

# OAKLAND CITY COUNCIL

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

RESOLUTION No. \_\_\_\_\_

C.M.S.

*Rock Diesso*

2004 JUN -3 PM 7:48

## RESOLUTION OF THE CITY OF OAKLAND SUPPORTING ASSEMBLY BILL AB 2690 – CHANGE EXISTING LAWS TO EXEMPT VOLUNTEER LABOR FROM PREVAILING WAGE REQUIREMENTS FOR PUBLIC WORKS PROJECTS

**WHEREAS**, the City of Oakland’s volunteer programs would be affected by the pending State Legislation; and

**WHEREAS**, Oakland residents regularly volunteer to participate in beautification and stewardship projects and enjoy as sense of community pride and ownership by doing so; and

**WHEREAS**, AB 2690 (Change existing laws to exempt volunteer labor from prevailing wage requirements for public works projects) authored by Assembly Member Loni Hancock would amend Section 1720.4 of the Labor Code of California dealing with the payment of prevailing wages on public works projects in order that it does not apply to work performed by a volunteer or volunteer coordinator; and

**WHEREAS**, AB 2690 (Hancock) would allow the City of Oakland to continue its volunteer programs; now, therefore be it

**RESOLVED**: that the City of Oakland declares its support for AB 2690 (Change existing laws to exempt volunteer labor from prevailing wage requirements for public works projects) by Assembly Member Loni Hancock; and be it

**FURTHER RESOLVED**: That the City Council directs the City Manager and the City’s legislative lobbyist to advocate for the above positions in the State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

CEDA FLOYD  
City Clerk and Clerk of the Council  
of the City of Oakland, California

*5-12*

**RULES & LEGISLATION  
CMTE**

JUN 10 2004

**CITY OF OAKLAND  
BILL ANALYSIS FORMAT**

**DEPARTMENT INFORMATION**

**Contact:** Lesley Estes

**Date** June 5, 2004

**Department:** Public Works Agency/ Environmental Services Division

**Telephone:** (510) 238-7431 **FAX #** (510) 238-7286 **E-mail:** lcestes@oaklandnet.com

**Bill Number:** AB 2690

**Bill Author:** Loni Hancock

**Topic:** Assembly Bill 2690

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**Summary of the Bill**

Assembly Bill 2690 (AB 2690), introduced by Assembly Member Loni Hancock, is an amendment to Section 1720.4 of the Labor Code of California. The intent of this legislation is to amend the provisions of existing law dealing with the payment of prevailing wages on public works projects in order that it does not apply to work performed by a volunteer or volunteer coordinator, as defined.

The legislation defines a "volunteer" as an individual who performs work for civic, charitable, or humanitarian reasons for a public agency or 501(c)(3) tax-exempt organization without promise, expectation, or receipt of any compensation for work performed. The legislation specifies that an individual shall be considered a volunteer only when his or her services are offered freely and without pressure or coercion, direct or implied, from an employer. "Volunteer coordinator" is defined as an individual paid by a corporation or 501(c)(3) tax-exempt organization to oversee or supervise volunteers.

**Positive Factors for Oakland**

The City of Oakland (City) has many programs that encourage volunteerism. These programs provide avenues for Oakland residents to participate in the stewardship of their community. The benefits of volunteerism go well beyond the initial effort to beautify a street median or assist with creek restoration. Volunteerism creates active, caring community stewards that feel a sense of ownership and pride in their community. This not only inspires long-term stewardship, but also encourages changes in behavior. Residents that are given opportunities to volunteer on beautification projects are far less likely to litter and vandalize property in their community.

**Negative Factors for Oakland**

The City of Oakland has many programs that utilize volunteers including the Adopt-A-Spot and Stormdrain Stenciling programs, as well as the annual Earthday and Creek To Bay Day citywide volunteer events. Additionally, there are many community organizations that conduct regular volunteer services such as debris and trash pick-up, and planting and weeding at Lake Merritt and other sites around the City. These programs would fold without volunteer support. The result would not only be more trash and debris on City streets, and less flowers and vegetation, but also a diminished sense of community pride and stewardship.

**Other Information:**

None

**RECOMMENDED POSITION:**

**Support**

**PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:**

**1 Urgent (top priority for city lobbyist, city position required ASAP)**

**2 Very Important (priority for city lobbyist, city position necessary)**

**3 Somewhat Important (position desired if time and resources are available)**

**4 None (do not review with City Council, position not required)**

**Other known support:**

Urban Creeks Council

County of Alameda Public Works

California Watershed Network

**Other known opposition: Not available**

**Is state/federal legislative committee analysis available? (If yes, please attach)**

**Yes, please see the attachment.**

ASSEMBLY THIRD READING  
AB 2690 (Hancock)  
As Amended May 20, 2004  
Majority vote

LABOR AND EMPLOYMENT            6-1            APPROPRIATIONS            16-5

Ayes:	Koretz, Mullin, Lieber, Chu, Laird, Leno	Ayes:	Chu, Berg, Calderon, Corbett, Correa, Firebaugh, Goldberg, Leno, Nation, Negrete McLeod, Oropeza, Pavley, Ridley-Thomas, Wesson, Wiggins, Yee
Nays:	Houston	Nays:	Runner, Bates, Daucher, Haynes, Keene

SUMMARY : Makes changes to existing law related to public works projects and the use of volunteers. Specifically, this bill :

- 1) Provides that the provisions of existing law dealing with the payment of prevailing wages on public works projects do not apply to work performed by a volunteer or volunteer coordinator, as defined.
- 2) Defines a "volunteer" as an individual who performs work for civic, charitable, or humanitarian reasons for a public agency or 501 (c) (3) tax-exempt organization without promise, expectation, or receipt of any compensation for work performed.
- 3) Defines a "volunteer coordinator" as an individual paid by a corporation or 501(c) (3) tax-exempt organization to oversee or supervise volunteers.
- 4) Specifies that an individual shall be considered a volunteer only when his or her services are offered freely and without pressure and coercion, direct or implied, from an employer.

