

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2182 (Haney)
Version: June 13, 2024
Hearing Date: June 25, 2024
Fiscal: Yes
Urgency: No
ID

SUBJECT

Public works

DIGEST

This bill requires that a joint labor-management committee be granted reasonable access, as defined, to a public works worksite to monitor compliance with prevailing wages law, revises provisions for the appeal of the Labor Commissioner’s civil wage and penalty assessments, provides that an employer has the burden of demonstrating that credit for employer payments is calculated correctly, requires an employer to provide payroll records to the Labor Commissioner upon request, and requires the Director of the Department of Industrial Relations to update the prevailing wage semi-annually, to take effect on current public works projects.

EXECUTIVE SUMMARY

When a state or local agency completes any construction or similar work through the use of public funds, it is considered a “public works” project. Under state law, when a public agency contracts for a public works project, all workers employed by a contractor or subcontractor on the public works project must be paid a prevailing wage for the locality. The Labor Commissioner (Commissioner) may investigate a claim that a contractor or subcontractor failed to pay an employee the prevailing wage, and if the Commissioner determines there was a violation, the Commissioner must issue an assessment for the wages and penalties within a specified period of time. However, the prevailing wage for a particular project does not change once set in the notice of bidding, and the Labor Commissioner’s and a Joint Labor-Management Committee’s ability to enforce the prevailing wage law is limited in a variety of ways. AB 2182 proposes to address what the author and sponsors assert are inadequacies through a variety of changes to the public works laws, as described below. AB 2182 is sponsored by the State Building and Construction Trades Council of California and is supported by various trade and worker associations and unions, and is opposed by the Associated

General Contractors, and a variety of other associations. The bill passed out of the Senate Public Employment and Retirement Committee by a vote of 4 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Labor Commissioner (Commissioner) within the Department of Industrial Relations (DIR), to enforce, among other things, wage and hour law, anti-retaliation provisions, and employer notice requirements. (Labor Code § 79 et seq.)
- 2) Defines a “public work” as construction, alteration, demolition, installation, or repair work done under contract and paid in part or in whole out of public funds, except for work done directly by a public utility company pursuant to Public Utilities Commission or other public authority. Includes work done for irrigation, utility, reclamation, improvement districts and other similar districts, street, sewer, or other improvement work, laying of carpet in specified circumstances, tree removal work, and public transportation demonstration projects. (Labor Code § 1720.)
- 3) Requires that, when a public agency contracts for a public works project, except for public works projects of \$1,000 or less, all workers on the public works project must be paid at least a prevailing rate of per diem wages for work of a similar character in the locality in which the public project is performed, including the prevailing rate for any holiday or overtime work. (Labor Code § 1771.)
- 4) Requires the Director of DIR (Director) to determine the general prevailing rate of per diem wages, as specified, and specifies that the Director’s determination shall be final, except as specified. (Labor Code § 1770.)
- 5) Requires an awarding agency of a public works project to “take cognizance” of violations of the prevailing wage laws, and permits the awarding agency to withhold contract payments for such violations. (Labor Code § 1726.)
- 6) Specifies that, before an awarding agency makes payments to a contractor of the money due under a public works contract, the agency withhold and retain all amounts required to satisfy any civil wage and penalty assessment issued by the Commissioner for a prevailing wage violation. (Labor Code § 1727.)
- 7) Requires the Commissioner to, with reasonable promptness, issue a civil wage and penalty assessment to the contractor or subcontractor, or both, if the Commissioner or their designee determines after an investigation that there has been a violation public works laws. Specifies that interest shall accrue for any due and unpaid wages from the time the wages were due and payable. (Labor Code § 1741 (a).)

