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| OPINION                 | : |                  |
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|                         | : | No. 26-201       |
| of                      | : |                  |
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|                         | : | October 13, 2026 |
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The HONORABLE EDWARD J. KIERNAN, SAN JOAQUIN COUNTY COUNSEL, has requested an opinion relating to public works.

**QUESTION PRESENTED AND CONCLUSION**

If a private nonprofit organization accepts and uses public funds to purchase materials for use on a construction project, is the organization obliged to pay prevailing wages to the workers that it hires onto the same project if the workers are paid using other, non-public funds?

Yes, as a general rule, when a private nonprofit organization accepts and uses public funds to purchase materials for use on a construction project, the organization is obliged to pay prevailing wages to the workers that it hires onto that same project.

**BACKGROUND**

California Labor Code section 1771 establishes the general rule that “all workers employed on public works” shall be paid at least the “prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed.”<sup>1</sup>

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<sup>1</sup> Statutory citations are to the Labor Code unless otherwise indicated.

The Legislature has explained that, among other purposes, the prevailing wage law “helps to maintain construction work as an occupation that provides middle-class jobs to hundreds of thousands of California workers, enabling the workers to support families and contribute to their communities.”<sup>2</sup> The law similarly “encourages contractors to hire the most skilled workers and to invest in their training,” thereby ensuring that the State will have “an available workforce of skilled construction workers to efficiently complete both public and private infrastructure projects.”<sup>3</sup>

At issue here is whether the prevailing wage law would cover workers employed on a hypothetical construction project involving a private nonprofit organization. The requestor asks us to assume that the organization will receive public funds from a county “to purchase materials that will be used to construct a project.” He offers an example involving “flooring material that will be installed by workers hired by the nonprofit.”<sup>4</sup> And he indicates that, although public funds would be used to purchase these materials, the public funds would not be spent to “do the construction work.”<sup>5</sup> The workers who install the flooring would instead be paid by the nonprofit organization using other, non-public funds.

The requestor asks whether the given facts would involve “public works” within the meaning of the prevailing wage law. He specifically asks about the definition of public works in section 1720(a)(1), which generally refers to “[c]onstruction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds.” He posits that an “ordinary reading” of this language would exclude the given facts “because the County’s money is being used to purchase materials, not [to] do the construction work.”<sup>6</sup> But he recognizes that, “[o]n the other hand, it could be argued that the cost of the materials is part of the cost of the construction, so it does qualify as a ‘public work.’”<sup>7</sup>

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<sup>2</sup> Stats. 2013, ch. 794, § 1, subd. (c); see *Busker v. Wabtec Corp.* (2021) 11 Cal.5th 1147, 1155-1156; *Kaanaana v. Barrett Business Services, Inc.* (2021) 11 Cal.5th 158, 165-166; *Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 987.

<sup>3</sup> Stats. 2013, ch. 794, § 1, subds. (a), (b).

<sup>4</sup> Letter from San Joaquin County Counsel Edward J. Kiernan (Feb. 5, 2026) (Letter from Requestor) p. 1.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Id.* at pp. 1-2.

<sup>7</sup> *Id.* at p. 2.

## ANALYSIS

The question of how the prevailing wage law applies to the requestor's hypothetical set of facts is essentially a question of statutory interpretation.<sup>8</sup> As such, our “fundamental task is to ascertain the Legislature’s intent and effectuate the law’s purpose.”<sup>9</sup> The “overall purpose of the prevailing wage law is to protect and benefit employees on public works projects.”<sup>10</sup> And courts “liberally construe the law to fulfill its purpose.”<sup>11</sup>

As mentioned, the prevailing wage law generally applies to “workers employed on public works.”<sup>12</sup> The definition of “public works” in section 1720(a)(1) generally includes “[c]onstruction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds.”<sup>13</sup> The California Supreme Court has parsed this language into three elements that are centered on the word “work.” Specifically, the court has described section 1720(a)(1) as applying when “[t]he work (1) entails construction, etc., (2) is done under contract, and (3) is paid for, at least in part, by public funds.”<sup>14</sup>

