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ARTICLE**CONTRACTOR BEWARE: THE FINE LINE BETWEEN “PUBLIC WORKS” AND “PRIVATE PROJECTS” UNDER CALIFORNIA’S PREVAILING WAGE LAW**

By Stephen J. Fowler*

The line between projects subject to the prevailing wage requirements, and those which are not, is not always as bright as it might seem. Although prevailing wage laws apply only to “public works,” the definition of a public works project extends to otherwise private construction or development projects that are “paid in whole or in part out of public funds.” Under most circumstances, a real estate development or construction project receiving public assistance is subject to prevailing wage requirements, unless one of the statutory exceptions to the prevailing wage law applies. Project labor costs at prevailing wage rates may be significantly higher than anticipated and may quickly surpass the cost benefit conferred by the public assistance. An unwitting contractor, subcontractor or material supplier may find itself in violation of California’s prevailing wage law, and subject to a prevailing wage and penalty assessment, fines, lawsuits and disciplinary action, and may be barred altogether from bidding on future public works projects.

It behooves all parties involved in the construction or development process to be aware of the many different forms of government assistance that can fundamentally change the nature of a project from a pri-

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vate to a public work. This article provides an overview of California's prevailing wage law, including a discussion of the definition of "public works" for prevailing wage purposes, and a discussion of the many different forms of government assistance that can result in coverage under the prevailing wage law. Through a better understanding of the prevailing wage law, including, in particular, when the requirement to pay prevailing wages is triggered, an owner, developer, contractor and subcontractor can better evaluate and anticipate the true cost of construction at the outset of a project, whether or not less expensive alternatives to public funding exist or whether a project can be structured in ways to minimize the impact of prevailing wages to the overall project.

I. OVERVIEW AND PURPOSE OF CALIFORNIA'S PREVAILING WAGE LAW.

Statutory and Regulatory Framework: The conditions of employment on construction projects financed "in whole or in part by public funds" are governed by California's "prevailing wage law," which is set forth in the Labor Code, Division 2, Employment Regulation and Supervision, Part 7, Public Works and Public Agencies.¹ The Director of the Department of Industrial Relations (the "Director") is authorized to establish rules and regulations for purposes of carrying out and enforcing the prevailing wage law, and for punishing offenders.² Those rules and regulations are found in the California Code of Regulations, Title 8, Subchapter 3, Payment of Prevailing Wages Upon Public Works.³

The Director has quasi-legislative authority to carry out its duties under the prevailing wage law, which may include case-specific determinations of wage rates⁴ and coverage issues,⁵ and the issuance of civil wage and penalty assessments as necessary to enforce the law.⁶ An interested party may request that the Director, or its duly authorized representative, determine coverage under the prevailing wage law regarding either a specific project or type of work to be performed which that interested party believes may be subject to or excluded from coverage as public works under the Labor Code.⁷ An awarding body, a prospective bidder, or its representative, or any representative of any craft, classification or type of worker involved in a public works project may also petition the Director to review a prevailing wage rate determination on the grounds that it was not determined in accordance with applicable law.⁸

In addition to the discussion found in the case law addressing prevailing wage issues, the Department of Industrial Relations ("DIR")

publishes with frequency the Director's determination letters addressing project specific coverage and rate issues. The Director's determination letters are available on the DIR's website.⁹

While the Director's project specific determinations are considered advisory, and are not legal precedents,¹⁰ the California courts nonetheless recognize that they must accord substantial deference to the Director's interpretation and enforcement of the prevailing wage law.¹¹ Further, the Director's determinations offer insight and guidance to the participants involved in the public works projects on a myriad of prevailing wage issues. Care must be taken to ensure that any past determinations have not been superseded by subsequent legislation, administrative action or court decision. In the event of an inconsistency between a statute, regulation or court decision and a public works coverage determination letter, statutory, regulatory, or case law is controlling.¹²

California courts also will look to federal law under the Davis-Bacon Act as guidance in interpreting California prevailing wage law because the two schemes share similar purposes.¹³

Prevailing Wage Rates Broadly Apply To Public Works Contracts: The prevailing wage law provides that workers on public works contracts be accorded the same working conditions and wages that prevail in private industry. In that regard, "prevailing wages" must be paid to those employed on "public works" that are performed by a private contractor and "paid in whole or in part by public funds."¹⁴ Public works contracts awarded to private contractors must include stipulations requiring contractors and subcontractors to pay their employees no less than the applicable prevailing wage rates, as determined by the Director.¹⁵ The obligations to pay prevailing wages, however, flow from a statutory duty, and operate independent of any contractual agreement or stipulation.¹⁶

The Purpose Of The Prevailing Wage Law Is To Establish And Enforce Minimum Labor Standards For Public Works: The overall purpose of the prevailing wage law is to protect and benefit workers on public works projects. The legislature has declared that it is the public policy of California to vigorously enforce minimum labor standards to ensure employees are not required to work under unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to meet those standards.¹⁷ Accordingly, California's prevailing wage law is intended to protect employees from substandard wages that might be

paid if contractors could recruit labor from distant cheap-labor areas, to permit union contractors to compete with non-union contractors, to benefit the public through the superior efficiency of well-paid employees, and to compensate non-public employees with higher wages for the absence of job security and employment benefits enjoyed by public employees.¹⁸

The prevailing wage law is a minimum wage law,¹⁹ and is to be liberally construed in furtherance of its purpose.²⁰ However, the rule of liberal construction is subject to the proviso that the courts should not interfere where the legislature has demonstrated the ability to make its intent clear and chosen not to act.²¹

Failure To Comply Can Have Devastating Consequences: The penalties for failing to comply with the prevailing wage law are severe. Any contractor or subcontractor that fails to comply with the prevailing wage requirements faces civil and criminal penalties, claims of unpaid workers, and may be barred from bidding on future public works projects.²² The Labor Commissioner is empowered to issue civil wage and penalty assessments requiring a non-complying contractor or subcontractor to forfeit the amount of the underpaid wages, plus a penalty of up to \$50/day for each underpaid worker,²³ plus liquidated damages in an amount equal to the wages that remain unpaid.²⁴ Willful or repeat violators may also be ineligible to bid on public works projects for not less than one year or more than three years.²⁵ An officer, agent or representative of the state or any political subdivision who willfully violates the prevailing wage law, or any contractor or subcontractor that neglects to comply with the prevailing wage law also is guilty of a misdemeanor,²⁶ punishable by imprisonment in a county jail, not exceeding six months, or fine not exceeding one thousand dollars (\$1,000), or both.²⁷ Moreover, anyone who takes, receives, or conspires to take or receive portions of the wages of any workman or working subcontractor in connection with services rendered on a public works project is guilty of a felony.²⁸

Workers on public works projects also have a private statutory cause of action against their employer for failure to pay prevailing wages,²⁹ and may sue their employer for breach of contract, rescission and restitution for misrepresentation, fraud and deceit, and for unfair competition under the California Business and Professions Code.³⁰ Also, the second lowest bidder on a public works project, and anyone entering a contract with the second lowest bidder, that suffers damages from submitting a bid that was not accepted due to the successful bidder's violation of the prevailing wage law, as evidenced by a conviction of

the successful bidder, has a claim for damages, including reasonable attorney's fees, against the violating person or entity. There is a rebuttable presumption that a successful bidder who is convicted of a violation of the prevailing wage requirements was awarded the contract because of the violation.³¹

II. PREVAILING WAGES ARE DUE ALL WORKERS EMPLOYED IN THE EXECUTION OF PUBLIC WORK.

The prevailing wage law defines worker to include "laborer, worker and mechanic."³² Workers employed by contractors or subcontractors in the execution of any contract for public works are deemed to be employed upon public work.³³ Such workers shall be paid at least the general prevailing rate for work of a similar character in the locality in which the public work is performed.³⁴ The definition of worker under the statute is not restricted to U.S. citizens.³⁵

Contractors And Subcontractors Engaging In Public Works Must Pay Prevailing Wages To Their Workers: The duty to pay prevailing wages to employees on a public works project applies to both general contractors and subcontractors.³⁶ The prevailing wage law defines "contractor" and "subcontractor" to include a contractor, subcontractor, licensee, officer, agent, or representative thereof, acting in that capacity, when working on public works projects.³⁷

Material Supplier Exemption: The California courts have applied a material supplier exemption to the prevailing wage law. Who is and is not a material supplier versus a contractor or subcontractor under the prevailing wage law depends on the scope of the work performed. The general test is whether or not the work performed is an integral part of the general contractor's work. Work is generally found to be performed in the execution of a contract for public work when it is "functionally related to the process of construction" and "an integral aspect of the 'flow' process of construction."³⁸

To qualify as a material supplier, the following criteria must be met: (1) the materials must come from a supplier who is in the business of selling supplies to the general public, (2) the plant where the supplies are purchased must not be established specially for the particular contract, (3) the materials supply plant must not be located at the site of the work, and (4) the delivery of the materials must not be an integrated aspect of and functionally related to the public work.³⁹

The material supplier exemption has been addressed by the California courts and the Director in the context of contracts relating to the

delivery or hauling of materials to and from a public works construction site. In those cases, the critical factor is not whether the trucking company delivers or carries materials to and from the public work site, but rather depends upon the individual worker's function and the role that the transport of the materials plays in the performance or execution of the public work contract.⁴⁰ The exemption has been applied where the delivery or hauling involves standard commercial building materials that are not immediately or directly incorporated into the project, and where generic materials are off-hauled to a locale bearing no relation to the public works project site.⁴¹

The mere delivery to the public works of material that is re-handled or incorporated in the work by other on-site workers, or the haulers' incidental placement on the public works site of the materials hauled is not covered work. By contrast, where the hauler leaves the pure hauling role and participates in the on-site construction activity of incorporation of the material hauled into the project, the worker is entitled to prevailing wages. The on-site incorporation must be "direct, immediate, or virtually so, more than de minimus, and involve construction related activity."⁴²

Off-Site Fabrication Work: Workers employed by contractors or subcontractors are employed in the execution of public work where they are engaged in off-site fabrication of items produced specially for the public works project and not for sale in the general market.⁴³ Where a contractor is producing products both for its own projects and for sale in the general market, whether the work is exempt from prevailing wage requirements depends on whether prefabricated items are specially made for the public works project pursuant to plans and specifications for that project such that the product differs from a standard, generic product. A standard, generic product that is modified for a specific project may be considered to be produced specifically for the public works project.⁴⁴

III. THE AWARDING BODY FOR PREVAILING WAGE PURPOSES.

The Awarding Body's Obligation To Ascertain And Specify Prevailing Wages: An "awarding body" or "body awarding the contract" for purposes of applying the prevailing wage laws means any state or local government agency, department, board, commission, bureau, district, office, authority, political subdivision, regional district officer, employee, or agent awarding or letting a contract or purchase order for public works.⁴⁵ An awarding body must obtain prevailing wage data

from the Department of Industrial Relations,⁴⁶ and must specify the wage rates in the call for bids and in every public contract it issues.⁴⁷ The information to be provided in the bid documents and contract include the prevailing rate for each craft, classification or type of worker needed to execute the contract. Alternatively, the public entity awarding the contract may include in those documents a statement that copies of the prevailing rates are on file at its principle office, where they are available for review by any interested party.⁴⁸

The statutory obligation to pay prevailing wages cannot be avoided by delegating responsibilities to a nonprofit corporation. For example, when a community redevelopment agency uses a nonprofit corporation to administer its housing activities (increasing, improving, and preserving affordable housing), it must comply with prevailing wage statutes.⁴⁹ Likewise, a public agency that contracted with a private corporation to construct a hospital owned by the public agency was the “awarding body” even though the corporation was responsible for the construction, because the public agency acted as the agent of the corporation in hiring a construction contractor and for all other purposes on the project.⁵⁰

By contrast, the Department of Transportation (“Caltrans”) was not an awarding body even though it distributed state general obligation funds to Amtrak to cover expenses incurred in constructing a rail station, where Caltrans was not a party to the construction contract between Amtrak and a private contractor, where Caltrans did not review, approve, or supervise the contract, and where Amtrak did not act on Caltrans’ behalf. Amtrak received the funds as an owner-operator performing a self-help improvement project. While Caltrans was not an “awarding body,” the workers were nonetheless protected by the prevailing wage law due to the public funding of the project.⁵¹

While an “awarding body” or “body awarding contract” as defined by the prevailing wage statutes and regulations refer to a public awarding body, as the examples above underscore, there is no requirement under the prevailing wage law that the public entity paying in whole or in part for work be the party that actually awards the contract. In many instances, a private developer in receipt of public funding is the entity awarding the contract, as well as the entity responsible for overseeing and performing the work. In short, the fact that the developer, and not the public entity, is the party awarding the contract will not preclude coverage under the prevailing wage law.