- 8) States that the Commissioner's assessment must be served not later than 18 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 18 months after the acceptance of the public work, whichever occurs last. Specifies that the Commissioner must, to the extent practicable, ascertain the identity of any bonding company that issued a bond to secure the payment of wages covered by the assessment and any surety on a bond, and that the Commissioner shall serve a copy of the assessment on the bonding company or surety at the same time that notice is made on the contractor or subcontractor. (Labor Code § 1741 (a).)
- 9) Requires the period of service of assessments to be tolled for the period of time required by the Director to determine whether a project is a public work, as specified. Requires the body awarding the contract for a public work to furnish, within 10 days after receipt of a written request from the Commissioner, a copy of the valid notice of completion for the public work, as described. (Labor Code §§ 1741.1 (a) and (b)(1).)
- 10) An affected contractor or subcontractor may request a review of a civil wage and penalty assessment and withholding to the Commissioner, if requested within 60 days after they are served with the notice of the assessment. Upon the contractor's request, a hearing before an impartial hearing officer within 90 days shall occur, at which the contractor will have the burden of proving that the basis for the civil wage and penalty assessment was incorrect. Within 45 days of the conclusion of the hearing, the Director must issue a written decision regarding the assessment. An affected contractor or subcontractor may obtain review of this decision by filing a petition for a writ of mandate to the appropriate superior court. (Labor Code § 1742.)
- 11) Provides that a joint labor-management committee, as established under federal law, may bring an action against an employer for a failure to pay a prevailing wage to its employees within 18 months after the filing of a valid notice of completion, or within 18 months after the acceptance of the public work, whichever occurs last. A court must award restitution to an employee for unpaid wages, plus interest, and liquidated damages equal to the amount of unpaid wages owed, and may impose civil penalties, injunctive relief, or any other appropriate form of equitable relief. (Labor Code § 1771.2.)
- 12) Provides that employer payments, as defined, are a credit against the obligation to pay the general prevailing rate of per diem wages. Specifies that employer payments include the rate of contribution irrevocably made pursuant to a plan, fund, or program, the rate of actual costs to the employer reasonably anticipated in providing benefits to workers, and payments to the California Apprenticeship Council. (Labor Code §1773.1(c).)

- 13) Requires the credit for employer payments to be computed on an annualized basis when the employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer, unless certain circumstances exist. (Labor Code §1773.1(e).)
- 14) Provides that if during any quarterly period the director shall determine that there has been a change in any prevailing rate of per diem wages in any locality, they shall make such change available to the awarding body and their determination shall be final. Such determination by the Director shall not be effective as to any contract for which the notice to bidders has been published. (Labor Code §1773.6.)
- 15) Requires each contractor and subcontractor to keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the contractor or subcontractor in connection with the public work. (Labor Code §1776(a).)
- 16) Requires the payroll records to be certified and to be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:
 - a) a certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request;
 - b) a certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and the Division of Labor Standards Enforcement; and
 - c) a certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. (Labor Code §1776(a).)

This bill:

- 1) Provides that, if a contractor or subcontractor requests a review of the Commissioner's civil wage and penalty assessment and fails to appear for a prehearing conference or hearing after receiving notice, as specified, the Director may dismiss the request for review and issue a decision affirming the assessment. Specifies that, within 15 days of the issuance of the decision, a Director may reconsider the dismissal upon a showing of good cause for the failure to appear.
- 2) Specifies that, as a condition to file a petition for a writ of mandate with the appropriate superior court, the petitioner seeking the writ must first post a bond with the Commissioner equal to the amount found to be due as determined pursuant to the decision. Specifies that the bond shall be issued by a surety duly authorized to do business in the state and shall be issued in favor of the Commissioner.

- 3) Specifies that, beginning July 1, 2025, representatives of a joint labor-management committee established pursuant to federal law must be permitted reasonable access to active public works job sites to monitor compliance with the prevailing wage and apprenticeship requirements.
 - a) Defines “reasonable access” to mean access that is consistent with job site safety and security requirements, including the use of personal protective equipment, and that does not disrupt performance of work, and to include access to workers during non-work time.
 - b) Specifies that an awarding body, contractor, or subcontractor must not be liable for any violations of safety standards caused by a representative of a joint labor-management committee.
 - c) Specifies that, if a representative of a joint labor-management committee is injured on a jobsite while monitoring compliance, the committee’s workers’ compensation or liability insurance policy, or both, shall be the exclusive remedy of the representative, and the awarding body, contractor, or subcontractor are not liable.