Here, there appears to be no question that the given facts would involve the first two elements of section 1720(a)(1), i.e., a qualifying type of work done under contract. Indeed, the requestor asks us to assume that a private nonprofit organization will receive public money to purchase flooring or other materials “that will be installed by workers hired by the nonprofit.”<sup>15</sup> The gravamen of the question presented is whether the installation of these materials would be “paid for in whole or in part out of public funds” if the public funds were to be earmarked only for the purchase of the materials and not for the wages of the workers who perform the installation.

The requestor directs our attention to *City of Long Beach v. Department of Industrial Relations* as being “somewhat supportive of the position that public money

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<sup>8</sup> See *Hensel Phelps Construction Co. v. San Diego Unified Port Dist.* (2011) 197 Cal.App.4th 1020, 1030.

<sup>9</sup> *Kaanaana v. Barrett Business Services, Inc.*, *supra*, 11 Cal.5th at p. 168.

<sup>10</sup> *Lusardi Construction Co. v. Aubry*, *supra*, 1 Cal.4th at p. 985.

<sup>11</sup> *Busker v. Wabtec Corp.*, *supra*, 11 Cal.5th at p. 1156.

<sup>12</sup> Lab. Code, § 1771.

<sup>13</sup> Lab. Code, § 1720, subd. (a)(1); see Lab. Code, § 1771 (prevailing wage law is also “applicable to contracts let for maintenance work”).

<sup>14</sup> *Busker v. Wabtec Corp.*, *supra*, 11 Cal.5th at pp. 1157, 1169.

<sup>15</sup> Letter from Requestor, *supra*, at p. 1.

spent for materials does not make the entire project subject to prevailing wages.”<sup>16</sup> At issue there was whether the prevailing wage law covered the workers who built an animal control facility for a charity that had received \$1.5 million in city funds.<sup>17</sup> The California Supreme Court determined that the prevailing wage law did not cover the workers, because the city had earmarked the funds for “preconstruction” work, which was not included in the definition of construction work under section 1720(a)(1) until a few years later.<sup>18</sup> The requestor suggests that the same might be true here because, like the preconstruction work in *City of Long Beach*, “materials do not equate to construction.”<sup>19</sup> We disagree for the reasons stated below.

### **The Text and Legislative History of the Prevailing Wage Law Establish That Public Agencies Cannot Deny Coverage Through Creative Earmarking.**

We begin by considering the requestor’s premise that the reference in section 1720(a)(1) to construction, alteration, demolition, installation, or repair work does not include materials. To be sure, the California Supreme Court has read the terms construction, alteration, demolition, installation, and repair as each modifying the term work.<sup>20</sup> And, in this context, work generally denotes an act of manual labor.<sup>21</sup> So, for example, various parts of the prevailing wage law refer to work as something that is “performed.”<sup>22</sup> The requestor’s premise would also be consistent with a 1987 opinion

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<sup>16</sup> Letter from Requestor, *supra*, at p. 2, discussing *City of Long Beach v. Department of Industrial Relations* (2004) 34 Cal.4th 942.

<sup>17</sup> *City of Long Beach*, *supra*, 34 Cal.4th at pp. 947, 950.

<sup>18</sup> *Id.* at pp. 946-947, 952-954; see Stats. 2000, ch. 881, §1 (“‘construction’ includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work”); Stats. 2019, ch. 719, §1 (“‘construction’ includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction, including, but not limited to, inspection and land surveying work”); see also Stats. 2014, ch. 864, § 1 (construction also includes “work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite”).

<sup>19</sup> Letter from Requestor, *supra*, at p. 2.

<sup>20</sup> See *Kaanaana v. Barrett Business Services, Inc.*, *supra*, 11 Cal.5th at p. 171; *Busker v. Wabtec Corp.*, *supra*, 11 Cal.5th at pp. 1157, 1169.