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- 5) Authorizes a volunteer to receive reasonable meals, lodging, transportation, and incidental expenses or nominal non-monetary awards if those benefits and payments are not a substitute form of compensation.
- 6) Excludes from the definition of volunteer an individual if that person is otherwise employed for compensation at any time: a) in the construction, alteration, demolition, installation, repair, or maintenance work on the same project; or, 2) by a contractor, other than a 501(c)(3) tax-exempt organization, that is receiving payment to perform construction, alteration, demolition, installation, repair or maintenance work on the same project.
- 7) Provides that the provisions of existing law dealing with the payment of prevailing wages on public works projects do not apply to work performed by members of the California Conservation Corps or a certified Community Conservation Corps.
- 8) Specifies that these provisions shall apply retroactively to otherwise covered work concluded on or after January 1, 2002, to the extent permitted by law.

EXISTING LAW :

- 1) Requires the prevailing wage rate to be paid to all workers on public works projects over \$1,000.
- 2) Defines "public work" to include construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds.
- 3) Provides a limited exception for projects utilizing volunteer labor that meet certain specified criteria.

FISCAL EFFECT : According to the Assembly Appropriations Committee, no direct fiscal impact. Potential savings of state bond money to the extent this bill authorizes volunteer labor that otherwise would be paid prevailing wages.

COMMENTS : This bill is intended to address an issue that has garnered significant attention in recent months concerning the use of volunteer labor on certain public works projects. Much of this attention is a result of an enforcement action taken by the Department of Industrial Relations (DIR) in July 2003 in

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relation to a stream restoration project in Shasta County.

Existing Labor Code Section 1720.4, originally enacted in 1989, provides that "public works" shall not include any otherwise covered work that meets all of the following conditions:

- 1) The work is performed entirely by volunteer labor.
- 2) The work involves facilities or structures which are, or will be, used exclusively by, or primarily for or on behalf of, private nonprofit community organizations including, but not limited to, charitable, youth, service, veterans, and sports groups or associations.
- 3) The work will not have an adverse impact on employment.
- 4) The work is approved by the Director of Industrial Relations as meeting the requirements of this section.

Labor Code Section 1720.4 also requires the Director of DIR to request information on whether or not the work will have an adverse impact on employment from the appropriate local or state organization of duly authorized employee representatives of workers employed on public works.

Significant media attention and controversy over this issue has arisen in recent months following a July 2003 enforcement action by DIR stemming from a stream restoration project in Shasta County.

In fiscal year 2000-01, the Department of Water Resources provided grant funding to the Sacramento Watersheds Action Group for a stream restoration project on Sulphur Creek in the City of Redding. According to media reports, students from nearby Shasta College were used for various activities including planting seeds, clearing brush, repairing culverts, installing rock beds to prevent erosion, and trash removal. The students reportedly earned course credit for classes in watershed restoration.

Responding to a complaint from a local labor organization, DIR investigated and determined that, based on the submitted job descriptions of the work performed by students and volunteers, prevailing wages were required for the following work: willow staking, spreading seeds and mulch, planting shrubs, operating heavy equipment, site cleanup, off-hauling garbage, and planting vegetation.

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The subsequent DIR enforcement action assessed back wages and civil penalties. The Sacramento Watersheds Action Group is currently appealing that ruling. An administrative hearing on this case reportedly has already been scheduled.

In September 2003, the Department of Water Resources (DWR) issued a memorandum that stated, "Due to the serious implications to our programs that would arise from being unable to support volunteerism, DWR is taking a conservative approach until these issues can be clarified?We will not enter into any new contracts possibly affected by these issues until we have a clearer picture of the obligations of DWR and the grantees under the Labor Code."

Since the July 2003 enforcement action, there has been an outcry among many in the environmental community that Labor Code Section 1720.4, as interpreted by DIR, effectively prohibits the mixed use of volunteer and paid labor on public works projects.

This bill is sponsored by the Urban Creeks Council and the California Watershed Network. In writing in support of this bill, the author's office states:

The author clearly understands the need to pay skilled labor a prevailing wage, but also recognizes the importance that volunteers pay in building community support for local projects. Under [Labor Code] Section 1720.4the law only provides for an all or nothing situation. It does not allow volunteers to work side by side with skilled labor. In some cases, local non-profit organizations that were established to restore creeks will utilize a mix of paid labor for things like heavy machinery operating and volunteers to plant trees along the creek bed. However, under current statute, DIR has determined you must pay prevailing wage to everyone who participates in the project.

A letter from the Coalition to Protect Watershed Volunteers and California's Prevailing Wages that is also signed by the President of the California Watershed Network states, "The Coalition believes that the best solution to this issue is to allow watershed volunteers to work alongside professional restorationists earning prevailing wage. We support the importance of prevailing wage being earned by workers on

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projects that are funded with public money."

Several supporters also indicate that, in addition to a long-term legislative solution, they will be advocating for immediate administrative action so that ongoing projects such as trail building, wetland and stream restoration, and beach cleanup using volunteer assistance can continue without the loss of current funding.

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FN: 0005590

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