IV. WHAT CONSTITUTES “PUBLIC WORKS” UNDER THE PREVAILING WAGE LAW.

Prevailing Wages Apply To Public Works Projects Exceeding \$1,000: Subject to a limited statutory exemption discussed below, prevailing wages are required on public works projects of \$1,000 or more.⁵² The \$1,000 threshold applies only to work performed under contract, and does not apply to work carried out by the public agency with its own employees.⁵³

A limited exemption to the \$1,000 threshold requirement exists for “construction work” in the amount of \$25,000 or less, or for “alteration, demolition, repair or maintenance work” in the amount of \$15,000 or less, if the awarding body elects to undertake all of the following for every public works project under its authority:⁵⁴

- Ensure that all bid invitations and public works contracts contain appropriate language regarding prevailing wage requirements;
- Conduct a pre-job conference with the contractor and subcontractor to discuss the prevailing wage requirements;
- Pay a fee determined by the DIR, not to exceed one quarter of 1 percent of the total public works project costs, to be used by DIR for enforcement purposes. The DIR may waive the fee if the awarding body has previously been granted approval to initiate and enforce a labor compliance program for every public works under its authority.⁵⁵ Any such labor compliance program must provide (1) that all bids and contracts include language concerning the application of prevailing wages, (2) for a pre-job conference to discuss labor requirements applicable to the contract, (3) that contractors and subcontractors are required to submit certified payroll records, (4) for the review and audit of payroll records to verify compliance, and (5) for the withholding of contract payments and penalties in the event of delinquencies or underpayments.⁵⁶

Impact Of Change Orders On The Threshold: If the amount of a contract is changed such that it exceeds the threshold limits for the requirement of prevailing wages, any workers employed on the contract after the amount due the contractor reaches the threshold limit must be paid prevailing wages.⁵⁷

Defining What Projects Constitute Public Works For Prevailing Wage Purposes: The three critical elements defining a “public work” under the prevailing wage law are: (1) the project must involve construction, alteration, demolition, repair, or maintenance; (2) the work must

be performed under contract; and (3) the work must be paid in whole or in part out of public funds. Work falls within the scope of the prevailing wage law when it is “functionally related to the process of construction” and “an integral aspect of the ‘flow’ process of construction.”⁵⁸

A public entity need not be a party to the construction contract to trigger the prevailing wage requirements. The statutes only require that there be construction, alteration, demolition, repair or maintenance, performed under contract, and paid in whole or in part out of public funds.⁵⁹

Public works are broadly construed under the prevailing wage statutes to include the following:

- Construction (including work done during the design and pre-construction phases of construction, including inspection and surveying work⁶⁰), alteration,⁶¹ demolition, installation⁶² or repair⁶³ work done under a contract for which payment was made in whole or in part out of public funds (except work done directly by a public utility company pursuant to an order of the Public Utility Commission or other public authority).⁶⁴
- Work done for irrigation, utility, reclamation and improvement districts, and other similar districts (except for the operation of the irrigation or drainage system of any irrigation or reclamation district).⁶⁵
- Street, sewer, or other improvements done under the direction and supervision of or by the authority of any officer or public body of the state, or of any political subdivision or district thereof (whether operating under a freeholder’s charter or not).⁶⁶
- The laying of carpet pursuant to a building lease-maintenance contract or in a public building under contract and paid with public funds.⁶⁷
- Authorized public transportation demonstration projects under Section 143 of the Streets and Highways Code.⁶⁸
- Construction work performed pursuant to a contract between private parties if upon completion of construction more than half or the assignable square feet of privately owned property is leased to the state or political subdivision, and either (a) the lease was entered into prior to the construction contract or (b) the work was performed pursuant to plans, specifications or criteria furnished by the state or political subdivision, and the lease agreement between the lessor and the state or public subdivision is entered into during, or upon completion of the work.⁶⁹
- Hauling of refuse from a public work site to an outside disposal locations with respect to contracts involving state agencies, including the

California State University or University of California, or any political subdivision of the state.⁷⁰

- Maintenance work. Maintenance includes the routine, recurring and usual work for the preservation, protection, and keeping of any publicly owned or operated facility for its intended purpose in a safe usable condition. It also includes carpentry, electrical, plumbing, glazing and other craft work designed to preserve the publicly owned or operated facility in a safe usable condition, and includes repairs, cleaning, and other operations on machinery and other equipment permanently attached to buildings or realty as fixtures.⁷¹

V. PRIVATE DEVELOPMENT PROJECTS.

Private Development Projects “Paid For In Whole or In Part Out Of Public Funds” Are Public Works Subject To Prevailing Wage Requirements: The definition of a public work project extends to otherwise private development projects that receive government financial support.⁷² Thus, public assistance to a project, under most circumstances, will trigger a prevailing wage requirement. That assistance may come in many different forms. The statutory definition of “paid in whole or in part out of public funds” includes a broad array of financial assistance, including: (1) public agency payments of money or its equivalent to or on behalf of a contractor or developer,⁷³ (2) public agency construction of a project,⁷⁴ (3) the transfer of property for less than “fair market value,”⁷⁵ (4) paid, reduced or waived fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations,⁷⁶ (5) money to be paid on a contingent basis,⁷⁷ or (6) the forgiveness of or credits against outstanding loans.⁷⁸ This list of triggering events covers many forms of assistance that a city, county, redevelopment agency or other public agency may provide to a project.⁷⁹

Competitive Bidding Is Not A Prerequisite To Coverage Under The Prevailing Wage Law: A project may be a public work even if it is not competitively bid. While competitive bidding is often required for public work, nothing in the Labor Code indicates that competitive bidding is a prerequisite to the application of the prevailing wage law to a public works project.⁸⁰ Further, the prevailing wage law does not distinguish between work performed on private land and work performed on public land.⁸¹

Minimizing The Scope Of Prevailing Wages To The Public Works Components Of A Mixed Public/Private Project: Public works proj-

ects cannot be split or separated into smaller work orders or projects for purposes of evading the applicable threshold provisions for payment of prevailing wages. Defining a single project by multiple jobs, subject to contractual “not to exceed” thresholds would allow parties to circumvent the clear intent of the prevailing wage law.⁸² However, where the overall sequence of development or construction is comprised of multiple separate projects, as opposed to a single integrated project, prevailing wages may apply only to one project, but not the other, depending on the circumstances.

In many instances, projects can be segregated into a series of separate and distinct projects in which case the prevailing wage requirements may be limited to only the public works portion of the project. However, whether a project is a single or multiple project for prevailing wage law purposes is not always easy to determine, and must be evaluated on a case by case basis. In making that determination, the Director considers the following five factors: (1) the manner in which the construction is organized in view of bids, construction contracts and workforce; (2) the physical layout of the project; (3) the oversight, direction and supervision of the work; (4) the financing and administration of the construction funds and (5) the general interrelationship of the various aspects of construction.⁸³ If a project is determined to constitute a single project involving the payment of public funds, prevailing wages will apply to the entire project. If there are multiple projects, prevailing wages may apply to one project but not the other, depending on the circumstances.⁸⁴ Accordingly, it may be possible through careful planning at the early stages of project development to structure the work such that prevailing wages apply to only certain portions of the work.

It is clear from the broad statutory definition of public work that drawing the line between and public and private components of a project, as well as defining where the public work ends and private work begins, may not always be readily apparent. For example, the construction of tenant improvements, or the performance of repair, maintenance or operations work, following the completion of a project that was constructed in whole or in part by public funds, may or may not be considered public work, depending on the circumstances. Tenant improvements are likely to meet the definition of construction or installation work. If such work is paid in whole or in part out of public funds, the employees engaged in that work would likely be entitled to prevailing wages. If, however, such work is paid solely by private

funds, and is properly characterized as connected to the leasing of the completed project, as opposed to part of the publicly funded construction project, it should be considered separate and apart from the public work, and not subject to prevailing wages. The same analysis would apply to repair, maintenance and post-construction operations work.

The Director's past determination letters provide some guidance in these situations. However, the ultimate determination will turn on the specific facts. From a developer's perspective, care should be taken to clearly segregate the private and public aspects of a project so as to delineate those aspects of the work that fall beyond the reach of the prevailing wage law.⁸⁵

VI. STATUTORY EXCEPTIONS TO PREVAILING WAGE REQUIREMENTS.

Assistance from a city, redevelopment agency or other public agency will likely trigger a prevailing wage requirement unless a statutory exemption applies. Those exemptions provide that prevailing wages are not required under any of the following circumstances:

- Residential projects built on private property, unless built pursuant to an agreement with a state agency, redevelopment agency, or local housing authority.⁸⁶
- Public agency funding of public work as a condition of regulatory approval of a private works project, if the agency maintains no proprietary interest in the overall project and contributes no more than is required for the public work, in which case only the public work itself is subject to the prevailing wage requirements.⁸⁷ To qualify for this exemption (1) the public facilities must be required as a condition of regulatory approval, (2) the project must be an otherwise private development, (3) the awarding body must not contribute more to the overall project than is required to construct the public facilities, and (4) the awarding body must not maintain a proprietary interest in the overall project.⁸⁸
- Reimbursement of costs to the private developer that would "normally be borne by the public," or where the public subsidy is "*de minimis* in the context of the project."⁸⁹
- Affordable housing projects subsidized from a redevelopment agency's low or moderate income housing funds.⁹⁰
- Project eligible for and receiving tax credits pursuant to Section 17053.49 or 23649 of the Revenue and Taxation Code.⁹¹

- Construction or rehabilitation of privately owned residential projects if one or more of the following conditions are met: (1) the project is a self-help housing project involving less than 500 hours of construction to be performed by homebuyers; (2) the project consists of rehabilitation or expansion of not-for-profit temporary or transitional housing for the homeless at a cost of less than \$25,000; (3) assistance is provided for mortgage, down payment or rehabilitation of a single family home; (4) the project is for construction, expansion or rehabilitation of not-for-profit facilities to provide emergency shelter and services for the homeless where more than half the costs are from private sources, excluding real property that is transferred or leased; or (5) the project is publicly funded by below market interest rate loans that restrict occupancy of a least 40 percent of the units for at least 20 years to individuals or families earning no more than 80 percent of the area median income.⁹²
- Volunteer work.⁹³

Case Examples:

Low Income Housing Tax credits: Tax credits pursuant to federal and California low-income housing tax programs have been found not to constitute public works paid for in whole or in part out of public funds. Such payments have been found not to be the equivalent of money or a transfer of an asset for less than fair market price by the state.⁹⁴

Oil And Gas Lease Royalties: Payments by a consortium of oil companies to a city based on the production of oil and gas from tidelands held in trust by the city did not make the consortium's work to produce that oil and gas a public work requiring the payment of prevailing wages. Pursuant to the contract with the city, the consortium was obligated to construct drilling and collateral equipment and to drill for, produce and sell oil and gas from the tidelands. The consortium operated at its own risk, and the city bore no obligation to reimburse the consortium for any losses it might incur. The equipment was owned by the consortium and removable at the termination of the lease. The court determined that the contract was in essence an oil and gas lease calling for payment of royalties to the city, and that the city's only interest was in receiving a percentage of sales.⁹⁵

Land Acquisition Costs: Public funds used by a developer to acquire land for a city redevelopment project did not mean that subsequent construction by the developer constituted a public work requiring payment of prevailing wages. The funds were used only for land acquisition, and not for demolition or construction costs, which the developer paid for with private funds. The court found that “construction” does not encompass pre-building phases of a project, and that traffic mitigation fees paid to the developer were not a cost of actual construction. Note that the decision was based on a prior version of Labor Code Section 1720(a)(1), which did not include the current language expanding the definition of “construction” to include any work performed “during the design and pre-construction phases of the construction.”⁹⁶ The statute today clearly extends the definition of construction to include pre-building contributions to the project.