- 4) Provides that a joint labor-management committee may bring an action in a court of competent jurisdiction against the awarding agency, contractor, or subcontractor that willfully denies the committee’s representative reasonable access to the public works job site. Specifies that this suit must be brought within six months of the denial of access, and that a court shall award a prevailing committee a civil penalty of \$1,000 for each occasion in which reasonable access was denied, as well as reasonable attorney’s fees and costs, including expert witness fees.

- 5) Specifies that annualized computations of credit for employer payments applies to all employer payments, except for contributions to defined contribution pension plans that provide for both immediate participation and immediate vesting. Specifies that an employer may take full credit for the hourly amounts contributed to such plans for public works projects even if the employer contributes at a lower rate or does not make contributions for private construction.
 - a) Specifies that an employer has the burden of demonstrating that the credit for employer payments was properly calculated, and that the employer shall, upon request of the Commissioner, produce records of employee hours and employer payments on private construction projects sufficient for the Commissioner to verify that the credit was properly calculated on an annualized basis. Provides that the Commissioner may deny the employer credit if such records are not produced.
 - b) Specifies that any exemptions to the annualization requirements issued by the director prior to January 1, 2025 are revoked.

- 6) Specifies that any prevailing wage fringe benefit credit issues not addressed by California law or regulations shall be governed by the version of the United States Department of Labor Field Operations Handbook in effect on January 1, 2023.

- 7) Provides that, if during any semi-annual period the Director determines that there has been a change in any prevailing rate of per diem wages in any locality, the Director must make the change available to the awarding agency, and that the Director's determination is final, except as specified. Specifies that the Director's determination of a change in the prevailing wage shall apply on its effective date to any contract that is awarded or for which notice to bidders is published after July 1, 2025.
- a) Provides that any contractor, awarding agency, or representative of any craft, classification, or type of work affected by a change of the prevailing wage rates on a particular contract may file, within 20 days after publication of the change of rate, with the Director a verified petition to review for not being determined in accordance with Labor Code Section 1773. Specifies that such a petition must be filed with the awarding agency within two days of being filed, and must set forth the facts upon which it is based.
 - b) Specifies that the Director or their representative must initiate an investigation or hold a hearing, upon notice to the petitioner, awarding agency, or other persons. Specifies that the Director shall make a determination and transmit the determination in writing to the awarding agency and to the interested parties within 20 days after the filing of the petition. Specifies that this determination is final.
 - c) Specifies that a determination issued by the Director is effective 10 days after issuance, and shall remain in effect until it is modified, rescinded, or superseded by the Director.
- 8) Specifies that, upon request of the Commissioner, a contractor or subcontractor must make available for the inspection by the Commissioner any payroll records, or portions of such records, requested by the Commissioner to verify the accuracy or completeness of certified payroll records required to be produced pursuant to Labor Code Section 1776. Specifies that the contractor or subcontractor has 10 days from receipt of written notice requesting the records to comply, unless additional time is granted by the Commissioner at the request of the contractor or subcontractor, and that the contractor or subcontractor is liable for penalties, as specified, for failing to comply with the order.

COMMENTS

1. Author's statement

According to the author:

Workers deserve to be paid the current prevailing wage – regardless of whether a project was bid on years ago, or days ago. AB 2182 levels the playing field for construction workers by making sure that when they begin a project, they are

earning the current wage – not the wage that was set when the project was announced. AB 2182 also ensures that contractors are complying with all parts of the State’s public works law and will provide transparency on public works projects.

2. California’s protections for workers’ wages and equity in public works projects

Many of California’s labor laws aim to protect the state’s workers and ensure they are paid fairly and adequately for their work. These laws are of significant importance, as they ensure that workers can meet their basic needs and protect their right to just compensation for their labor. However, wage theft, in which an employer does not pay a worker the amount the worker is due, or does not pay the worker for all of their working hours, is the largest form of theft in the nation.¹ Reports state that workers lost at least 338 million dollars to wage theft in 2021, and one of the top industries for wage theft was construction.² The Commissioner, who is charged with investigating complaints of violations of prevailing wage and apprenticeship laws that protect the wages of workers on public works projects, opened 1,964 cases of prevailing wage violation and assessed over \$10.6 million prevailing wages and another \$12.6 million in penalties against employers for violations.³

