 2008, that require closure and postclosure maintenance cost estimates to be based on reasonably foreseeable costs the state may incur if the state would have to assume responsibility for the closure and postclosure maintenance due to the failure of the owner or operator. Cost estimates shall include, but not be limited to, estimates in compliance with Sections 1770, 1773, and 1773.1 of the Labor Code, and the replacement and repair costs for longer lived items, including, but not limited to, repair of the environmental control systems.

(B) The owner or operator has established a trust fund or equivalent financial arrangement acceptable to the board, as specified in Article 4 (commencing with Section 43600).

(C) The amounts that the owner or operator will deposit annually in the trust fund or equivalent financial arrangement acceptable to the board will ensure adequate resources for closure and postclosure maintenance.

(2) Submit to the regional water board, the local enforcement agency, and the board a plan for the closure of the solid waste landfill and a plan for the postclosure maintenance of the solid waste landfill.

(b) Notwithstanding subparagraph (C) of paragraph (1) of subdivision (a) or any other provision of law, if the owner or operator is a county with a population of 200,000 or less, as determined by the 1990 decennial census, the county shall not be required to make annual deposits in excess of the amount required by the federal act or any other applicable federal law, or by any board-approved formula that meets the requirements of the federal act.

(c) If not in conflict with federal law or regulations, a county or city may, with regard to a solid waste landfill owned or operated by the county or city, base its estimate of closure and postclosure maintenance costs on the costs of employing county or city employees or persons under contract with the county or

## California Prevailing Wage Laws

city in performing closure and postclosure maintenance. However, even if, to meet federal requirements, the cost estimate is based on the most expensive costs of closure and postclosure maintenance performed by a third party, the county or city may, to effect cost savings, employ county or city employees or employ persons under contract to actually perform closure operations or postclosure maintenance operations.

Division 43. The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal  
Protection Bond Act of 2006  
Chapter 10. Miscellaneous Provisions

### **§ 75075. Labor compliance program; adoption and enforcement**

The body awarding any contract for a public works project financed in any part from funds made available pursuant to this division shall adopt and enforce, or contract with a third party to enforce, a labor compliance program pursuant to subdivision (b) of Labor Code Section 1771.5 for application to that public works project.

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## PUBLIC UTILITIES CODE

### Rights and Obligations of Public Utilities

#### **§ 465. Custodial or Janitorial Labor; Bids; Prevailing Wages; Exception**

(a) Except as provided in subdivision (c), whenever any labor of a custodial or janitorial nature is not performed by the employees of a public utility, such labor shall be let out under contract to the lowest responsible bidder with the provision that prevailing wages be a condition of any such contract. For the purposes of this section, "prevailing wages" shall be deemed to include employer payments for health and welfare, pension, holidays, sick leave, vacation, apprenticeship or other training programs.

(b) A public utility shall implement the provisions of subdivision (a) by requiring the entity with which it contracts to pay its custodial or janitorial employees the prevailing wage. The public utility awarding the contract shall cause to be inserted in the contract a stipulation that the failure to pay prevailing wages shall be cause for the termination of the contract.

(c) Nothing in this section shall prevent a public utility from employing a custodial or janitorial service for a period of 90 days or less without a contract meeting the requirements of subdivision (a) of this section.

(d) The Director of the Department of Industrial Relations shall determine the prevailing wage for custodial or janitorial employees in accordance with the standards set forth in Section 1773 of the Labor Code.

#### **§ 466. Custodial or Janitorial Labor; Contractors and Subcontractors; Payroll Records**

Pursuant to Section 465, the contractor to whom the contract is awarded and any subcontractor under him shall pay not less than the specified prevailing wage to all workmen performing custodial or janitorial labor in the execution of the contract.

Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each janitorial and custodial worker employed by him in connection with the contract. The contractor's and subcontractor's payroll records shall be available for inspection at all reasonable hours, and a copy shall be made available upon request to the employee, or his authorized representative, and the Division of Labor Standards Enforcement.

After a complaint has been filed with the Division of Labor Standards Enforcement alleging that the contractor or the subcontractor has paid less than the prevailing wage, the contractor or subcontractor shall upon receipt of a written notice from the Division of Labor Standards Enforcement within 10 days file with the public utility and the Division of Labor Standards Enforcement a certified copy of the payroll records.

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### **§ 467. Custodial or Janitorial Labor; Enforcement of § 466 Requirements; Law Governing**

The Division of Labor Standards Enforcement in the Department of Industrial Relations shall enforce Section 466 in the same manner as provided for by Chapter 4 (commencing with Section 79) of Division 1 of the Labor Code.

The California Consumer Power and Conservation Financing Authority

### **§ 3320. Creation and Responsibility of Authority**

(a) There is hereby created in the state government the California Consumer Power and Conservation Financing Authority, which shall be responsible for administering this division.

(b) The authority shall implement the purposes of Chapter 2 (commencing with Section 3310), and to that end finance projects and programs in accordance with this division, all to the mutual benefit of the people of the state and to protect their health, welfare, and safety.