<sup>21</sup> See Webster’s New World Dict. (3d college ed. 1988) p. 1538 (“work” means “physical or mental effort exerted to do or make something; purposeful activity; labor; toil”); see also 109 Ops.Cal.Atty.Gen. 96 (2026) (prevailing wage law covers only manual labor).

<sup>22</sup> See, e.g., Lab. Code, §§ 1720, subds. (a)(1) (referring to “work performed” during the  
(continued...)

from the United States Department of Justice, Office of Legal Counsel, which construed a similar prevailing wage requirement in 42 U.S.C. § 5310 regarding federally financed “construction work” as not applying to “the use of federal funds either to purchase materials, equipment, machinery, or other fixtures.”<sup>23</sup>

But on the other hand, it could be argued that the reference to construction work in section 1720(a)(1) includes not only an act of labor but also the real or personal property upon which the labor is performed. In *City of Long Beach*, for example, the court quoted dictionaries that define construction as “[t]he act of putting parts together to form a complete integrated object” or “the action of framing, devising, or forming, by the putting together of parts; erection, building.”<sup>24</sup> And the court similarly explained in *Busker* that installation work is covered by the prevailing wage law only if it involves the installation of “fixtures on real property,” as would be the case with the “bolting, securing or mounting of fixtures to realty.”<sup>25</sup>

The example proffered by the requestor illustrates how materials can be an essential part of construction or installation work under section 1720(a)(1). As mentioned, we are asked to assume that a public agency has appropriated funds for the

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preconstruction and postconstruction phases of construction), (c)(5)(A) (“work . . . performed” by home buyers), 1720.4, subd. (a) (“work performed” by volunteers).

<sup>23</sup> Off. of Legal Counsel, U.S. Dept. of Justice, Application of the Davis-Bacon Act to Urban Development Projects That Receive Partial Federal Funding (Aug. 6, 1987) 11 Op. O.L.C. 92, 99-100, 103. The opinion reasoned in part that, if Congress wanted 42 U.S.C. § 5310 to apply when funds are used for “the purchase of land, equipment, and raw materials,” it would have broadly referred to construction “projects” or development “activities” rather than to construction “work.” (*Id.* at p. 100, quoting 42 U.S.C. §§ 1440(g), 3222.) We note that Congress subsequently included a broad, project-oriented approach in several bills, such as the American Recovery and Reinvestment Act (Pub.L. No. 111-5 (Feb. 17, 2009) 123 Stat. 303, § 1606) [referring to “projects funded directly by or assisted in whole or in part by and through the Federal Government”], the Consolidated Appropriations Act of 2021 (20 U.S.C. § 1232b [“all construction and minor remodeling projects assisted under any applicable program”]), and the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022 (15 U.S.C. § 4652(f) [“a construction project that receives financial assistance”], 4656(h) [same]).

<sup>24</sup> *City of Long Beach v. Department of Industrial Relations*, *supra*, 34 Cal.4th at p. 951, quoting Webster’s 3d New Internat. Dict. (2002) p. 489 and 3 Oxford English Dict. (2d ed. 1989) p. 794; see *Priest v. Housing Authority of City of Oxnard* (1969) 275 Cal.App.2d 751, 756 (“As one thinks of ‘construction’ one ordinarily considers the entire process, including construction of basements, foundations, utility connections and the like, all of which may be required in order to erect an above-ground structure”).

<sup>25</sup> *Busker v. Wabtec Corp.*, *supra*, 11 Cal.5th at p. 1162.

“purchase of the flooring material that will be installed by workers hired by the nonprofit.”<sup>26</sup> In this scenario, it would be physically impossible for workers to perform the installation labor unless and until the organization has purchased, leased, or otherwise acquired the flooring.<sup>27</sup> And recall that coverage under section 1720(a)(1) requires only that the work be paid for “in part” out of public funds.<sup>28</sup> This suggests that the appropriation of public funds to purchase the flooring would qualify as payment for part of the construction or installation “work” involving the flooring.