Residential Projects: Residential projects consisting of single family homes and apartments up to and including four stories are subject to prevailing wages when paid in whole or in part out of public funds, including federally-funded or assisted residential projects controlled or carried out by an awarding body.⁹⁷

Field Surveying Projects: Field survey work covered by collective bargaining agreements is subject to prevailing wages if the work is integral to the public works project in the design, pre-construction, or construction phase.⁹⁸

Prevailing Wages Are Not Applicable To Force Account Work Carried Out By Public Employees: The prevailing wage law applies to work performed under contract, and is not applicable to work carried out by the public agency with its own forces.⁹⁹ The definition of force account is generally limited to work performed by the public entity’s own personnel.¹⁰⁰

Federally Funded Or Assisted Projects: Federally funded public works projects in California that are controlled by, carried out by, and awarded by the federal government are not subject to California’s prevailing wage law, even if it requires payment of higher wages than required by the Bacon-Davis Act.¹⁰¹ However, when a federally funded project is carried out or controlled by a California awarding body, the state prevailing wage law applies, including the payment of prevailing

wages when higher.¹⁰²

The California Constitution Limits Application Of Prevailing Wages To Charter Cities and the University Of California: Under the “home rule” doctrine, charter cities and the University of California have the right to “make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and with respect to all other matters they shall be subject to general laws.”¹⁰³ The determination of wages paid to employees are effectively salary setting statutes, and are matters of local rather than statewide concern.¹⁰⁴ As such, charter cities and the University have the right to provide for the compensation of their employees.

When engaging in public works projects, the courts and the Director have consistently exempted charter cities and the University from complying with prevailing wage requirements on projects that are purely municipal affairs. Whether a project falls completely in realm of the charter city’s municipal affairs, or is a matter of statewide concern, depends on (1) the extent of any extra-municipal control over the project, (2) the source and control of the funds used to finance the project, and (3) the nature and purpose of the project. Related to the nature and purpose of the project are its geographic scope and its extra-territorial effects.¹⁰⁵

While prevailing wage requirements imposed by general law impinging on the right of chartered cities or the University to control internal or municipal affairs have been consistently found to be unconstitutional,¹⁰⁶ the legislature has nonetheless declared that the prevailing wage law is a matter of statewide concern, and thus applicable to all public works projects, including the projects of charter cities.¹⁰⁷ This issue is presently pending review by the California Supreme Court.¹⁰⁸

V. CONCLUSION

Determining whether a project constitutes public work is complicated. The case law and Director’s determination letters offer insight and guidance into the process, but the message very clearly is “Buyer Beware.” The prevailing wage law cuts a wide berth, and is likely triggered whenever a project receives public funding or financial assistance. If applicable, the cost impacts can be significant, and may warrant close examination of alternative funding mechanisms. Failure to appreciate the risk, and failure to comply with the law, can have a devastating consequence on parties involved in the development or construction process and on the ultimate success of the project.

NOTES

1. Lab. Code, §§1720 et seq.
2. Lab. Code, §1773.5; see also Lab. Code, §§50, 50.5, 50.6, 51, 54, 55, 59, 90.5, 95, 1741, 1742, 1742.1, 1770, 1773, 1773.9, 1777.1, 1777.7; *Independent Roofing Contractors v. Department of Industrial Relations*, 23 Cal. App. 4th 345, 351-353, 28 Cal. Rptr. 2d 550, 1 Wage & Hour Cas. 2d (BNA) 1577, 128 Lab. Cas. (CCH) P 57691 (1st Dist. 1994), *Lusardi Construction Co. v. Aubry*, 1 Cal. 4th 976, 989-991, 4 Cal. Rptr. 2d 837, 824 P.2d 643, 30 Wage & Hour Cas. (BNA) 1281, 121 Lab. Cas. (CCH) P 56852, 123 Lab. Cas. (CCH) P 57112 (1992); *Winzler & Kelly v. Department of Industrial Relations*, 121 Cal. App. 3d 120, 127, 174 Cal. Rptr. 744, 25 Wage & Hour Cas. (BNA) 991 (1st Dist. 1981).
3. Cal. Code Reg., tit. 8, §§16000 et seq.
4. Lab. Code, §§1770, 1773 to 1773.9.
5. The Director determines whether a specific project is a public work under the Labor Code. Lab. Code, §§50.5, 51, 54, 55, 59; Cal. Code Reg., tit. 8, §§16001 to 16002.5; *Lusardi Construction Co. v. Aubry*, *supra*, 1 Cal. 4th 976, 985-989.
6. The Director also determines the prevailing wage rate applicable to every type or class of worker employed on a public work project, handles issues of noncompliance, including the collection of unpaid wages, and metes out penalties for violations of the prevailing wage law. Cal. Code Reg., tit. 8, §§16002.5(c) and 16303; *Lusardi Construction Co. v. Aubry*, *supra*, 1 Cal. 4th 976, 988 (The Director has broad quasi-legislative authority to “carry out and effect all purposes vested by law in the department....”).
7. Lab. Code, §1773.5; Cal. Code Reg., tit. 8, §16001.
8. Lab. Code, §1773.4; Cal. Code Reg., tit. 8, §16302; *Sheet Metal Workers Intern. Ass’n, Local Union No. 104 v. Rea*, 153 Cal. App. 4th 1071, 63 Cal. Rptr. 3d 672, 12 Wage & Hour Cas. 2d (BNA) 1513 (1st Dist. 2007), as modified, (Aug. 29, 2007).
9. Prevailing rates and related scope of work provisions for the affected craft, classification or type of worker are posted and readily accessible on the Department of Industrial Relations website (www.dir.ca.gov).
10. *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 59 Cal. Rptr. 2d 186, 927 P.2d 296, 3 Wage & Hour Cas. 2d (BNA) 1094, 1997 A.M.C. 316 (1996) (A state agency can make generally applicable policy pronouncements in the course of enforcing its responsibilities without following procedures set forth in the Administrative Procedures Act.).
11. *International Brotherhood of Electrical Workers v. Aubry*, 41 Cal. App. 4th 1632, 1638, 49 Cal. Rptr. 2d 759, 3 Wage & Hour Cas. 2d (BNA) 261 (1st Dist. 1996); *Independent Roofing Contractors v. Department of Industrial Relations*, *supra*, 23 Cal. App. 4th 345, 358-359 (1994); *Cuesta College/Offsite Fabrication of Sheet Metal Work*, PW 2000-027 (CDIR, Mar. 4, 2003). **Comment:** The term “Cal. Dept. of Indus. Relations,” used in citations to determination letters shall hereinafter be abbreviated as “CDIR.”
12. See Important Notice To Awarding Bodies And Interested Parties Regarding The Department’s Decision To Discontinue The Use Of Precedent Determinations (undated). [www.dir.ca.gov/dlsr/09-06-2007\(pwcd\).pdf](http://www.dir.ca.gov/dlsr/09-06-2007(pwcd).pdf); see also *Plumbers and Steamfitters, Local 290 v. Duncan*, 157 Cal. App. 4th 1083, 1089-1090, 69 Cal. Rptr. 3d 184 (1st Dist. 2007).
13. *Southern Cal. Lab. Management etc. Committee v. Aubry*, 54 Cal. App. 4th 873, 882-883, 63 Cal. Rptr. 2d 106, 3 Wage & Hour Cas. 2d (BNA) 1680 (1st Dist. 1997), as modified on denial of reh’g, (Apr. 29, 1997).
14. Lab. Code, §§1720, 1720.2, 1720.3, 1720.4, 1771; Cal. Code Reg., tit. 8, §§16000 et seq.
15. Lab. Code, §§1773.2, 1775.
16. Lab. Code, §§1773.2, 1775, 1776, subd. (g), 1777, 1777.5; *Lusardi Construction Co. v. Aubry*, *supra*, 1 Cal. 4th 976, 987 (The only legal wage which may be paid to laborers on public works projects is the prevailing wage. It is of no moment that the respondents did not contract with their employees to pay the prevailing wage: the statutory requirement that workers be paid the prevailing wage “is not limited to those workers whose

employers have contractually agreed to pay the prevailing wage; it applies to ‘all workers employed on public works.’”).

17. Lab. Code, §90, subd. (a).
18. *Lusardi Construction Co. v. Aubry, supra*, 1 Cal. 4th 976, 985-987 (1992); *O. G. Sansone Co. v. Department of Transportation*, 55 Cal. App. 3d 434, 458, 127 Cal. Rptr. 799, 22 Wage & Hour Cas. (BNA) 1008 (2d Dist. 1976); *People v. Hwang*, 25 Cal. App. 4th 1168, 1181-1182, 31 Cal. Rptr. 2d 61, 146 L.R.R.M. (BNA) 2666, 2 Wage & Hour Cas. 2d (BNA) 141 (2d Dist. 1994); *Independent Roofing Contractors v. Department of Industrial Relations, supra*, 23 Cal. App. 4th 345, 356; *Walker v. Los Angeles County*, 55 Cal. 2d 626, 634-635, 12 Cal. Rptr. 671, 361 P2d 247 (1961); *Cassaretto v. City and County of San Francisco*, 18 Cal. App. 2d 8, 10, 62 P2d 777 (1st Dist. 1936).
19. *Reyes v. Van Elk, Ltd.*, 148 Cal. App. 4th 604, 56 Cal. Rptr. 3d 68, 12 Wage & Hour Cas. (BNA) 805, 154 Lab. Cas. (CCH) P 60371 (2d Dist. 2007), cert. denied, 128 S. Ct. 1222, 170 L. Ed. 2d 60, 13 Wage & Hour Cas. 2d (BNA) 576 (2008); *Road Sprinkler Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc.*, 102 Cal. App. 4th 765, 778, 125 Cal. Rptr. 2d 804 (3d Dist. 2002) (Workers have private statutory remedies against employer to recover unpaid prevailing wages.).
20. *City of Long Beach v. Department of Industrial Relations*, 34 Cal. 4th 942, 951, 22 Cal. Rptr. 3d 518, 102 P3d 904, 10 Wage & Hour Cas. 2d (BNA) 405 (2004); *California Grape and Tree Fruit League v. Industrial Welfare Commission*, 268 Cal. App. 2d 692, 698, 74 Cal. Rptr. 313 (1st Dist. 1969). [Not addressed is the definition of “employer” within the meaning of the Act. See 2002 WL 33776616 (CA.Dept.Lab) for discussion and general statement that the employment relationship is broadly defined under California law and turns on the particular facts, rather than on technical or contractual distinctions.]; *Cuesta College/Offsite Fabrication of Sheet Metal Work*; PW 2000-027 (CDIR, Mar. 4, 2003) (While courts accord substantial deference to the Director’s interpretation of the law, such deference does not extend to importing into the statute a restriction that is not supported by its language.).
21. *Id.* at p. 950; *State Bldg. and Const. Trades Council of California v. Duncan*, 162 Cal. App. 4th 289, 326, 76 Cal. Rptr. 3d 507, 13 Wage & Hour Cas. 2d (BNA) 1408, 155 Lab. Cas. (CCH) P 60600 (1st Dist. 2008), as modified on denial of reh’g, (May 16, 2008).
22. Lab. Code, §§1194, 1741, 1774, 1775; *Road Sprinkler Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc.*, 102 Cal. App. 4th 765, 125 Cal. Rptr. 2d 804 (3d Dist. 2002) (Workers on public works projects have a private statutory right of action against their employer for failure to pay prevailing wages.).
23. Lab. Code, §§1741, 1775; the Director has the plenary authority to promulgate rules to enforce the prevailing wage law, see Lab. Code, §§50.5, 51, 54, 55, 59; Lab. Code, §1743 (Contractor and subcontractor are jointly and severally liability for all amounts assessed by the Labor Commissioner); *O. G. Sansone Co. v. Department of Transportation*, 55 Cal. App. 3d 434, 458, 127 Cal. Rptr. 799, 22 Wage & Hour Cas. (BNA) 1008 (2d Dist. 1976).
24. Lab. Code, §1742.1, subd. (a).
25. Lab. Code, §1777.1, subsd. (a), (b).
26. Lab. Code, §1777; *People v. Miles & Sons Trucking Service, Inc.*, 257 Cal. App. 2d 697, 706-707, 65 Cal. Rptr. 465 (4th Dist. 1968) (Defendant pretended falsely that trucking company employees were owner-operator drivers to avoid the prevailing wage requirement.).
27. Lab. Code, §23.
28. Lab. Code, §1778; *People v. Hwang, supra*, 25 Cal. App. 4th 1168 (1994) (contractor convicted of felony for taking and receiving portions of worker’s wages in violation of Section 1778; imposition of civil penalties does not preclude government from pursuing criminal prosecution).
29. Lab. Code, §§1194, 1771, and 1774; *Road Sprinkler Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc.*, 102 Cal. App. 4th 765, 775-779, 125 Cal. Rptr. 2d 804 (3d Dist. 2002).

