

## **Governor Newsome Signs Priority Industry Bills**

In the final hours of the 2020 legislative session, Governor Newsom signed all four of the priority bills sponsored by the industry this year. The measures will expand the scope of prevailing wage, stimulate electric vehicle infrastructure work – prioritizing the utilization of union electrical contractors and provide notice in all public agency bidding and contract documents when a skilled and trained workforce will be required. All of these measures will help increase union electrical contractor market share, and will benefit our industry for years to come. Below are brief summaries of each measure:

### ***AB-2311 (Low) Skilled & Trained Workforce Notice Requirement***

AB-2311 will ensure all parties to a construction contract, including subcontractors, are aware of the skilled and trained workforce requirement prior to bidding on a project. Proper and clear notice that a project is subject to the skilled and trained workforce requirement will increase compliance with the policy and will alleviate current issues created when contractors are notified, after they have already commenced work, that the project is subject to the requirement.

### ***AB-841 (Ting) Energy Efficiency Stimulus Program***

Among other things, AB-841 requires the California Public Utilities Commission to quickly approve electrical vehicle (EV) charging infrastructure applications and allows Investor Owned Utilities to rapidly move forward with the deployment of EV infrastructure to accommodate the state's current and future electric vehicle bus needs. The measure requires that all electric vehicle charging infrastructure and equipment located on the customer side of the electrical meter, that is funded or authorized by state programs, be installed by a licensed contractor and that a portion of all installing electricians hold an Electric Vehicle Infrastructure Training Program (EVITP) certification.

### ***AB-2765 (O'Donnell) Charter Schools: Prevailing Wage***

This bill expands the definition of “public works” for purposes of prevailing wage requirements, to also include any construction, alteration, demolition, installation, or repair work done under private contract on a charter school project when the project is paid for in whole or in part with the proceeds of conduit revenue bonds.

Conduit revenue bond financing is a method by which the public subsidizes a private development project. A public entity acts as the “issuer” of the bonds so the interest payments on the bonds will be tax-exempt to the bondholders under the income tax code.

Because the bondholders will not be taxed on the interest, they are willing to accept a lower return on their investment, and the cost of borrowing is lower. The bond proceeds are transferred to a private developer, which is responsible for making the payments to the bondholders. The public entity issuing the bonds acts purely as a “conduit,” it does not receive the bond proceeds or pay back the bondholders. The public thereby subsidizes the private

development project by foregoing the tax revenues that would otherwise be paid by the bondholders. We believe this fact should trigger prevailing wages.

***AB-2231 (Kalra) Public Works: Public Subsidy***

Defines a public subsidy as de minimis for the purpose of paying prevailing wage on private projects if the subsidy is both less than \$600,000 and less than 2% of the total project cost for bids advertised or contracts awarded after July 1, 2021. If the subsidy is for a residential project consisting entirely of single-family dwellings, the subsidy is de minimis so long as it is less than 2% of the total project cost.

Under current law, prevailing wage is triggered for projects of \$1,000 or more that are “paid for in whole or in part out of public funds,” including subsidies in all forms. However, Labor Code Section 1720(c)(3) provides that a project is not subject to the prevailing wage, even if it receives a public subsidy, if that subsidy is “de minimis” in the context of the project. Since the term “de minimis” is not statutorily defined, there is no guidance as to the appropriate level of public subsidy that should be considered de minimis. This has led the Department of Industrial Relations (DIR) to offer wildly different determinations on a project-by-project basis as to what is de minimis, leading to confusion and litigation on what the term actually means and allowing very large public subsidies to be granted to private projects without the triggering of prevailing wage. AB-2231 provides clarity in this area.