When a state or local agency completes any construction, demolition, installation, alteration, or repair work, or work on any irrigation, utility, or street, sewer, public transportation, or other infrastructure project through the use of public funds, it is considered a “public works” project. (Labor Code § 1720.) When a California state or local agency initiates a public works project, the agency often lacks the staff and expertise to carry out the project itself. Instead, it turns to contractors to which it awards funds and a contract to complete the project for the agency. Under state law, when a public agency contracts for a public works project, all workers employed on the public works project must be paid a prevailing wage for the locality, as determined by the Director of DIR. (Labor Code § 1771.) Furthermore, in any call for bids for a public works contract, as well as in the final contract for the contracted-for work, the agency must specify the prevailing wage rate for each type of worker needed for the project, or otherwise make the rate available upon request. (Labor Code § 1773.2.) The prevailing wage is based on the standard wages for a particular work or position, and is often based on the rate in local collective bargaining agreements. The function of prevailing wage laws is to ensure that a contractor’s ability to obtain a public works contract is not

¹ Brady Meixell & Ross Eisenbrey, Wage theft is a much bigger problem than other forms of theft – but workers remain mostly unprotected, Economic Policy Institute (Sept. 18, 2014), available at <https://www.epi.org/publication/wage-theft-bigger-problem-forms-theft-workers/>.

² Alejandro Lazo et al, When employers steal wages from workers, CalMatters (Jul. 25, 2022), available at <https://calmatters.org/explainers/when-employers-steal-wages-from-workers/?series=unpaid-wages-california-workers>.

³ Cal. Labor Commissioner’s Office, 2020-2021 *The Bureau of Field Enforcement Fiscal Year Report*, Dept. of Industrial Relations (2021), available at <https://www.dir.ca.gov/dlse/DLSEReports.htm>.

based on paying lower wage rates than competing bidders. Thus, all bidders on a public works project are required to use the same wage rates when bidding for a public works project, and contractors cannot squeeze their employees or rely on non-unionized workers in order to outbid another contractor for the project.

However, for such a public works project, ensuring compliance with the prevailing wages law requires a variety of mechanisms as well as enforcement from the Commissioner. An awarding agency is supposed to “take cognizance” of a violation of the prevailing wage and public works laws and promptly report any suspected violations to the Commissioner. (Labor Code § 1726.) The awarding agency is empowered to withhold contract payments until the violations are resolved when the contractor has not paid a prevailing wage. (Labor Code §§b 1726, 1771.6.) The Commissioner will investigate and determine whether there has been a violation of the prevailing wage laws, whether by notification of a suspected violation from the awarding agency or from a worker. If the Commissioner’s investigation determines there has been a violation, the Commissioner must with reasonable promptness issue an assessment of the wages and civil penalty stating the wages, penalties, and forfeitures due. (Labor Code § 1741.) The law provides the Commissioner 18 months from the completion of the public works project (when a notice of completion for the project is recorded, or upon acceptance by the awarding agency of the public work) to serve the assessment on the project’s contractor or subcontractor. (Labor Code § 1741.) This timeline may additionally be tolled if DIR must investigate whether the project is in fact a public works project. (Labor Code § 1741.1.) If the public awarding agency has not disbursed all of the funds under the public works contract when the Commissioner issues an assessment, the agency must withhold from any disbursements the amounts needed to satisfy the Commissioner’s civil wage and penalty assessment, which the agency can disburse when the Commissioner’s assessment order is final. (Labor Code § 1727.)

A contractor may request review of the withholding and any assessment of penalties within 60 days after receiving the assessment notice, and such review would then be conducted within 90 days at a hearing before an impartial hearing officer. (Labor Code § 1742.) The Director must issue their written decision on the case within 45 days of the hearing, which becomes final if the contractor or subcontractor does not appeal the decision within 45 days to an appropriate court through a writ of mandate. Upon receiving a copy of the final order, the awarding agency that has withheld funds from the contractor must transmit the funds to the Commissioner. A wage and penalty assessment also becomes final if the contractor does not request a hearing on the assessment within 60 days, and the agency in such scenario also transmits any withheld funds to the Commissioner for disbursement to the aggrieved workers.