30. *Violante v. Communities Southwest Development and Const. Co.*, 138 Cal. App. 4th 972, 41 Cal. Rptr. 3d 673 (4th Dist. 2006) (No private right of action for enforcement by a subcontractor's employees against other parties other than the subcontractor.); restitution available under Bus. & Prof. Code, §17203, *Violante*, 138 Cal. App. 4th at 981; *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163, 177, 96 Cal. Rptr. 2d 518, 999 P.2d 706 (2000); *Department of Indus. Relations, Div. of Labor Standards Enforcement v. Fidelity Roof Co.*, 60 Cal. App. 4th 411, 425-426, 70 Cal. Rptr. 2d 465, 4 Wage & Hour Cas. 2d (BNA) 503 (1st Dist. 1997); *Tippett v. Terich*, 37 Cal. App. 4th 1517, 1532-1533, 44 Cal. Rptr. 2d 862, 2 Wage & Hour Cas. 2d (BNA) 1441, 131 Lab. Cas. (CCH) P 58039 (4th Dist. 1995) (abrogated on other grounds by, *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163, 96 Cal. Rptr. 2d 518, 999 P.2d 706 (2000)).
31. Lab. Code, §1750.
32. Lab. Code, §1723.
33. Lab. Code, §1772.
34. Lab. Code, §1771.
35. *Reyes v. Van Elk, Ltd.*, 148 Cal. App. 4th 604, 56 Cal. Rptr. 3d 68, 12 Wage & Hour Cas. (BNA) 805, 154 Lab. Cas. (CCH) P 60371 (2d Dist. 2007), cert. denied, 128 S. Ct. 1222, 170 L. Ed. 2d 60, 13 Wage & Hour Cas. 2d (BNA) 576 (2008) (undocumented workers entitled to pursue claims against employer for failure to pay prevailing wages on public works project).
36. Lab. Code, §1774; *Road Sprinkler Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc.*, 102 Cal. App. 4th 765, 125, 125 Cal. Rptr. 2d 804 (3d Dist. 2002) (Workers have private statutory remedies against employer to recover unpaid prevailing wages.).
37. Lab. Code, §1722.1.
38. *O.G. Sansone Co. v. Department of Transportation, supra*, 55 Cal. App. 3d 434, 458 (1976).
39. *O.G. Sansone Co. v. Department of Transportation, supra*, 55 Cal. App. 3d 434, 458 (1976); *Stacey & Wilbeck, Inc., Metropolitan Transit Development Board*, PW 2004-033 (CDIR, Jan. 6, 2005) (On-haul delivery of materials by subcontractor's employees generally subject to prevailing wages, while on-haul work of materials by material suppliers or their employees is not.); *County of El Dorado*, PW 02-037, (CDIR, Apr. 7, 2003).
40. *Canyon Lake Dredging Project*, Decision on Appeal, PW 2005-025 (CDIR, Mar. 28, 2008) ("delivery exemption" only applies to work done by bona fide material suppliers and does not exempt off-hauling work done by employees of the construction contractors).
41. *Id.*; see also *Production of Recycled Asphalt Concrete from Reclaimed Asphalt Pavement and Related Off-hauling and On-hauling, Street Resurfacing and Reconstruction Program, City of Los Angeles*, PW 2002-010 (CDIR, Aug. 8, 2007) (Truckers entitled to prevailing wages for any time spent on site in the immediate incorporation the public work site of the material they haul; conversely, truckers who haul from a supplier to a public work site material that is stockpiled for later use are not entitled to prevailing wages for their delivery function. Also, batch plant contractor not a material supplier were plant was established for project.); City is not required to pay its own workers prevailing wages.); *Williams v. SnSands Corp.*, 156 Cal. App. 4th 742, 67 Cal. Rptr. 3d 606 (1st Dist. 2007) (absent evidence that off-haul of material was an integrated aspect of the "flow" process of construction, the prevailing wage statute was not applicable.); *Request For Proposals: Planting, Operation, Maintenance and Monitoring of Owens Lake Southern Zones Managed Vegetation Project, Los Angeles Department of Water and Power*, PW 2002-096 (CDIR, June 1, 2005) (Material supplier exemption applied to nursery that sold to general public and was not established specifically to furnish materials for the project.); *Canyon Lake Dredging Project, Lake Elsinore and San Jacinto Watersheds Authority*, PW 2005-025 (CDIR, June 26, 2007) (Workers engaged in off-hauling from a public work site are not engaged in the execution of a public work contract unless the off-hauling is functionally related to the process of construction.); see also Lab. Code, §1720.3 (Public works as including hauling of refuse.) and 3 Ops. Cal. Atty. Gen. 166 (2000) (Private contractor's operation of county's trash transfer station (collecting fees, monitoring unloading, and transporting containers to county's landfill) was not the

- performance of “public works.”); *County of El Dorado*, PW 02-037 (CDIR, April 7, 2003).
42. *Hauling of Fill Material from Bryan Ranch to State Highway 99 Roadway Project*, California Department of Transportation, PW 2009-019 (CDIR, Aug. 31, 2009) (Material supplier exemption not available to independent trucking company hired to haul fill material from private farm to public works roadway construction project.); Decision On Administrative Appeal, *Richmond-San Rafael Bridge/Benicia-Martinez Bridge Bridge/San Francisco-Oakland Bay Bridge—California Department of Transportation; West Mission Bay Drive Bridge Retrofit Project—City of San Diego*, PW 2004-023 and PW 2003-046 (CDIR, July 31, 2006) (Material hauling by Towboat operators is covered by prevailing wage law where materials are hauled to a public works site from an adjacent site dedicated to the project, and where the haulers incorporated the materials into the public works site; Section 1720.3 reference to prevailing wage coverage for the off-hauling of refuse from a public works site does set forth the only circumstances under which hauling is public work.); *O.G. Sansone Co. v. Department of Transportation*, *supra*, 55 Cal. App. 3d 434, 458 (1976); *Off-Hauling of Fill Dirt Between Public Work Sites*, *City of Dixon*, PW 2003-044 (CDIR, Feb. 2, 2004) (Workers transporting full dirt from a public works construction site to a storage site for future use on another public works project are performing work in the execution of public work and thus entitled to the payment of prevailing wages.).
43. *Cuesta College/Offsite Fabrication of Sheet Metal Work*, PW 2000-027 (CDIR, Mar. 4, 2003) and *City of San Jose/SJSU Joint Library Project*, PW 2002-064 (CDIR, Mar. 4, 2003) (Prevailing wages required for off-site fabrication of customized components pursuant to project specifications and for use in subcontractors own construction project, as opposed to production of generic components for sale in the general market); *Russ Will Mechanical, Inc., Off-Site Fabrication of HVAC Components*, PW 2007-008 (CDIR, Nov. 13, 2008) (off-site manufacture of HVAC components by permanent, licensed fabricator was subject to prevailing wage law because manufacturer only sold goods to contractors and not to the general public). But see *Wasco Union High School District/JTS Modular, Inc.*, PW 2007-009 (CDIR, May 5, 2008) (off-site manufacture of portable classrooms exempt from prevailing wage law if completed at permanent manufacturing site owned by supplier); *Cuesta College/Offsite Fabrication of Sheet Metal Work*; PW 2000-027 (CDIR, Mar. 4, 2003) (Prevailing wages due for offsite fabrication or prefabrication of items specially produced for public works project.).
44. *Id.*
45. Lab. Code, §§1721, 1772; Cal. Code Reg., tit. 8, §16000.
46. Lab. Code, §1773.
47. Lab. Code, §§1773.2, 90.5.
48. Lab. Code, §§1726, subd. (c), 1773, 1773.2.
49. 81 Ops. Cal. Atty. Gen. 281 (1998).
50. *Lusardi Construction Co. v. Aubry*, *supra*, 1 Cal. 4th 976.
51. See 83 Ops. Cal. Atty. Gen. 231, 2000 WL 1606573 (Cal. A.G. 2000) (Use of state general obligation funds distributed by the Department of Transportation (“Caltrans”) to reimburse Amtrak for expenses incurred in constructing a rail station did not make Caltrans an “awarding body” under the prevailing wage law. Caltrans was not a party to the construction contract, which was executed between Amtrak and a private contractor to construct a train station on property leased by Amtrak and owned by a private railroad company. Caltrans did not review or approve the contract and had no responsibility in supervising the contractor. Amtrak did not act on Caltrans’ behalf. Amtrak received the funds as an owner-operator performing a self-help improvement project. (While Caltrans was not an “awarding body,” the workers were nonetheless protected by the prevailing wage law due to the public funding of the project.).
52. Lab. Code, §1771.
53. *Id.*; Lab. Code, §1771; *Construction Industry Force Account Council v. Amador Water Agency*, 71 Cal. App. 4th 810, 815, 84 Cal. Rptr. 2d 139 (3d Dist. 1999); *Beckwith v.*

- Stanislaus County*, 175 Cal. App. 2d 40, 49, 345 P.2d 363 (3d Dist. 1959) (The prevailing wage statutes have no application to work undertaken by force account or day labor.); Cal. Code Reg., tit. 2, §988; 70 Ops. Cal. Atty. Gen. 92, 97 (1987), but see 7 Ops. Cal. Atty. Gen. 92 (1987) (Prevailing wage law engineering firm employees under contract with city to perform the duties of a city engineer, except where such duties do not qualify as a public work).
54. Lab. Code, §1771.55, but see also Lab. Code, §§1771.5, 1771.7, 1771.75, 1771.8, 1771.85, 1771.9 for further exceptions and for projects that pre-exist the effective date of §1771.55.
55. Lab. Code, §§1771, 1771.5, Cal. Code Reg., tit. 8, §16433.
56. Lab. Code, §1771.5, subd. (b), Cal. Code Reg., tit. 8, §16421 to 16429 (setting forth detailed rules and regulations governing labor compliance programs).
57. Lab. Code, §1773.5; Cal. Code Reg., tit. 8, §16433.
58. Lab. Code, §§1720, 1771; *O.G. Sansone Co. v. Department of Transportation*, *supra*, 55 Cal. App. 3d 434, 444 (1976), citing *Green v. Jones*, 23 Wis. 2d 551, 128 N.W.2d 1, 7, 49 Lab. Cas. (CCH) P 51069 (1964); *Off-site Testing and Inspection Services, Jurupa Unified School District—Glen Avon High School*, PW 2005-037 (CDIR, Jan. 12, 2007) (Off-site testing and inspection of structural steel at supplier's fabrication plant not an integrated aspect of the flow of construction and not sufficiently functionally related to that process so as to be done in the execution of a public work.).
59. *Lusardi Construction Co. v. Aubry*, *supra*, 1 Cal. 4th 976, 985-987 (1992); *City of Long Beach v. Department of Industrial Relations*, 1 Cal. Rptr. 3d 837, 845, 8 Wage & Hour Cas. 2d (BNA) 1761 (Cal. App. 2d Dist. 2003), review granted and opinion superseded, 5 Cal. Rptr. 3d 240, 77 P.3d 420 (Cal. 2003) and judgment rev'd, 34 Cal. 4th 942, 22 Cal. Rptr. 3d 518, 102 P.3d 904, 10 Wage & Hour Cas. 2d (BNA) 405 (2004) (citing to *Goleta Amtrak Station*, PW 98-005 (Nov. 23, 1998)); *Legacy Partners Project, City of Concord Redevelopment Agency*, PW 2002-047 (CDIR, Apr. 7, 2003), affirmed on Administrative Appeal, (CDIR, Oct. 29, 2003) (Labor Code, §1720, subd. (a)(1) does not require agency to be a party to the construction contract); 83 Ops. Cal. Atty. Gen. 231 (Oct. 23, 2000) (Section 1720 applicable when public funds are used to reimburse construction costs irrespective of whether the construction contract was awarded by a public "awarding body.").
60. Cal. Code Reg., tit. 8, §16001(c) (Field survey work traditionally covered by collective bargaining agreements is subject to prevailing wages when it is integral to the specific public works project in the design, preconstruction or construction phase.); 7 Ops. Cal. Atty. Gen. 92 (1987) (Prevailing wage law applicable to employees of an engineering firm which contracts with a city to perform the duties of a city engineer, except with respect to such duties that do not qualify as a public work.); *Erection and Removal of Portable Fencing System, Peninsula Camp Ground, Folsom Lake State Recreation Area*, PW 2007-005 (CDIR, June 26, 2007) (Preconstruction erection and removal of a portable fencing system is public work.); *Decision On Administrative Appeal, Request for Proposals: Planting, Operation, Maintenance And Monitoring Of Owens Lake Southern Zones Managed Vegetation Project, Los Angeles Department of Water And Power*, PW 2002-096 (CDIR, Dec. 16, 2005) (Inspection, monitoring, and testing work performed in the execution of the public work of alteration is public work requiring payment of prevailing wages.); *Off-site Testing and Inspection Services, Jurupa Unified School District—Glen Avon High School*, PW 2005-037 (CDIR, Jan. 12, 2007) (Off-site testing and inspection of structural steel at suppliers fabrication plant not an integrated aspect of the flow of construction and not sufficiently functionally related to that process so as to be done in the execution of a public work.); *Laboratory Field Operation/leviathan Mine, California Regional Water Quality Control Board—Labontan Region*, PW 2003-004 (CDIR, Feb. 13, 2003) (Work performed by field laboratory technicians, chemist, hygienist and geochemist to monitor effluent discharge from state run water treatment system determined not to be testing in connection with a public work construction

project.); *Decision on Administrative Appeal*, PW 2002-038, *Kohl's Warehouse and Distribution Center, City of San Francisco*, (CDIR, Oct 21, 2003) (Project was public work where Agency's contributed toward cost of inspection, testing and oversight services.); *Self-Generated Waste Program and Highway Spill Program, California Department of Transportation*, PW 2005-028 (CDIR, May 17, 2006) (Testing of hazardous waste done in connection with maintenance and off hauling (public work) is subject to prevailing wages.).