In any event, the Legislature clarified the scope of the prevailing wage law in 2001 when it amended section 1720(b) to define the circumstances under which work is “paid for in whole or in part out of public funds.”<sup>29</sup> As amended, subdivision (b) “encompasses both direct and indirect subsidies.”<sup>30</sup> And it includes “numerous types of subsidies that, as a practical matter, cannot be used to pay the actual construction costs, but that can serve to reduce a developer’s project costs” in ways that are unrelated to the cost of labor.<sup>31</sup> For example, it applies when a public agency has transferred “an asset of value for less than fair market price.”<sup>32</sup> It also applies when a public agency has “paid, reduced, charged at less than fair market value, waived, or forgiven” any “[f]ees, costs,

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<sup>26</sup> Letter from Requestor, *supra*, at p. 1.

<sup>27</sup> Cf. Lab. Code, § 1720, subd. (a)(4) (defining public works as including the “laying of carpet done under a building lease-maintenance contract and paid for out of public funds”).

<sup>28</sup> Lab. Code, § 1720, subd. (a)(1).

<sup>29</sup> Stats. 2001, ch. 938, § 2; Lab. Code, § 1720, subd. (b) (“For purposes of this section, ‘paid for in whole or in part out of public funds’ means all of the following: (1) The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer. (2) Performance of construction work by the state or political subdivision in execution of the project. (3) Transfer by the state or political subdivision of an asset of value for less than fair market price. (4) Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision. (5) Money loaned by the state or political subdivision that is to be repaid on a contingent basis. (6) Credits that are applied by the state or political subdivision against repayment obligations to the state or political subdivision”) (line breaks omitted).

<sup>30</sup> *Cinema West, LLC v. Baker* (2017) 13 Cal.App.5th 194, 205.

<sup>31</sup> *Hensel Phelps Construction Co. v. San Diego Unified Port Dist.*, *supra*, 197 Cal.App.4th at p. 1034.

<sup>32</sup> Lab. Code, § 1720, subd. (b)(3).

rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract.”<sup>33</sup>

The hypothetical scenario presented here involves a straightforward “[p]ayment of money or the equivalent of money” by the county “directly to or on behalf of the public works contractor, subcontractor, or developer” under section 1720(b)(1). Although we are asked to assume that the funds will be earmarked for the purchase of materials, we are also told that the materials “will be installed by workers hired by the nonprofit.”<sup>34</sup> Indeed, it does not appear that the appropriation of public funds would serve any public purpose other than to help the nonprofit “construct a project.”<sup>35</sup>

It also appears that, by paying for the purchase of materials, the county would be paying one of the “costs” that “would normally be required in the execution of the contract” for the installation of the materials under section 1720(b)(4). And it would be no different if the county were to donate the materials to the nonprofit organization as a “transfer” of “an asset of value for less than fair market price” under section 1720(b)(3). As such, we read the 2001 amendments to section 1720(b) as foreclosing any possibility that the county could deny coverage under the prevailing wage law by earmarking public funds for the purchase of construction materials.

We find additional support for this conclusion in section 1720(c)(3). As originally enacted in 2001, subdivision (c) stated that if a public agency “provides directly or indirectly a public subsidy to a private development project that is de minimis in the context of the project, an otherwise private development shall not thereby become subject to the requirements of [the prevailing wage law].”<sup>36</sup> In 2020, the Legislature established that a public subsidy is de minimis “if it is both less than six hundred thousand dollars (\$600,000) and less than 2 percent of the total project cost.”<sup>37</sup> The \$600,000 cap does not apply if the project “consists entirely of single-family dwellings.”<sup>38</sup>

The caps on de minimis subsidies would be ineffective, however, if public agencies could deny coverage under the prevailing wage law simply by earmarking public funds for the purchase of materials. According to the United States Bureau of Labor Statistics, the cost of materials regularly exceeds two percent of total construction

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<sup>33</sup> Lab. Code, § 1720, subd. (b)(4).