A joint labor-management committee (JLMC) is an organization jointly organized by management and labor organizations representing employees in the area for the purpose of improving labor-management relationships, job security, organizational effectiveness, and economic opportunity pursuant to Title 29 of the United States Code,

Section 175a. A JLMC also may enforce the prevailing wage requirements for public projects by bringing a civil action against the contractor that failed to pay the required prevailing wage. (Labor Code § 1771.2.) A JLMC also may request certified payroll records. (Labor Code § 1776.)

Contractors and subcontractors on public works projects are also required to pay prevailing rate of per diem wages, which generally are employer payments toward a worker's healthcare, pension, vacation, travel, subsistence, and other payments for training or assistance programs and fees. (Labor Code § 1773.1.) Any employer payments into benefit contribution plans can be credited against this obligation. However, because an employee's work may not be solely on the public works project, the amount of payments toward benefits that can be credited is calculated on an annualized basis.

3. AB 2182 proposes to make various changes to the public works law to ensure workers are paid an up-to-date prevailing wage

a) *AB 2182 provides more clarity for the enforcement of civil wage and penalty assessments*

AB 2182 provides additional guidelines for the Commissioner's civil wage and penalty assessments to ensure that such assessments can be enforced without significant delay. It specifies that, if a contractor or subcontractor requests review of the assessment by the Director, and the contractor or subcontractor does not appear for a prehearing conference or the hearing, the Director may dismiss the request for review. Currently, the statute provides no process for a request to review to be dismissed, or to be dismissed when a contractor or subcontractor fails to appear for proceedings on the request. Thus, AB 2182 creates a mechanism to allow the Director to dismiss a request to review when the contractor or subcontractor does not appear to argue their request. AB 2182 includes protections for if there was a valid reason that the contractor or subcontractor missed the prehearing conference or hearing, as it allows the Director to reconsider the request within 15 days of their dismissal upon a showing of good cause. This process provides a contractor or subcontractor with an opportunity to still make their case if there is a good reason that they missed the prehearing conference or hearing. The author argues that this process is needed because review proceedings of the Commissioner's assessment can take years to conclude, and that contractors and subcontractors failing to appear at a proceeding further delays the review and delays workers receiving their lost wages.

AB 2182 also aims to prevent an appeal of a final order upholding the Commissioner's assessment from further delaying the payment of the unpaid wages to the aggrieved employees. It specifies that, if a contractor or subcontractor files a writ of mandate to appeal to the court a final order on the assessment, they must post a bond with the Commissioner equal to the total amount found to be due. Thus, the aggrieved worker

will be paid their lost wages while the petition challenging the Commissioner's final order is reviewed on appeal.

- b) *AB 2182 amends the annualization process for credit on prevailing rates of per diem wages*

AB 2182 makes two changes to the annualization process for credit for employer payments on benefits. It first specifies that employer contributions to defined contribution pension plans that provide for both immediate participation and immediate vesting are exempted from the annualization process and can instead be claimed in full as credit. Second, it specifies that the employer has the burden of demonstrating that the credit for employer payments was properly calculated. For determining whether the calculations were correct, AB 2182 provides that an employer must produce records of employee hours and employer payments on private construction project upon the request of the Commissioner, and that the Commissioner may deny the employer credit for employer payments if the employer does not produce such records.

- c) *AB 2182 provides JLMCs a right to reasonable access to a public works worksite for the purposes of ensuring compliance with prevailing wage law*

AB 2182 aims to provide JLMCs greater ability to investigate and enforce the prevailing wage law. It does so by requiring that JLMCs are provided reasonable access to active public works worksites in order to monitor compliance with the prevailing wage and apprenticeship requirements. It limits such access by requiring it be consistent with job site safety and security requirements and that it not disrupt the ongoing work. It also specifies that reasonable access includes access to workers during non-work time. If the JLMC is denied reasonable access, the JLMC may bring a civil action against the entity, be it the awarding agency, the contractor, or a subcontractor, that willfully denied the JLMC reasonable access. Such a suit may only be brought within six months of the denial of access, but a prevailing JLMC is entitled to reasonable attorney's fees and a civil penalty of \$1,000 for each occasion access was denied.