61. *Priest v. Housing Authority of City of Oxnard*, 275 Cal. App. 2d 751, 756, 80 Cal. Rptr. 145 (2d Dist. 1969) (defining "alter" under the prevailing wage law as "merely to modify without changing into something else"); *Land Clearing Project, Selma-Kingsburg-Fowler County Sanitation District*, PW 2008-015 (CDIR, June 11, 2008) (clearing of agricultural land held to be both "demolition" and "alteration" under statute); *Canyon lake Dredging Project, Lake Elsinore and San Jacinto Watersheds Authority*, PW 2005-025 (CDIR, June 26, 2007) (Dredging is alteration, and the dewatering and loading of dredged materials functionally related to that work.); *Removal and Hauling of BioSolids, Irvine Ranch Water District*, PW 2006-022 (CDIR, Jan. 12, 2007) (Removal and hauling of biosolids from sewage treatment ponds not "alteration" or "maintenance."); *Decision On Administrative Appeal, Proposition 40 Watershed and Fuels Community assistance Grants Program, Department of Forestry and Fire Protection*, PW 2006-010 (CDIR, Aug. 24, 2006) (Chipping, pruning, and removal of brush and trees to minimize fire risk not alteration because no characteristic of land was modified.); *Tree Removal Project, County of San Bernardino Fire Department*, PW 2005-026 (CDIR, July 28, 2006) (Tree felling and removal, and associated erosion control, not alteration or maintenance.); *The Hauling of Biosolids from Orange County, The Application of Hauled Biosolids on Farmland in Kern and Kings Counties*, PW 2005-009 (CDIR, Apr. 21, 2006) (Application of sludge as a soil amendment is not alteration); *Decision On Administrative Appeal, Request for Proposals: Planting, Operation, Maintenance And Monitoring Of Owens Lake Southern Zones Managed Vegetation Project, Los Angeles Department of Water And Power*, PW 2002-096 (Dec. 16, 2005) (Transplanting salt grass plugs and soil reclamation involves a change of surface or below-surface and constitutes an "alteration" triggering prevailing wages.); *Tree Removal Project, County of San Bernardino Fire Department*, PW 2005-026 (CDIR, Nov. 18, 2005) (Cutting trees to stump that were designated a fire risk is not alteration, demolition, or repair subject to prevailing wages.); *Howe Creek Ranch Habitat Restoration Project, California Department of Fish and Game*, PW 2004-050 (CDIR, Oct. 19, 2005) (Habitat restoration project involved both construction and alteration work requiring payment of prevailing wages); *Mare Island Environmental Remediation Project, Western Early Transfer Parcel, City of Vallejo*, PW 2003-054 (CDIR, July 1, 2004) (Environmental remediation work constitutes alteration and demolition of land and facilities.).
62. *Priest v. Housing Authority of City of Oxnard, supra*, 275 Cal. App. 2d at 756 (1969) (defining "demolition" as the tearing up and removing of things previously constructed whether on the surface or below ground); *Installation of Smart Classroom Technology, Fresno Unified School District*, PW 2008-034 (CDIR, July 27, 2009) (Affixing classroom technology equipment to ceilings and walls constitutes "installation."); *Modular Furniture, County of Sacramento*, PW 2008-035 (CDIR, Nov. 24, 2009) (Where modular furniture units are attached to realty, the entire frame work, attachment and build-out process constitutes installation subject to prevailing wages. Where work entails assembly of free standing modular units, which are not affixed to realty, prevailing wages do not apply.); *Sewer and Strom Lift Station Upgrade Project, City of Visalia/Goshen Community Services District*, PW 2005-012 (CDIR, Aug. 8, 2006), affirmed on Decision On Administrative Appeal (Oct. 25, 2007) (Wiring and bolting of electric instruments and components to control panels affixed to lift stations constitutes installation work.); *Pre-rinse Spray Valve Program (Phase II), California Urban Water Conservation Council*, PW 2005-041 (CDIR, May 11, 2006) (Installation is the bolting, securing, or mounting of fixtures to realty; screwing on spray valve to pre-existing water faucets

- does not constitute installation.); *Installation and Removal of Temporary Fencing and Power and Communications Facilities/Eastside High School, Antelope Valley Union High School District*, PW 2005-018 (CDIR, Feb. 28, 2006) (Installation and removal of temporary fencing, power and communication facilities is public works subject to prevailing wages.); Civ. Code, §660.
63. *Emergency Repair Work to Barnes and Noble Bookstore, City of Redding*, PW 2005-021 (CDIR, Jan. 10, 2006) (Public funds paid to reconstruct and repair bookstore damage by City's sewer system failure is public work.).
64. Lab. Code, §1720, subd. (a)(1); *Kiwi Substation, Orange County Water District*, PW 2005-039 (CDIR, Apr. 25, 2007) (Construction and installation by PUC is subject to prevailing wages only to the extent the work is performed by contractors; work done directly by PUC own employees is not public work.); *Greystone Homes, Inc. v. Cake*, 135 Cal. App. 4th 1, 37 Cal. Rptr. 3d 183, 11 Wage & Hour Cas. 2d (BNA) 268 (1st Dist. 2005) (A city redevelopment project to construct a housing development did not constitute a public work subject to the prevailing wage law where the public funds provided to the developer were used only for land acquisition, as opposed to construction costs. Developer paid all demolition and construction costs with private funds. The Court found that "construction" does not encompass pre-building phases of a project, and that traffic mitigation fees paid to the developer were not a cost of actual construction. Note that the decision was based on an earlier version of Lab. Code, §1720, subd. (a)(1), which did not include the current language expanding the definition of "construction" to include any work performed "during the design and preconstruction phases of the construction."); *County of Orange Hazardous Waste Program*, PW 2005-013 (CDIR, Aug. 29, 2005) (County's removal of hazardous waste from loads delivered to landfill site not construction, alteration, demolition or repair under Section 1720, subd. (a)(1).); *Legacy Partners Project, City of Concord Redevelopment Agency*, PW 2002-047 (CDIR, Apr. 7, 2003), affirmed on Administrative Appeal, (Oct. 29, 2003) (Agency payment of site assembly and relocation costs as part of pre-construction phase of construction, as well as public grant of deferred participation payments, and developer tax rebates, constitute payment of public funds for construction.); *Western Contract Services, Assembly and Disassembly of Free-Standing Modular Furniture*, PW 2005-017 (CDIR, Dec. 16, 2005) (assembly and disassembly of free-standing modular furniture is not "construction" covered by prevailing wage law.); *Installation of Furniture, Department of General Services*, PW 2002-052 (CDIR, Aug. 18, 2000) (Bolting, securing, or mounting of components to real property is construction covered by prevailing wage law).
65. Lab. Code, §§1720, subd. (a)(2) and 1771; *Reclamation Dist. No. 684 v. State Dept. of Industrial Relations*, 125 Cal. App. 4th 1000, 23 Cal. Rptr. 3d 269, 35 Env't. L. Rep. 20012 (3d Dist. 2005) (The exception for operation of an irrigation or drainage system held not applicable to maintenance work on levee for flood control purposes.).
66. Lab. Code, §1720, subd. (a)(3); *Priest v. Housing Authority of the City of Oxnard*, *supra*, 275 Cal. App. 2d 751 (1969) (Contract with housing authority to remove pipes, remove asphalt roadbeds, install curbs, sidewalks, driveways and cement footings involved "public works.").
67. Lab. Code, §1720, subd. (a)(4), (a)(5).
68. Lab. Code, §1720, subd. (a)(6); Sts & Hy. Code, §143.
69. Lab. Code, §1720.2; *Plumbers and Steamfitters, Local 290 v. Duncan*, *supra*, 157 Cal. App. 4th 1083 (2007) (Statute defining public works to include project where 50% of property was to be leased to state or political subdivision was not limited to new construction, but also included renovation, and was not limited to areas of property leased, but applied to entire renovation of privately owned building leased in sufficient part to county.); *King/Chavez Preparatory Academy, City of San Diego*, PW 2008-026 (CDIR, Oct. 1, 2009) (Prevailing wage law not applicable to construction of privately funded, privately owned, chartered school.); *Office Quarters Project—Department of Corrections, Bakersfield, California*, PW 2003-008 (CDIR, May 7, 2003); *Decision on Administrative Appeal*,

- Capitol Park Homes, City of Sacramento Redevelopment Agency*, PW 2001-043 (CDIR, Jan. 15, 2003) (Section 1720.2 expands, not restricts, reach of prevailing wage law to include privately owned projects leased to public agencies.).
70. Lab. Code, §1720.3; *Williams v. SnSands Corp.*, 156 Cal. App. 4th 742, 67 Cal. Rptr. 3d 606 (1st Dist. 2007) (employees of trucking contractor engaged in off-hauling work from public works construction sites not entitled to prevailing wages); *Canyon Lake Dredging Project, Lake Elsinore and San Jacinto Watersheds Authority*, PW 2005-025 (CDIR, June 26, 2007) (Dredge material not refuse where not being discarded as useless or worthless but being used as clean fill; workers engaged in off-hauling from a public work site are not engaged in the execution of a public work contract unless the off-hauling is functionally related to the process of construction.); *Removal and Hauling of BioSolids, Irvine Ranch Water District*, PW 2006-022 (CDIR, Jan. 12, 2007) (Removal and hauling of biosolids from sewage treatment ponds not “alteration” or “maintenance.”); *Self-Generated Waste Program and Highway Spill Program, California Department of Transportation*, PW 2005-028 (CDIR, May 17, 2006) (Hauling of liquid waste constituted hauling of refuse from a public work site); *Decision On Administrative Appeal, Richmond-San Rafael Bridge/Benicia-Martinez Bridge Bridge/San Francisco-Oakland Bay Bridge—California Department of Transportation; West Mission Bay Drive Bridge Retrofit Project—City of San Diego*, PW 2004-023 and PW 2003-046 (CDIR, July 31, 2006) (Material hauling by Towboat operators is covered by prevailing wage law where materials are hauled to a public works site from an adjacent site dedicated to the project, and where the haulers incorporated the materials into the public works site; Section 1720.3 reference to prevailing wage coverage for the off-hauling of refuse from a public works site does set forth the only circumstances under which hauling is public work.); *Off-Hauling of Contaminated and Clean Soil, Long Beach Unified School District, Avalon School*, PW 2006-017 (CDIR, June 26, 2007) (Off-hauling of contaminated soil is off-hauling of “refuse” and covered prevailing wage law, while off-hauling of clean soil is not.); *Williams Street Widening Project/Off-Hauling of Road Grindings, City of San Leandro*, PW 2003-049 (Jan. 6, 2005) (Owner-operator performing trucking in connection with public work must be paid prevailing wages, but truck drivers off-hauling road grindings not entitled to prevailing wages.); *Stacey & Wilbeck, Inc., Metropolitan Transit Development Board*, PW 2004-033 (CDIR, Jan. 6, 2005) (Prevailing wages applied to hauling of dumpsters containing refuse from public work site.); *Decision On Administrative Appeal, Lindeman Brothers Trucking*, PW 2003-044 (CDIR, Jan. 3, 2005) (Prevailing wages not required for drivers off-hauling clean fill dirt from public work site to off-site storage.); 83 Ops. Cal. Atty. Gen. 166 (2000) (A private contractor’s operation of a trash transfer station (collecting fees, monitoring unloading, and transporting containers to a county landfill) for a county was not the performance of “public works.”); 64 Ops. Cal. Atty. Gen. 234 (1981) (Prevailing wages apply to employees of a contractor who operates a county landfill where the land surface is altered by the employees in the course of their work.).
71. Lab. Code, §1771; Cal. Code Reg., tit. 8, §16000; *Agreement No. 07A2407-Homeless Sites Debris Removal and Disposal, California Department of Transportation*, PW 2009-008 (CDIR, June 5, 2009) (Homeless sites debris removal, transport and disposal work along state highways is hauling of refuse and maintenance work requiring payment of prevailing wages.). *Video Network Surveillance System Upkeep, City of Los Angeles, Department of Airports*, PW 2006-019 (CDIR, Sept. 10, 2007) (Upkeep of video network surveillance system permanently attached to LAX buildings or realty is maintenance covered by prevailing wage law.); *Sediment Removal from Storm Drains, California Department of Transportation*, PW 2005-014 (CDIR, Oct. 31, 2005) (Sediment removal from self-cleaning storm drains pursuant to federal injunction aimed at environmental preservation is not maintenance.); *Request For Proposals: Planting, Operation, Maintenance and Monitoring of Owens Lake Southern Zones Managed Vegetation Project, Los Angeles Department of Water and Power*, PW 2002-096 (CDIR, June 1, 2005) (repair and maintenance of drainage and irrigation systems is public work; operations of system is not.); *Stacey & Wilbeck, Inc., Metropolitan Transit*