<sup>34</sup> Letter from Requestor, *supra*, at p. 1.

<sup>35</sup> *Ibid.*; cf. Cal. Const., art. XVI, § 6 (prohibiting any gift of public money or thing of value); *Alameda County v. Janssen* (1940) 16 Cal.2d 276, 281 (appropriation of public money is not a gift if it serves a public purpose).

<sup>36</sup> Lab. Code, § 1720, former subd. (c)(2)(B); Stats. 2001, ch. 938, § 2.

<sup>37</sup> Lab. Code, § 1720, subd. (c)(3)(B)(i); Stats. 2020, ch. 346, § 1.

<sup>38</sup> Lab. Code, § 1720, subd. (c)(3)(B)(ii).

costs.<sup>39</sup> So, giving effect to the hypothetical earmark at issue here would allow a public agency to circumvent the de minimis contribution limits by carving up a construction project and allocating all of the public funds for materials and none for labor. We see no reason why the Legislature would have intended that result.

### **Our Conclusion Is Consistent with Other Authorities That Have Interpreted the Prevailing Wage Law.**

Our interpretation of section 1720 is also consistent with a recent determination by the Director of the Department of Industrial Relations, who has authority to determine whether a “specific” project is subject to the prevailing wage law.<sup>40</sup> The issue presented to the Director was how the prevailing wage law applied to the recipients of grants that were designed to expand the infrastructure used by medium- and heavy-duty electric vehicles.<sup>41</sup> There was no dispute that the program reimbursed the purchase price of certain electric vehicle chargers.<sup>42</sup> But there was some disagreement about whether the program also reimbursed the cost to install the chargers.<sup>43</sup>

The Director determined that, even if the program “specifically excluded construction or installation costs as being reimbursable, the construction or installation likely still would be paid for in part out of public funds” within the meaning of section 1720(a)(1).<sup>44</sup> This is because the purpose of the program was “to have EV chargers and infrastructure *installed*,” not merely to have them purchased.<sup>45</sup> And public subsidies for “the cost of the equipment or other component crucial to the deployment of the EV charger or infrastructure ‘serve to reduce a developer’s project cost.’”<sup>46</sup>

The Director also determined that excluding the grant program from the definition of public works under section 1720(a)(1) would be inconsistent with authorities that have

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<sup>39</sup> See U.S. Bureau of Labor Statistics, Producer Price Index Data for the Nonresidential Building Construction Sector, <https://www.bls.gov/ppi/factsheets/producer-price-index-nonresidential-building-construction-initiative.htm> (as of Oct. 12, 2026).

<sup>40</sup> See Lab. Code, § 1773.5, subd. (b); Cal. Code Regs., tit. 8, § 16001, subd. (a).

<sup>41</sup> Dept. of Industrial Relations, Director Katrina Hagen, Letter to EnergIIZE Deputy Director Tesi Bravo (Oct. 2, 2024) (EnergIIZE Determination) p. 3.

<sup>42</sup> *Id.* at pp. 3-4.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Id.* at p. 4.

<sup>45</sup> *Ibid.*, original italics.

<sup>46</sup> *Ibid.*, quoting *Hensel Phelps Construction Co. v. San Diego Unified Port Dist.*, *supra*, 197 Cal.App.4th at p. 1034.