### **§ 3353. Authority to Receive and Act on Applications for Financial Assistance**

The authority shall have the authority to receive and act on applications for financial assistance from owners of existing power plants whose owners or operators commit to undertake capacity expansion through facility retrofits, new construction, or both, that will improve the efficiency and environmental performance of generation facilities.

### **§ 3354. Compliance with Public Works and Public Agencies**

All generation facilities constructed or improved pursuant to this division shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

# California Prevailing Wage Laws

## STREETS & HIGHWAYS CODE

Division 1. State Highways  
Chapter 1. Administration  
Article 3. The Department of Transportation

### § 143(e)

Agreements between the department or regional transportation agency and the contracting entity or lessee shall authorize the contracting entity or lessee to use a design-build method of procurement for transportation projects, subject to the requirements for utilizing such a method contained in Chapter 6.5 (commencing with Section 6800) of Part 1 of Division 2 of the Public Contract Code, other than Sections 6802, 6803, and 6813 of that code, if those provisions are enacted by the Legislature during the 2009-10 Regular Session, or a 2009-10 extraordinary session.

Division 1. State Highways  
Chapter 3. The Care and Protection of State Highways  
Article 2. Permit Provisions

### § 670.1. Permit to owner or developer of adjacent property; improvement of local traffic access

(a) The department may issue a permit to the owner or developer of property adjacent to or near a state highway to construct, alter, repair, or improve any portion of the highway for the purpose of improving local traffic access, if the improvements to the highway are required as part of, or as a condition to, the development of property and the improvements are accepted by the department.

(b) The permit may be issued only if the work within the highway right-of-way is to be performed in accordance with plans and specifications approved by the department and the department reserves the right to inspect and accept the work as complying with the approved plans and specifications.

(c) All road, bridge, street lighting, or installation of signal work performed under a permit issued pursuant to this section for acceptance into the state highway system, except work performed solely to allow private encroachments onto the state highway or for utility or drainage encroachments within the state highway, are public works for purposes of Part 7 (commencing with Section 1720) of Division 2 of the Labor Code.



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## Bridge and Highway Districts

### **§ 27189. Repair or Replacement of Structures or District Property in Cases of Great Emergency**

In cases of great emergency, including but not limited to states of emergency as defined in subdivision (b) of Section 8558 of the Government Code, the board of directors of a bridge and highway district may proceed at once to replace or repair any and all structures, roadway, or property of the district that may be rendered unusable or unsafe without adopting the plans, specifications, strain sheets or working details or giving notice for bids to let contracts. The work may be done by day labor under the direction of the board, by contract, or by a combination of the two. If the work is done wholly or in part by contract, the contractor shall be paid the actual cost of the use of machinery and tools and of material and labor expended by him in doing the work, plus not more than 15 percent to cover all profits, supervision, and other expenses. No more than the lowest current market prices shall be paid for materials. Not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, fixed as provided in Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code, shall be paid to all workmen employed on such works.

# California Prevailing Wage Laws

## VEHICLE CODE

Division 3. Registration of Vehicles and Certificates of Title  
Chapter 6. Registration and Weight Fees  
Article 2. Registration Fees

**§ 9250.10. Service authority for freeway emergencies; additional fees; distribution after deduction of administrative costs**

(a)(1) In addition to any other fees specified in this code and the Revenue and Taxation Code, any additional fees imposed by a service authority for freeway emergencies pursuant to Section 2555 of the Streets and Highways Code shall be paid to the department at the time of registration or renewal of registration of every vehicle, except vehicles described in subdivision (a) of Section 5014.1, subject to registration under this code in the subject counties, except those vehicles that are expressly exempted under this code from the payment of registration fees.

(2) In addition to the additional fees imposed for freeway emergencies, and upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles subject to Section 9400.1 registered to an owner with an address in the county that established a service authority under this section, shall pay an additional service fee of two dollars (\$2).

(b) After deducting its administrative costs, the department shall distribute the additional fees collected pursuant to subdivision (a) to the authority in the county in which they were collected.

Division 11. Rules of the Road  
Chapter 2. Traffic Signs, Signals, and Markings  
Article 3. Offenses Relating to Traffic Devices

**§ 21455.5. Automated traffic enforcement system; requirements; use of printed representation as evidence; confidentiality and retention of records; review of alleged violation by registered owner; manufacturers and suppliers; duties and contract limitations**

(a) The limit line, the intersection, or a place designated in Section 21455, where a driver is required to stop, may be equipped with an automated traffic enforcement system if the governmental agency utilizing the system meets all of the following requirements:

(1) Identifies the system by signs posted within 200 feet of an intersection where a system is operating that clearly indicate the system's presence and are visible to traffic approaching from all directions in which the automated traffic enforcement system is being utilized to issue citations. A governmental agency utilizing such a system does not need to post signs visible to traffic approaching the intersection

## California Prevailing Wage Laws

from directions not subject to the automated traffic enforcement system. Automated traffic enforcement systems installed as of January 1, 2013, shall be identified no later than January 1, 2014.