- Development Board*, PW 2004-033 (Jan. 6, 2005) (Delivery and service of portable toilets not construction or maintenance.); *Self-Generated Waste Program and Highway Spill Program*, California Department of Transportation, PW 2005-028 (CDIR, May 17, 2006) (Contractor's quarterly collection, loading, hauling, and disposal of hazardous liquid generated by Caltrans' maintenance activities on public works is subject to payment of prevailing wages, but hauling of solid waste containers is not maintenance.); Decision On Administrative Appeal, *Street Sweeping, City of Santa Clarita*, PW 2005-007 (CDIR, Feb. 7, 2006) (Street sweeping does not constitute the public work of maintenance.); Decision On Administrative Appeal, *Tree Removal Project, County of San Bernardino Fire Department*, PW 2005-026 (CDIR, July 28, 2006) (Tree felling and removal, and associated erosion control, not alteration or maintenance.); *Reclamation Dist. No. 684 v. State Dept. of Industrial Relations*, 125 Cal. App. 4th 1000, 23 Cal. Rptr. 3d 269, 35 Envtl. L. Rep. 20012 (3d Dist. 2005) (Rehabilitation of levee was "maintenance" and therefore public work, and not operations.); *Removal and Hauling of BioSolids, Irvine Ranch Water District*, PW 2006-022 (CDIR, Jan. 12, 2007) (Removal and hauling of biosolids from sewage treatment ponds not "alteration" or "maintenance."); *Decision On Administrative Appeal, Request for Proposals: Planting, Operation, Maintenance And Monitoring Of Owens Lake Southern Zones Managed Vegetation Project, Los Angeles Department of Water And Power*, PW 2002-096 (CDIR, Dec. 16, 2005) (Coverage is not defeated by labeling as "operational" work that otherwise meets the definition of public work.); *Dry Creek Joint Elementary School District, Coyote Ridge Elementary School-On-site Heavy Equipment Upkeep*, PW 2004-013 (CDIR, Dec. 16, 2005) (On-site heavy equipment upkeep for paving, grading, and utility installation is public work requiring payment of prevailing wages to contractor's shop employees.); *Liquid Waste Disposal Services for the Los Angeles County Metropolitan Transportation Authority*, PW 2004-040 (CDIR, Aug. 29, 2005) (Removal and off-haul of waste material from MTA facilities is maintenance work requiring payment of prevailing wages.); *Sediment Removal from Storm Drains, California Department of Transportation*, PW 2005-014 (CDIR, Oct. 31, 2005) (Sediment removal from storm drains was not maintenance under Section 1771.); *Traffic Signal Maintenance, Sonoma County*, PW 96-004 (CDIR, Aug. 30, 2002) (City's monthly inspection, maintenance and repair of traffic signals is public work.).
72. Lab. Code, §1720, subd. (b); *Decision on Administrative Appeal, Capitol Park Homes, City of Sacramento Redevelopment Agency*, PW 2001-043 (CDIR, Jan. 15, 2003) (Contracts between private parties fall within prevailing wage law when public funds are used for construction.); *Improvements to Real Property, Lucia Mar Unified School District*, PW 2002-059 (CDIR, Jan. 6, 2003) (District's increase in real property purchase price to cover costs of developer's improvements required by City constitute work paid with public funds.).
73. Lab. Code, §1720, subd. (b)(1); *The Commons at Elk Grove, City of Elk Grove*, PW 2008-037 (CDIR, Jan. 2, 2009) (City's grant of sewer credits is payment out of public funds.); *Colony Square, City of Atascadero*, PW 2009-001 (CDIR, May 13, 2009) (Agency's loan guaranty not payment of money or its equivalent.); *Construction of Animal Community Center, Humane Society Silicon Valley*, PW 2008-025 (Aug. 5, 2009) (Tax exempt bond financing not payment of public money or its equivalent.); *Horizons at Indio Apartment, City of Indio*, PW 2006-001 (CDIR, Mar. 12, 2007) (Tax exempt bond financing is not payment of public money or its equivalent.); *Central Village Apartments, City of Los Angeles*, PW 2006-005 (July 12, 2006) (Tax exempt bond financing not payment of public money or its equivalent); *Tracy Place Senior Apartments, City of Tracy*, PW 2006-06 (CDIR, July 11, 2006) (Tax exempt bond financing not payment of public money or its equivalent); *Casa Loma Family Apartments/CL Investors, a California Limited Partnership*, PW 2004-030 (CDIR, Feb. 25, 2005); *Rancho Fe Village Senior Affordable Housing Project*, PW 2004-016 (CDIR, Feb. 25, 2005); *Silverado Creek Family Apartments, Sacramento, California*, PW 2004-049 (May 27, 2005) (Tax exempt bond financing not money collected for, or in the coffers of, a public entity, and thus not payment of money or its equivalent by public entity.); *Advisory Opinion Re: Proposed*

Hotel Developments, PW 2002-040 (CDIR, Jan. 16, 2003) (transient occupancy tax rebates used to construct hotel development triggering duty to pay prevailing wages); *Legacy Partners Project, City of Concord Redevelopment Agency*, PW 2002-047 (CDIR, Apr. 7, 2003), affirmed on Administrative Appeal, (Oct. 29, 2003) (Agency payment of site assembly and relocation costs as part of pre-construction phase of construction, as well as public grant of deferred participation payments, and developer tax rebates, constitute payment of public funds for construction regardless of fact that Agency was not a party to the construction contract.); *Tamale Factory Relocation, City of Riverside Redevelopment Agency*, PW 2003-027 (CDIR, Oct. 22, 2003) (Construction of a specifically described building on a specific site as a condition for payment of relocation monies constitutes payment of public funds for construction.); *Energy Efficiency and Generation Work, San Diego Police Headquarters*, PW 2003-029 (CDIR, Jan. 28, 2005) (City's assignment of energy efficiency incentive payments to developer is payment in part out of public funds.); *Rosedale Project, City of Azusa*, PW 2005-038 (CDIR, Oct. 25, 2007) (Mixed use development financed in part by CDF bond funds under Mello Roos Act is payment in part out of public funds.); *International Brotherhood of Electrical Workers v. Board of Harbor Commissioners*, 68 Cal. App. 3d 556, 137 Cal. Rptr. 372, 23 Wage & Hour Cas. (BNA) 568, 82 Lab. Cas. (CCH) P 55083 (2d Dist. 1977). Note that this case was decided under an earlier version of the statutory which did not include the "paid in whole or in part out of public funds" criteria for defining a public work; *Lake Piru Recreation Area Concessionaire Improvements, United Water Conservation District*, PW 2004-034 (CDIR, Mar. 15, 2005) (Concession agreement involving lease of land to developer who was required to pay fair market rent and bear all construction cost and risk is not public work.).

74. Lab. Code, §1720, subd. (b)(2); 69 Ops. Cal. Atty. Gen. 300 (1986) (Construction of a library and fire station by a private developer qualified as a public works where ownership of the property was to be transferred to county at completion, as a condition precedent to the county's amendment of the general plan and approval of subdivision maps, and where county maintained control over the design and construction.); Decision on Administrative Appeal, *Doubletree Hotel Development Project, City of Anaheim*, PW 2002-090 (CDIR, Aug. 19, 2003) (Public easement over project will not constitute ownership interest retained by City.).
75. Lab. Code, §1720, subd. (b)(3); *State Building And Construction Trades Council Of California v. Duncan, supra*, 162 Cal. App. 4th 289 (2008) (Tax credits pursuant to Federal and California low-income housing tax program do not constitute public works paid for in whole or in part out of public funds. Such payments are not the equivalent of money or a transfer of an asset for less than fair market price by the state.); *Santa Ana Transit Village, City of Santa Ana*, PW 2004-035 (CDIR, Dec. 5, 2005), affirmed by Decision On Administrative Appeal (June 25, 2007) (Transfer of parcels at "fair use value" determined through a residual land value calculation constitutes transfer of an asset at less than fair market price; fair market value, not fair use value, establishes fair market price.); *Bakersfield Affordable Senior Apartment Complex*, PW 2004-008 (CDIR, Oct. 12, 2004) (Project determined to be a public work, paid in whole with public funds, where City used HOME funds for demolition and construction of senior apartment complex, and transferred property to developer for no cost.); *Sierra Business Park, City of Fontana*, PW 2003-040 (CDIR, Jan. 23, 2004) (prevailing wages not required where property transferred by agency to private developer for fair market value); determination in PW 2003-006, *Union Square Condominium Project—San Diego*, (CDIR, Oct. 22, 2003) (city's vacation of easement was not a transfer of asset at less than fair market value, but simply returned to owner the use of portion of its own property.).
76. Lab. Code, §1720, subd. (b)(4); *The Commons at Elk Grove, City of Elk Grove*, PW 2008-037 (CDIR, Jan. 2, 2009) (City's grant of sewer credits results in a fee being reduced by a political subdivision within meaning of §1720, subd. (b)(4).); *Hilton San Diego Convention Center Hotel*, Decision on Appeal, PW 2006-021 (CDIR, June 20, 2008) (\$46.5 million in rent credits and forbearance given to project developer by Port of San Diego

Unified Port District constitutes payment out of public funds); Decision On Administrative Appeal, *Heber Family Apartments, County of Imperial*, PW 2006-020 (CDIR, Apr. 5, 2007) (Home loan made by political subdivision of the state to developer at below market value but exempt where occupancy restrictions satisfied §1720, subd. (c)(6)(E).); *Crossings at Madera Apartments, City of Madera*, PW 2006-018 (CDIR, Sept. 14, 2007); *Sierra Garden Apartments, City of South Lake Tahoe*, PW 2006-015 (CDIR, Sept. 1, 2006) (City's loan was below market rate but exempt under Section 1720(c)(6)(E).); *East Campus Student Apartments, University of California, Irvine*, PW 2003-042 (CDIR, July 28, 2006) (Rent charged to developer by U.C. under ground lease not payment of public funds where rent was not less than fair market value.); *Central Village Apartments, City of Los Angeles*, PW 2006-005 (CDIR, July 12, 2006); *Lake Piru Recreation Area Concessionaire Improvements, United Water Conservation District*, PW 2004-034 (Mar. 15, 2005) (Concession agreement involving lease of land to developer who was required to pay fair market rent and bear all construction cost and risk is not public work.); *Tracy Place Senior Apartments, City of Tracy*, PW 2006-06 (CDIR, July 11, 2006); *Casa Loma Family Apartments/CL Investors, a California Limited Partnership*, PW 2004-030 (Feb. 25, 2005); *Rancho Fe Village Senior Affordable Housing Project*, PW 2004-016 (CDIR, Feb. 25, 2005); *Silverado Creek Family Apartments, Sacramento, California*, PW 2004-049 (May 27, 2005); *Bakersfield Affordable Senior Apartment Complex*, PW 2004-008 (October 12, 2004) (Project determined to be a public work, paid in whole with public funds, where City used HOME funds for demolition and construction of senior apartment complex, and transferred property to developer for no cost.); *The Abella Project, Redevelopment Agency of the City of San Pablo*, PW 2002-015 (CDIR, Jan. 23, 2003) (Agency provision of bona fide loan at market interest rate not a public work); *Doubletree Hotel Development Project, City of Anaheim*, PW 2002-090 (CDIR, May 13, 2003) (market rate interest loans to private entities by City are not public funds; developers grant to city of a pedestrian and vehicular easement did not convert project to public work); *Mare Island Technology Academy/Charter School*, PW 2002-084 (CDIR, Mar. 22, 2004) (City's and district's permit and developer fee waivers constitutes payment of public funds.); Decision on Administrative Appeal, PW 2002-038, *Kohl's Warehouse and Distribution Center, City of San Francisco*, (CDIR, Oct 21, 2003) (Funding mechanism embodied in tax reimbursement arrangements, including vehicle trip credits, and sewer capacity fee credits, satisfies the public funding element of public works); *Festival of Arts Workshop Project, City of Laguna Beach*, PW 2003-036 (CDIR, Oct. 7, 2003) (Rental payments do not lose their character as public funds merely because they are deposited into a trust fund dedicated to pay for works of improvements on publicly owed property.); Decision on Administrative Appeal, *Doubletree Hotel Development Project, City of Anaheim*, PW 2002-090 (CDIR, Aug. 19, 2003) (City's right to grant or withhold approval of aspects of project not sufficient exercise of control of project to convert City's market rate loan to develop into "public funds.").