“specifically rejected” a “contract-based analysis” of the prevailing wage law.<sup>47</sup> In particular, the proffered reasons for exempting the grant program would allow a public agency to “simply assign all public funding to pay for all non-labor costs on a public works project [in an] attempt to avoid prevailing wage requirements.”<sup>48</sup>

Regarding the question presented here, the Chief Counsel of the Department of Industrial Relations informs us that “it is [his] office’s opinion that prevailing wage requirements apply to the construction or installation work described in the County Counsel’s hypothetical.”<sup>49</sup> He also reiterates that a contrary conclusion “would ‘incentivize gamesmanship’ because public entities and contractors ‘often have strong incentives to avoid the prevailing wage law and thus may structure their contracts to circumvent it.’”<sup>50</sup> “To allow the prevailing wage law to be circumvented in situations where payment of public funds was meant to subsidize construction would contravene the law’s overarching purposes to ‘protect and benefit employees on public works projects’ and ‘to benefit the public through the superior efficiency of well-paid employees.’”<sup>51</sup>

Courts have similarly rejected attempts to limit coverage under the prevailing wage law through other forms of creative earmarking. In *Azusa Land Partners*, for example, the court held that a public agency may not “carve up the individual components of an overall project into publicly and privately financed pieces” to avoid paying prevailing wages to the workers on the latter pieces.<sup>52</sup> So, if a project requires public improvement work, an agency may not “allocate all public funds to one piece of improvement work instead of applying [the funds], in part, to pay for all required improvements.”<sup>53</sup> Nor may developers “allocate lump sum public contributions to specific structures in order to minimize their prevailing wage obligations.”<sup>54</sup> Similarly, the court in *Oxbow* rejected an attempt to “contract around the prevailing wage law by

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<sup>47</sup> *Ibid.*, quoting *Azusa Land Partners v. Department of Industrial Relations* (2010) 191 Cal.App.4th 1, 35; see *Lusardi Construction Co. v. Aubry*, *supra*, 1 Cal.4th at p. 987.

<sup>48</sup> *EnergIIZE Determination*, *supra*, at p. 4.

<sup>49</sup> Letter from Dept. of Industrial Relations Chief Counsel Ken Lau (June 1, 2026) p. 3.

<sup>50</sup> *Ibid.*, citations omitted; see *Lusardi Construction Co. v. Aubry*, *supra*, 1 Cal.4th at pp. 987-988; *Cinema West, LLC v. Baker*, *supra*, 13 Cal.App.5th at p. 211.

<sup>51</sup> Letter from Dept. of Industrial Relations Chief Counsel Ken Lau, *supra*, at p. 3, quoting *Lusardi Construction Co. v. Aubry*, *supra*, 1 Cal.4th at p. 987.

<sup>52</sup> *Azusa Land Partners v. Department of Industrial Relations*, *supra*, 191 Cal.App.4th at p. 36.

<sup>53</sup> *Id.* at p. 35.

<sup>54</sup> *Id.* at p. 32.

breaking up individual tasks into separate construction contracts.”<sup>55</sup> And the court in *Cinema West* likewise rejected an “attempt to segment [a] development into separate components so as to avoid application of the [prevailing wage law].”<sup>56</sup> There is no cause to believe that the result would be any different with respect to the hypothetical earmark at issue here.

## CONCLUSION

For the foregoing reasons, the facts presented to us would involve public works within the meaning of the prevailing wage law. And there is no suggestion that these facts might qualify for an exception to the law’s coverage, such as the exception discussed above for private development projects that receive only de minimis subsidies. We therefore conclude that the prevailing wage law would cover the workers hired by the nonprofit organization.<sup>57</sup>

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<sup>55</sup> *Oxbow Carbon & Minerals, LLC v. Department of Industrial Relations* (2011) 194 Cal.App.4th 538, 550; see *id.* at pp. 551-552 (public funds earmarked for construction of conveyor system to bring petroleum coke into a facility indirectly paid for construction of a roof over the same facility).

<sup>56</sup> *Cinema West, LLC v. Baker*, *supra*, 13 Cal.App.5th at p. 213; see *id.* at p. 217 (public funds earmarked for construction of a parking lot to be used by theatergoers indirectly paid for construction of the adjacent theater).

<sup>57</sup> See *Azusa Land Partners v. Department of Industrial Relations*, *supra*, 191 Cal.App.4th at p. 29 (“Once the determination is made that the Project is a ‘public work’ under section 1720, subdivision (a)(1), the entire Project is subject to the [prevailing wage law]”).