The author asserts that this provision is necessary because JLMCs ability to monitor and enforce prevailing wage and apprenticeship law is hampered by not having access to the worksite. Indeed, enforcement requires having the ability to monitor, and while JLMCs may obtain payroll records from contractors and subcontractors, such payroll records may not tell the whole story. Talking with workers to determine how much they are paid and what their hours are would be a valuable tool in enforcing the law. In response to opposition's concerns that requiring access to the worksite would expose the property owner to liability if an accident or injury occurs while the JLMC representative is on the property, the author recently amended the bill in specify that an awarding agency, contractor, or subcontractor may not be liable for any violations of safety standards caused by a JLMC representative. The amendments further specify

that, if a representative of the JLMC is injured on the jobsite while monitoring compliance, the JLMC's workers' compensation or liability insurance policy are the exclusive remedy of the representative.

Opposition also argues that requiring that a property owner provide a JLMC access to the worksite is unconstitutional under recent Supreme Court precedent in *Cedar Point Nursery v. Hassid*. In that case, a nursery asserted that a California regulation that granted union organizers access to the nursery's property for three hours a day for four months a year for organizing activities constituted a taking per se under the Fifth and Fourteenth Amendments. (*Cedar Point Nursery v. Hassid*, (2021) 141 S. Ct. 2063.) The Supreme Court agreed with the nursery on the reasoning that the regulation was not a regulatory taking restraining the grower's use of their property, but rather a per se taking because it amounted to a right to invade and appropriated the grower's right to exclude. (*Id.* at 2072.) However, the provisions of AB 2182 can be distinguished from those at issue in *Cedar Point Nursery*. AB 2182 does not grant a complete right of access, like in *Cedar Point Nursery*, but rather a limited access subject to reasonableness. It also does not mandate access for a certain number of hours or days per year, as did the regulation at issue in *Cedar Point Nursery*. Thus, a property owner under AB 2182 still has a right to exclude based on reasonableness, and the bill does not mandate any specific amount of access other than that to which the JLMC is entitled.

- d) *AB 2182 applies any semiannual change in the prevailing wage to pending public works projects*

AB 2182 seeks to allow adjustments to the prevailing wage so that workers are not stuck with an old prevailing wage years after it was set for the project. It requires that, if the Director determines that there has been a change in the prevailing wage upon a semi-annual review, the Director must make the change available to the awarding agency of any public works project to which it applies. Additionally, this determination of a new prevailing wage applies to any public works contract on a project that was advertised for bidding after July 1, 2025. Thus, AB 2182 permits DIR to adjust the prevailing wage when it completes its semi-annual review of the prevailing wage, and mandates this new prevailing wage on all applicable public works projects. The author asserts that this is necessary because many workers take a wage lower than the current prevailing wage because they must accept the rate set during the bidding process. The prevailing wage in such a case would stay the same throughout the bidding and completion of the public works project, even if the project takes years and the prevailing wage changes. Because the entire purpose of the prevailing wage is meant to ensure that workers on public works projects are not being paid less than local workers, including unionized workers, in the area, this adjustment makes sense.

AB 2182 includes provisions that allow for the Director's new, adjusted prevailing wage determination to be challenged, much like current law allows the Director's prevailing wage to be challenged. Those provisions allow the Director to initiate an investigation

and hold a hearing on the request, and requires the Director to make a final determination within 20 days of the filing of the petition for review, except upon agreement of all parties.

- e) *AB 2182 provides the Commissioner an enforcement mechanism to obtain contractor certified payroll records*

Lastly, AB 2182 provides a mechanism by which the Commissioner can require a contractor provide the certified payroll records that the Commissioner is already empowered to review as part of their power to investigate prevailing wage violations. However, while the Commissioner currently can request and review certified payroll records for this purpose, the Commissioner does not have an enforcement mechanism to require the contractor to provide the records. AB 2182 requires a contractor or subcontractor to make available to the Commissioner any payroll records requested by the Commissioner, and it requires that the contractor or subcontractor provide the records within 10 days of the request. If the contractor or subcontractor fails to comply in the 10-day period, the contractor or subcontractor is liable for penalties. AB 2182 aligns the definition of payroll records with the definition in the regulations on such records at California Code of Regulations Section 16000.