77. Lab. Code, §1720, subd. (b)(5).

78. Lab. Code, §1720, subd. (b)(6); *Decision on Administrative Appeal, Capitol Park Homes, City of Sacramento Redevelopment Agency*, PW 2001-043 (CDIR, Jan. 15, 2003) (Agency's forgiveness of loan is payment for public works even though Agency intends to later recoup those funds through later sales of condominium units.).

79. *Legacy Partners Project, City of Concord Redevelopment Agency*, PW 2002-047 (CDIR, Apr. 7, 2003), affirmed on Administrative Appeal (CDIR, Oct. 29, 2003) (Agency payment of site assembly and relocation costs as part of pre-construction phase of construction, as well as public grant of deferred participation payments, and developer tax rebates, constitute payment of public funds for construction regardless of fact that Agency was not a party to the construction contract.); *Tamale Factory Relocation, City of Riverside Redevelopment Agency*, PW 2003-027 (CDIR, Oct. 22, 2003) (Construction of a specifically described building on a specific site as a condition for payment of relocation monies constitutes payment of public funds for construction.); *Union Square Condominium Project—San Diego*, PW 2003-006 (CDIR, Oct. 22, 2003) (city approval of additional housing units and vacating of easement not payment of public funds; vacation

- of easement was not a transfer of asset at less than fair market value, but simply returned to owner the use of portion of its own property).
80. *Howe Creek Ranch habitat Restoration project, California Department of Fish and Game*, PW 2004-050 (CDIR, Oct. 19, 2005).
 81. *Emergency Repair Work to Barnes and Noble Bookstore, City of Redding*, PW 2005-021 (Jan. 10, 2006); *Howe Creek Ranch habitat Restoration project, California Department of Fish and Game*, PW 2004-050 (CDIR, Oct. 19, 2005).
 82. Lab. Code, §§1771, 1771.5; Cal. Code Reg., tit. 8, §16100(b)(6); *Lusardi Construction Co. v. Aubry, supra*, 1 Cal. 4th 976, 987-88 (1992) (court cannot allow parties to divide up work contractually to evade prevailing wage law); *Pier G, pad 14, City of Long Beach*, Decision on Appeal, PW 2006-003 (CDIR, July 3, 2008); *Replacement of Concrete Sidewalks, Curbs and Gutters, County of Sacramento (RFP 5695)*, PW 2002-069 (CDIR, Apr. 16, 2003).
 83. *Movie Theater Construction at Glendale Town Center, Glendale Redevelopment Agency*, PW 2007-010 (CDIR, Jan. 12, 2009) (Movie theater construction part of single, integrated town center development project.); *Pier G, Pad 14, City of Long Beach*, PW 2006-003 (CDIR, Oct. 12, 2007) (Replacement conveyor and enclosure improvement work at City pier deemed a single, integrated public works project paid in part out of public funds.); *Strand Redevelopment Project, Redevelopment Agency of the City of Huntington Beach*, PW 2004-019 (CDIR, June 20, 2005) (Construction of Redevelopment project consisting of public parking garage, private commercial and office space, and hotel was a single integrated project.); *Decision On Administrative Appeal, Baldwin Park Marketplace Project, City of Baldwin Park*, PW 2003-028 (June 28, 2005); *Phase II Residential Development, Victoria Gardens, City of Rancho Cucamonga*, PW 2003-014 (CDIR, June 20, 2005); *Vineyard Creek Hotel and Conference Center*, PW 2000-016 (CDIR, Oct. 16, 2000).
 84. *Simi Valley Town Center—First California Bank, City of Simi Valley*, PW 2004-048 (Oct. 15, 2007) (Bank construction sufficiently attenuated from the parcel development such that it should be viewed as a separate project.); *Golf Course Site, Northwest Golf Course Community, City of Oxnard*, PW 2005-002 (CDIR, Aug. 7, 2006) (Rough grading of golf course site and the remaining residential development re severable projects form the publicly funded off-site improvements.); *Long Beach Queensway Bay Project*, PW 2003-037 (CDIR, Aug. 6, 2004) (Publicly funded parking and infrastructure construction is public work requiring prevailing wages, but privately funded retail contracts were not.); *Chapman Heights, City of Yucaipa*, PW 2003 -022 (CDIR, Jan. 30, 2004) (Where public work of infrastructure development was separate from private residential development, public funding of the former did not require payment of prevailing wages on the later.); *Victoria By The Bay*, PW 2003-003 (CDIR, Jan. 30, 2004) (The relationship between site preparation work (public work) and residential development (private work) not sufficient to transform the residential development into a public work.); *Baldwin Park Marketplace Project, City of Baldwin Park*, PW 2003-028 (CDIR, Oct. 16, 2003) (finding that (1) land assembly, relocation, demolition and rough grading/clearance work, (2) site infrastructure work, and (3) on-site marketplace improvements are all part of a single integrated public works project); *Decision on Administrative Appeal, PW 2002-038, Kohl's Warehouse and Distribution Center, City of San Francisco* (CDIR, Oct 21, 2003) (Demolition work and subsequent grading and building work part of the project such that agency's payment of inspection, testing and oversight services relating to the demolition work constituted payment of public funds for construction relating to work on the entire integrated project.).
 85. Any "Interested Party," including the awarding body of a public works project, and any contractor, subcontractor or laborer who may be employed on the project, may request a determination letter from the Director regarding prevailing wage coverage with regard to any work believed to be subject to or excluded by the prevailing wage law. See Cal. Code Reg., tit. 8, §16001. While a developer or private owner is not identified as an "Interested Party" for purposes of make a determination request, if doubt exists as to the scope of

- coverage, it may be prudent for the developer to request that an interested party seek such a determination if disagreement exists regarding the scope of coverage.
86. Lab. Code, §1720, subd. (c)(1); Cal. Code Reg., tit. 8, §16001(d). Effective January 26, 2009, the Division of Labor Statistics and Research will no longer issue residential wage rates as special determinations. If obtaining residential wage determinations and a project is not immediately advertised for bid, it is important to check with DSLR to verify the residential determination in effect at the time the project is advertised for bid. The residential determination will apply only to the residential portion of the project.
 87. Lab. Code, §1720, subd. (c)(2); *Rosedale Project, City of Azusa*, PW 2005-038 (CDIR, Oct. 25, 2007) (Mixed use development publicly funded by CDF bond funds under Mello Roos Act exempt under §1720, subd. (c)(2).); *Slatten Ranch Project, City of Antioch*, PW 2003-020 (CDIR, Oct. 29, 2003) (prevailing wage requirements not applicable to construction of privately funded retail shopping center, but required for off-site street improvement required by and partially funded by city); *Sierra Business Park, City of Fontana*, PW 2003-040 (CDIR, Jan. 23, 2004) (agency payment of costs of public improvements imposed on developer as condition of approval required payment of prevailing wages only for construction of those improvements); *Destination 0-8 Shopping Center, City of Palmdale*, PW 2003-010 (Oct. 7, 2003); *Pacheco Pass Retail Center, City of Gilroy*, PW 2002-099/100 (CDIR, July 10, 2003) (prevailing wages restricted to construction of public improvements).
 88. *Rosedale Project, City of Azusa*, PW 2005-038 (Cal. Dept. of Indus. Relations, Oct. 25, 2007).
 89. Lab. Code, §1720, subd. (c)(3); *The Commons at Elk Grove, City of Elk Grove*, PW 2008-037 (CDIR, Jan. 2, 2009) (City's grant of sewer credits amounting to only 1.1 percent of overall project cost is *de minimis*.); *Construction of Animal Community Center, Humane Society Silicon Valley*, PW 2008-025 (CDIR, Aug. 5, 2009) (Public subsidy for construction of Animal Community Center of 1.23 percent of total project costs is *de minimis*.); *Sewer Line Construction, City of Corona*, PW 2008-010 (CDIR, Aug. 4, 2008) (reimbursement to developer for cost of sewer line construction beyond what was solely required for developer's project was not payment of public funds, and even if it was, payment of less than 0.4 percent of overall project costs was *de minimis*.); *New Mitsubishi Auto Dealership, Victorville Redevelopment Agency*, PW 2004-024 (CDIR, Mar. 18, 2005) (Public payment of 1.64 percent of project cost proportionately small enough to be *de minimis*.); *Advisory Opinion Re: Proposed Hotel Developments*, PW 2002-040 (CDIR, Jan. 16, 2003) (public funding of 5% of overall project costs not trifling, minimal, or insignificant).
 90. Lab. Code, §1720, subd. (c)(4), *Vista Del Sol Senior Housing Complex, City of Redlands*, PW 2009-010) (CDIR, Nov. 2, 2009) (Prevailing wages required for construction of senior housing for city where funding is not solely from a Low and Moderate Income Housing Fund, or by a combination of such fund and private funds.); Health & Saf. Code, §§33334.2 and 33334.3; *Central Village Apartments, City of Los Angeles*, PW 2006-005 (CDIR, July 12, 2006) (Affordable housing unit paid in part from funds available under Health & Safety Code §33334.2 or 33334.3 exempt under prevailing wage.); *Cottage Homes Project—Bakersfield Redevelopment Agency*, PW 2004-003 (CDIR, Oct. 12, 2004) (Agency purchase of property for development with Low- and Moderate—Income Housing Funds established under requisite section of Health & Safety Code do not constitute a project that is paid in whole or in part out of public funds.).
 91. Lab. Code, §1720, subs. (c)(5), (d)(3) and (e); *State Building And Construction Trades Council Of California v. Duncan, supra*, 162 Cal. App. 4th 289 (2008); *The Village at Hesperia* PW 2004-009 (CDIR, Aug. 16, 2004) (Absent a local or contractual requirement that would vitiate the tax credit exemption in §1720, subd. (d)(3), statutory exemption applicable to tax credits insulates senior low income housing project from requirement to pay prevailing wages.); *Monte Vista Senior Apartments*, PW 2003-032 (CDIR, Nov. 14, 2003) (Affordable rental housing project financed, in part, by tax credits is exempt from prevailing wage requirements.).