(2) Locates the system at an intersection and ensures that the system meets the criteria specified in Section 21455.7.

(b) Prior to issuing citations under this section, a local jurisdiction utilizing an automated traffic enforcement system shall commence a program to issue only warning notices for 30 days. The local jurisdiction shall also make a public announcement of the automated traffic enforcement system at least 30 days prior to the commencement of the enforcement program.

(c) Only a governmental agency, in cooperation with a law enforcement agency, may operate an automated traffic enforcement system. A governmental agency that operates an automated traffic enforcement system shall do all of the following:

(1) Develop uniform guidelines for screening and issuing violations and for the processing and storage of confidential information, and establish procedures to ensure compliance with those guidelines. For systems installed as of January 1, 2013, a governmental agency that operates an automated traffic enforcement system shall establish those guidelines by January 1, 2014.

(2) Perform administrative functions and day-to-day functions, including, but not limited to, all of the following:

(A) Establishing guidelines for the selection of a location. Prior to installing an automated traffic enforcement system after January 1, 2013, the governmental agency shall make and adopt a finding of fact establishing that the system is needed at a specific location for reasons related to safety.

(B) Ensuring that the equipment is regularly inspected.

(C) Certifying that the equipment is properly installed and calibrated, and is operating properly.

(D) Regularly inspecting and maintaining warning signs placed under paragraph (1) of subdivision (a).

(E) Overseeing the establishment or change of signal phases and the timing thereof.

(F) Maintaining controls necessary to ensure that only those citations that have been reviewed and approved by law enforcement are delivered to violators.

(d) The activities listed in subdivision (c) that relate to the operation of the system may be contracted out by the governmental agency, if it maintains overall control and supervision of the system. However, the activities listed in paragraph (1) of, and subparagraphs (A), (D), (E), and (F) of paragraph (2) of, subdivision (c) shall not be contracted out to the manufacturer or supplier of the automated traffic enforcement system.

(e) The printed representation of computer-generated information, video, or photographic images stored by an automated traffic enforcement system does not constitute an out-of-court hearsay statement by a declarant under Division 10 (commencing with Section 1200) of the Evidence Code.

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(f)(1) Notwithstanding Section 6253 of the Government Code, or any other law, photographic records made by an automated traffic enforcement system shall be confidential, and shall be made available only to governmental agencies and law enforcement agencies and only for the purposes of this article.

(2) Confidential information obtained from the Department of Motor Vehicles for the administration or enforcement of this article shall be held confidential, and shall not be used for any other purpose.

(3) Except for court records described in Section 68152 of the Government Code, the confidential records and information described in paragraphs (1) and (2) may be retained for up to six months from the date the information was first obtained, or until final disposition of the citation, whichever date is later, after which time the information shall be destroyed in a manner that will preserve the confidentiality of any person included in the record or information.

(g) Notwithstanding subdivision (f), the registered owner or any individual identified by the registered owner as the driver of the vehicle at the time of the alleged violation shall be permitted to review the photographic evidence of the alleged violation.

(h)(1) A contract between a governmental agency and a manufacturer or supplier of automated traffic enforcement equipment shall not include provision for the payment or compensation to the manufacturer or supplier based on the number of citations generated, or as a percentage of the revenue generated, as a result of the use of the equipment authorized under this section.

(2) Paragraph (1) does not apply to a contract that was entered into by a governmental agency and a manufacturer or supplier of automated traffic enforcement equipment before January 1, 2004, unless that contract is renewed, extended, or amended on or after January 1, 2004.

(3) A governmental agency that proposes to install or operate an automated traffic enforcement system shall not consider revenue generation, beyond recovering its actual costs of operating the system, as a factor when considering whether or not to install or operate a system within its local jurisdiction.

(i) A manufacturer or supplier that operates an automated traffic enforcement system pursuant to this section shall, in cooperation with the governmental agency, submit an annual report to the Judicial Council that includes, but is not limited to, all of the following information if this information is in the possession of, or readily available to, the manufacturer or supplier:

(1) The number of alleged violations captured by the systems they operate.

(2) The number of citations issued by a law enforcement agency based on information collected from the automated traffic enforcement system.

(3) For citations identified in paragraph (2), the number of violations that involved traveling straight through the intersection, turning right, and turning left.

(4) The number and percentage of citations that are dismissed by the court.

(5) The number of traffic collisions at each intersection that occurred prior to, and after the installation of, the automated traffic enforcement system.

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(j) If a governmental agency utilizing an automated traffic enforcement system has posted signs on or before January 1, 2013, that met the requirements of paragraph (1) of subdivision (a) of this section, as it read on January 1, 2012, the governmental agency shall not remove those signs until signs are posted that meet the requirements specified in this section, as it reads on January 1, 2013.