4. Arguments in support

According to the State Building and Construction Trades Council of California, which is the sponsor of AB 2182:

Under existing law, the prevailing wage determination that is in effect when a public works project is advertised for bid governs the project regardless of how long the project lasts. Thus, if work does not start for a long time after the advertisement for bids, or the work goes on for a long time, the required prevailing wage will not keep up with the CBA on which the determination is based. This occurs if there is a single asterisk determination or if the determination has a double asterisk, but the work goes on for longer than the predetermined changes.

This bill would make current prevailing wage determinations applicable to projects, so the required prevailing wage or benefits will keep up with the actual prevailing wage rates. Contractors can estimate materials costs when they bid and they can also estimate future increases in labor costs when they bid. Union-signatory contractors already must do this because they must pay the current CBA rates. Using current prevailing wage rates maintains a level playing field.

This bill would also grant representatives from joint labor-management committee's reasonable access to active public works jobsites to ensure

compliance with prevailing wage and apprenticeship requirements so that workers are treated fairly.

AB 2182 also fixes an issue with annualization. Annualization is a principle adopted by the federal Department of Labor (DOL) in enforcing federal prevailing wage law, the Davis-Bacon Act, for crediting contributions made to fringe benefit plans based on the effective rate of contributions for all hours worked during a year by an employee on both public and private projects. Contractors may meet their prevailing wage obligations by paying workers a combination of cash wages and fringe benefits. Under a state law passed in 2000, contractors must use the annualization rule to calculate the hourly value of their fringes. However, the Department of Industrial Relations (DIR) has yet to issue conforming regulations on annualization. Instead, the DIR has issued public guidelines, private rulings, and enforcement decisions; actions that have sometimes contradicted each other and have at times also conflicted with federal prevailing wage rules. Lacking clarity, enforcement suffers; a particular problem as underpayment schemes via excessive fringe benefit credits have become more widespread. AB 2182 would conform annualization to the US DOL Davis-Bacon regulations for purposes of clarity and to help prevent wage theft.

Under current law, the Labor Commissioner issues a civil wage and penalty assessment (CWAPA) to a contractor that violates the prevailing wage law. Contractors often request administrative review, which just requires a letter and delays enforcement of the assessment, and then the contractor fails to appear at the hearing. This wastes the time of the Labor Commissioner's office, which must prepare for the hearing, and wastes the time of the Director's hearing officers. If the contractor does not appear, the hearing officer conducts the hearing anyway and requires the deputy Labor Commissioner to present evidence. This bill allows the Director to dismiss the request for review and issue a decision affirming the civil wage and penalty assessment if the contractor who has been served with notice, does not show up for the pre-hearing conference or hearing. The Labor Code requires that parties seeking judicial review of Labor Commissioner decisions to post a bond to secure payment of back wages. The same is true for parties seeking writ review of Labor Commissioner decisions after citations by the Bureau of Field Enforcement. However, there is no similar requirement to post a bond after a decision by the director to affirm a CWAPA. This bill requires a contractor who wishes to file a petition for a writ of mandate challenging the director's decision to post a bond.

Finally, this bill would require contractors to produce the backup payroll records requested by the Labor Commissioner and authorize the Labor Commissioner to issue a civil wage and penalty assessment if the contractor fails to do so. Under current law, contractors on public works projects are required by Labor Code 1776 to produce certified payroll records so it is possible to verify that

construction workers are being paid prevailing wages. The issue AB 2182 is fixing is that the definition of “payroll records” is broader than the definition in Labor Code 1776, and some contractors have used this as a reason to refuse to provide the Labor Commissioner with these backup payroll records.

5. Arguments in opposition

According to the Associated General Contractors, which opposes AB 2182:

There are numerous issues with AB 2182. First, changing the prevailing wage rate during a project would increase contractor costs. When a contractor enters into a contract with a public agency, the wage rates are defined as part of that contract and are reflected in a contractor’s bid price. Under AB 2182, it is not clearly identified that the awarding public entity would have to pay for the wage rate changes, making the contractors potentially responsible for paying the prevailing wage rate changes. This could make contractors less inclined to bid on public works projects as there is no certainty of what the future wage rates may be, thereby impacting the contractor’s cost on a project. Further, if the definition of “public works” is expanded while a project is underway, a contractor would not have prepared its bid document with any knowledge of a potential future substantial contract change.