92. Lab. Code, §1720, subd. (c)(6); *Rehabilitation of Single-Family Homes, Neighborhood Stabilization Acquisition/Rehabilitation Program, City of Fairfield*, PW 2009-027 (CDIR, Nov. 5, 2009) (Rehabilitation of single-family homes funded non-interest bearing loans to developer from federal Neighborhood Stabilization Program funds awarded through city qualifies for mortgage assistance or down payment assistance and thus is exempt under §1720, subd. (c)(6)(C).); *Geneva Village Apartments, City of Fresno*, PW 2008-012 (CDIR, Aug. 1, 2008) (project in which majority of residential units would be restricted to low-income families was exempt from prevailing wage law despite public entity's grant of below-market interest rate loans); *Horizons at Indio Apartment, City of Indio*, PW 2006-001 (CDIR, Mar. 12, 2007) (Below market loans exempt where project meets occupancy restrictions.); *Farm Worker Housing Association, City of Orange Grove*, PW2003-017 (June 30, 2003); *Crossings at Madera Apartments, City of Madera*, PW 2006-018 (CDIR, Sept. 14, 2007) (Public funding through below market interest rate loans fall within safe harbor of §1720, subd. (c)(6)(E).); *Sierra Garden Apartments, City of South Lake Tahoe*, PW 2006-015 (CDIR, Sept. 1, 2006) (City's loan was below market rate but exempt under §1720, subd. (c)(6)(E).); Decision On Administrative Appeal, *Heber Family Apartments, County of Imperial*, PW 2006-020 (CDIR, Apr. 5, 2007) (HOME Loan made by political subdivision of the state to developer at below market value but exempt where occupancy restrictions satisfied Section 1720, subd. (c)(6)(E).); *Tracy Place Senior Apartments, City of Tracy*, PW 2006-06 (CDIR, July 11, 2006); *Casa Loma Family Apartments/CL Investors, a California Limited Partnership*, PW 2004-030 (CDIR, Feb. 25, 2005); *Rancho Fe Village Senior Affordable Housing Project*, PW 2004-016 (CDIR, Feb. 25, 2005); *Silverado Creek Family Apartments, Sacramento, California*, PW 2004-049 (CDIR, May 27, 2005).
93. Lab. Code, §1720.4.
94. Lab. Code, §1720, subs. (c)(5), (d)(3) and (e); *State Building And Construction Trades Council Of California v. Duncan, supra*, 162 Cal. App. 4th 289 (2008); *The Village at Hesperia* PW 2004-009 (CDIR, Aug. 16, 2004) (Absent a local or contractual requirement that would vitiate the tax credit exemption in §1720(d)(3), statutory exemption applicable to tax credits insulates senior low income housing project from requirement to pay prevailing wages.); *Monte Vista Senior Apartments*, PW 2003-032 (CDIR, Nov. 14, 2003) (Affordable rental housing project financed, in part, by tax credits is exempt from prevailing wage requirements.).
95. *International Brotherhood of Electrical Workers v. Board of Harbor Commissioners*, 68 Cal. App. 3d 556, 137 Cal. Rptr. 372, 23 Wage & Hour Cas. (BNA) 568, 82 Lab. Cas. (CCH) P 55083 (2d Dist. 1977). Note that this case was decided under an earlier version of the statutory which did not include the "paid in whole or in part out of public funds" criteria for defining a public work; *Lake Piru Recreation Area Concessionaire Improvements, United Water Conservation District*, PW 2004-034 (CDIR, Mar. 15, 2005) (Concession agreement involving lease of land to developer who was required to pay fair market rent and bear all construction cost and risk is not public work.).
96. *Greystone Homes, Inc. v. Cake, supra*, 135 Cal. App. 4th 1 (2005); In another case decided under an earlier version of Lab. Code, §1720, *City of Long Beach v. Department of Industrial Relations*, 34 Cal. 4th 942, 22 Cal. Rptr. 3d 518, 102 P3d 904, 10 Wage & Hour Cas. 2d (BNA) 405 (2004), the court determined that "construction" within the meaning of the statute meant the actual physical act of building a structure and did not encompass "pre-building" phases of a project. Accordingly, the use of grant money from the City for project development and pre-construction expenses such as legal fees, insurance premiums, architectural design costs, project management and surveying fees did not qualify as payments for actual construction and the project was found not to be a public work within the meaning of the prevailing wage law. Under the current version of Lab. Code, Section 1720, the definition of "construction" has been expanded to include pre-construction payments of the nature addressed in *City of Long Beach*.
97. Cal. Code Reg., tit. 8, §16001(d). Effective January 26, 2009, the Division of Labor Statistics and Research will no longer issue residential wage rates as special determinations. If obtaining residential wage determinations and a project is not immediately advertised

for bid, it is important to check with DSLR to verify the residential determination in effect at the time the project is advertised for bid. The residential determination will apply only to the residential portion of the project.

98. Cal. Code Reg., tit. 8, §16001(c).
99. Lab. Code, §1771; *Construction Industry Force Account Council v. Amador Water Agency*, 71 Cal. App. 4th 810, 815, 84 Cal. Rptr. 2d 139 (3d Dist. 1999); *Beckwith v. Stanislaus County*, 175 Cal. App. 2d 40, 49, 345 P.2d 363 (3d Dist. 1959) (The prevailing wage statutes have no application to work undertaken by force account or day labor.); *Production of Recycled Asphalt Concrete from Reclaimed Asphalt Pavement and Related Off-hauling and On-hauling, Street Resurfacing and Reconstruction Program, City of Los Angeles*, PW 2002-010 (CDIR, Aug. 8, 2007) (City is not required to pay its own workers prevailing wages.).
100. *Id.*; Cal. Code Reg., tit. 2, §988; 70 Ops. Cal. Atty. Gen. 92, 97 (1987), but see 7 Ops. Cal. Atty. Gen. 92 (1987) (Prevailing wage law engineering firm employees under contract with city to perform the duties of a city engineer, except where such duties do not qualify as a public work).
101. Cal. Code Reg., tit. 8, §§16000, 16001(a), and 16001(b); *Southern California Labor Management Operating Engineers Contract Compliance Committee v. Aubry*, *supra*, 54 Cal. App. 4th 873 (Dam project controlled and carried out by a federal agency not subject to California's prevailing wage law); *Lili Valley Water System Improvement Project, City of West Point*, PW 2008-030 (CDIR, Nov. 3, 2008) (project funded by federal grant and controlled by federal government is not subject to state prevailing wage law); Decision On Administrative Appeal, *Casmalia Resources Hazardous Waste Management Facility*, PW 2001-046 (CDIR, Mar. 30, 2005) (California prevailing wage law not applicable where federal government maintains complete and exclusive control over CERCLA remediation project.).
102. Cal. Code Reg., tit. 8, §16001(b); *Mare Island Environmental Remediation Project, Western Early Transfer Parcel, City of Vallejo*, PW 2003-054 (CDIR, July 1, 2004) (Federally funded environmental remediation project controlled by state is subject to California prevailing wage requirements.).
103. Cal. Const., art. XI, §5.
104. *Vial v. City of San Diego*, 122 Cal. App. 3d 346, 348, 175 Cal. Rptr. 647, 25 Wage & Hour Cas. (BNA) 786 (4th Dist. 1981) ("The prevailing wage law, a general law, does not apply to the public works projects of a chartered city, as long as the projects in question are within the realm of 'municipal affairs.'"); see *City of Redondo Beach v. Taxpayers, Property Owners, Citizens and Electors of City of Redondo Beach*, 54 Cal. 2d 126, 137, 5 Cal. Rptr. 10, 352 P.2d 170 (1960) (charter city "has plenary powers with respect to municipal affairs not expressly forbidden to it by the state Constitution or the terms of the charter.").
105. *City of Santa Clara v. Von Raesfeld*, 3 Cal. 3d 239, 246-47, 90 Cal. Rptr. 8, 474 P.2d 976 (1970) (general improvements to a regional wastewater treatment facility that transcends municipal boundaries and are funded by several constituent entities are matters of statewide concern); *Southern California Roads Co. v. McGuire*, 2 Cal. 2d 115, 39 P.2d 412 (1934); *Young v. Superior Court of Kern County*, 216 Cal. 512, 516-517, 15 P.2d 163 (1932); *Pacific Tel. & Tel. Co. v. City & Cty. of San Francisco*, 51 Cal. 2d 766, 771-774, 336 P.2d 514 (1959); *City of Palo Alto, Regional Water Quality Control Plant*, PW 2007-016 and 2007-017 (CDIR, June 19, 2008) (holding improvements to regional wastewater treatment facility that is part of a joint sewer system is not a municipal affair); *Kirby Building Tenant Improvements*, PW 2008-006 (CDIR, May 6, 2008) (library administrative headquarters built with bonds from charter city was not municipal affair, and thus was subject to prevailing wage law, because headquarters was funded and used by joint powers authority made up of county and other non-charter cities); *New Public Library, City of Lindsay*, PW 2006-016 (CDIR, Dec. 14, 2006) (Charter city exempt from prevailing wage requirements on construction of public library); *Sewer*

- And Storm Lift Station Upgrade Project, City of Visalia/Gosben Community Services District*, PW 2005-012 (CDIR, Aug. 8, 2006), affirmed by Decision On Administrative Appeal (CDIR, Oct. 5, 2007) (Upgrades to sanitary sewer and storm water lift stations not a purely municipal affair where funding had extra-municipal source and where work had extra-territorial effects.); *Energy Efficiency and Generation Work, San Diego Police Headquarters*, PW 2003-029 (Jan. 28, 2005) (Chartered City's electrical upgrades to police headquarters is purely a municipal affair exempt from general prevailing wage law); *Storm Drain Pump Station High Water Cutoffs, City of Merced*, PW 2007-001 (CDIR, Oct. 12, 2007) (Installation of storm drain pump cutoff mechanisms is municipal affair.); *Zoo Improvements, City of Merced*, PW 2007-018 (CDIR, Dec. 17, 2007) (Chartered City's construction of multi-purpose facility at local zoo a municipal affair.); *Mare Island Environmental Remediation Project, Western Early Transfer Parcel, City of Vallejo*, PW 2003-054 (CDIR, July 1, 2004) (Environmental remediation project impacting water quality of water beyond city boundaries is a matter of statewide concern.).
106. Cal. Const., art. IX, §9 and art. XI, §1; *Curcini v. County of Alameda*, 164 Cal. App. 4th 629, 641-644, 79 Cal. Rptr. 3d 383 (1st Dist. 2008) (Lab. Code provisions regarding wage and hour requirements concern compensation not working conditions.); *County of Riverside v. Superior Court*, 30 Cal. 4th 278, 285-288, 132 Cal. Rptr. 2d 713, 66 P3d 718, 172 L.R.R.M. (BNA) 2545, 148 Lab. Cas. (CCH) P 59724 (2003) (County, not the state, shall provide for compensation of its employees.); *San Francisco Labor Council v. Regents of University of California*, 26 Cal. 3d 785, 789-791, 163 Cal. Rptr. 460, 608 P2d 277, 25 Wage & Hour Cas. (BNA) 126 (1980) (statute requiring University to pay employees prevailing wages violated powers reserved to Regents under art. IX, §9); *Sonoma County Organization of Public Employees v. County of Sonoma*, 23 Cal. 3d 296, 316-317, 152 Cal. Rptr. 903, 591 P.2d 1, 100 L.R.R.M. (BNA) 3044 (1979) (Charter counties have the right to determine the compensation of their employees.); *Kim v. Regents of University of California*, 80 Cal. App. 4th 160, 166-167, 95 Cal. Rptr. 2d 10, 143 Ed. Law Rep. 602 (1st Dist. 2000), and *Regents of University of California v. Aubry*, 42 Cal. App. 4th 579, 588-589, 49 Cal. Rptr. 2d 703, 106 Ed. Law Rep. 796, 3 Wage & Hour Cas. 2d (BNA) 175 (2d Dist. 1996) (University of California exempt under Cal. Const., art. IX, §9 from prevailing wage law where University's housing projects where part of the University's core educational function and not a matter of statewide concern.). *Vial v. City of San Diego*, 122 Cal. App. 3d 346, 175 Cal. Rptr. 647, 25 Wage & Hour Cas. (BNA) 786 (4th Dist. 1981) (Upholding chartered city's rescission of prevailing wage requirements for public works contracts on projects falling within the sphere of municipal affairs, while applying general prevailing wage law to state or federally funded projects or projects of statewide concern.); Decision on Administrative Appeal, PW 2002-021, *City Place Project, City of Long Beach*, (CDIR, Nov. 14, 2003) (charter city exemption from general state law not applicable where redevelopment agency is separate and apart from city and is not covered by City exemption, and where agency function is to carry out statewide policy to eliminate blight by economic development controlled at a local level); *San Diego Ballpark Project/Tailgate Park*, PW 2003-007 (Nov. 14, 2003) (ballpark project not purely municipal affair where funding provided by redevelopment agency of San Diego and Port of San Diego and where purpose was to attract out of town visitors to city); *Installation of Underground Substructures, City of Alameda*, PW 2003-041 (CDIR, May 24, 2004) (undergrounding of city utilities is a municipal affair such that city charter exempts it from prevailing wage obligations).
107. See Lab. Code, §1771.55 (Stats. 2009-2010, 2d Ex Sess ch 7, §7 (SB 9)), effective May 21, 2009.
108. *State Bldg. and Const. Trades Council of California, AFL-CIO v. City of Vista*, 93 Cal. Rptr. 3d 95, 14 Wage & Hour Cas. 2d (BNA) 1453 (Cal. App. 4th Dist. 2009), review granted and opinion superseded, 99 Cal. Rptr. 3d 559, 215 P3d 1061 (Cal. 2009), Review Granted August 19, 2009.

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