Granting “reasonable access” to job sites by joint labor-management committees raises concerns. While the most recent amendments help alleviate some of the liability concerns of being on a worksite, there are additional concerns about the amount of non-project personnel that may be on-site at any time. Many contractors hold master labor agreements (MLA) with specific unions irrespective of the projects. As such, measures like AB 2182 would look to disturb the existing labor agreements held by those MLA-affiliated contractors by allowing any joint labor management committee access to the worksite. The undercurrent of allowing these committees to access active worksites reflects the current tension of unions fighting to ensure their workers hold jobs on a worksite. This creates possible disruptions at worksites merely because a joint labor-management committee union affiliation may not be the union working on the project. Only joint labor-management committees that have members on a worksite should be granted reasonable access.

Lastly, by requiring a contractor to secure a surety bond if they are filing a writ of mandate to dispute the Department of Industrial Relations Director’s decision unfairly discriminates against minority-owned and women-owned subcontractors. Unless a subcontractor is required to have performance and payment bonds (which is rare) for the job, securing a surety bond where the subcontractor is not required to have surety bonds makes it difficult to secure one as a standalone bond which would be viewed by the sureties as a “financial

guarantee bond". Aside from tying up needed capital, obtaining a bond of this type would require a subcontractor to produce the necessary guarantees, which can be a time-consuming process. Creating an additional barrier to legitimate legal rights negatively affects a subcontractor's right to due process. In the case of the general contractor on a public works project, they are required to provide performance and payment bonds and the surety is liable for any unpaid wage claims and penalties. In addition, as it relates to the subcontractor wage claims, the general contractor is responsible for labor violations of its subcontractors which calls into question the necessity of this provision. The general contractor is the ultimate guarantor along with the insurer of performance and payment bonds.

SUPPORT

State Building and Construction Trades Council of California, AFL-CIO (sponsor)
Air Conditioning Sheet Metal Association
Associated General Contractors - San Diego Chapter
California Democratic Party
California Labor Federation, AFL-CIO
California State Association of Electrical Workers
California State Pipe Trades Council
California State Treasurer
International Union of Operating Engineers, Cal-Nevada Conference
Western States Council of Sheet Metal Workers

OPPOSITION

Associated General Contractors
California Special Districts Association
Calleguas Municipal Water Districts
Western Electrical Contractors Association

RELATED LEGISLATION

Pending Legislation:

AB 2705 (Ortega, 2024) provides that the Labor Commissioner must file any action on a payment bond for a violation of the prevailing wages law within the timeline required for the Labor Commissioner to serve a civil wage and penalty assessment, as specified. AB 2705 is currently in the Senate Judiciary Committee.

AB 2135 (Schiavo, 2024) increases the timeline for when the LC must serve a civil wage and penalty assessment upon a contractor or subcontractor of a prevailing wage violation from 18 months to 24 months after the later of the filing of a valid notice of

completion or after the acceptance of the public work. Provides that this time period may be extended by 18 months for good cause. AB 2135 is currently in the Senate Judiciary Committee.

Prior Legislation:

AB 1336 (Frazier, Ch. 792, Stats. 2013) increased timeline for when the LC must serve a civil wage and penalty assessment upon a contractor or subcontractor of a prevailing wage violation from 180 days to 18 months after the later of the filing of a valid notice of completion or after the acceptance of the public work.

AB 1140 (Daly) of 2013 would have provided that if the Director determines, within a semiannual period, that there is a change in any prevailing rate of per diem wages in a locality, that determination applies to any public works contract that is awarded or for which notice to bidders is published on or after January 1, 2014. This bill was vetoed by Governor Brown.

AB 1646 (Committee on Labor and Employment, Ch. 954, Stats. 2000) established the authority of the LC to assess a civil wage and penalty against a contractor or subcontractor who fails to pay the prevailing wage.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 0)

Assembly Floor (Ayes 65, Noes 5)

Assembly Appropriations Committee (Ayes 11, Noes 2)

Assembly Labor and Employment Committee (Ayes 7, Noes 0)
