

Frequently Asked Questions (FAQ) – Construction of Renewable Energy Facilities Under Public Utilities Code Section 769.2 (A.B. 2143)

This FAQ addresses the provisions of A.B. 2143 (2022), which was passed by the Legislature and signed by the Governor on September 29, 2022. A.B. 2143 adds Section 769.2 to the Public Utilities Code, which imposes certain requirements on each “contractor who enters into a contract to perform work on a renewable electrical generation facility or associated battery storage” that “receives service pursuant to [net energy metering (NEM) tariffs or net billing tariffs (NBT).]” These requirements begin “after December 31, 2023.”

A.B. 2143 defines a project for the “construction of any renewable electrical generation facility, and any associated battery storage, after December 31, 2023, that receives service pursuant to [NEM or NBT tariffs]” to be a “public works project for purposes of Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code,” except as provided.

The information in this FAQ is current as of January 1, 2024, and is intended only as an educational tool for our community.

1. What are Net Energy Metering (NEM) and Net Billing tariffs (NBT)?

For information about NEM or NBT tariffs, please visit the website for the [California Public Utilities Commission \(CPUC\)](#), which developed the tariffs and is the state agency that oversees public utilities.

2. Do A.B. 2143’s requirements apply to contracts entered into or advertised for bid before January 1, 2024?

The CPUC developed the NEM and NBT tariffs and has expertise over customer generation such as A.B. 2143 projects. The CPUC has determined “that the statute is clear and concludes that [A.B. 2143] is only applicable to projects with an interconnection application date (as determined above) after December 31, 2023.” Furthermore, “any customer-generator submitting an interconnection application for an upgrade to increase the size of the system or to pair an energy storage device, including those taking service under the NEM 1.0 and NEM 2.0 tariffs, after December 31, 2023 will be considered a new project required to comply with” A.B. 2143. Please see CPUC Decision [D.23-11-068](#) (November 2023).

3. Is the construction of *any* “renewable electrical generation facility, and any associated battery storage” subject to A.B. 2143’s requirements?

No. A.B. 2143’s requirements do not apply to:

- A residential renewable electrical generation facility that is eligible to receive service pursuant to [NEM or NBT tariffs] and has a maximum generating capacity of 15 kilowatts or less of electricity;
- A residential renewable electrical generation facility that is eligible to receive service pursuant to [NEM or NBT tariffs] and that is installed on a single-family home;
- A renewable electrical generation facility that serves only a modular home, a modular home community, or multiunit housing that has two or fewer stories; or
- A project that is otherwise a public work, as defined in Section 1720 of the Labor Code, and that is subject to Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code.

For shorthand, any project that is subject to A.B. 2143 and does not meet any of the above exceptions, will be referred to as an “A.B. 2143 project” in this FAQ.

4. What are A.B. 2143’s requirements for contractors?

As mentioned above, A.B. 2143 projects are specifically defined as “public works project for purposes of Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code,” except as provided. In addition to the public works and prevailing wage requirements located in Article 2 (further addressed in FAQs [here](#)) A.B. 2143 contractors must also comply with these specific A.B. 2143 provisions:

- Pay each construction worker employed in the execution of the work, at minimum, the general prevailing rate of per diem wages, except that an apprentice registered in a program approved by the Chief of the Division of Apprenticeship Standards shall be paid, at minimum, the applicable apprentice prevailing rate.
- Maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided in that section. A.B. 2143 contractors shall not be required to provide copies of certified payroll records to any entity other than DIR and the CPUC.
- Submit digital copies of its certified payroll records for A.B. 2143 projects to the CPUC on July 1 and December 31 of each year. For information on how digital copies of certified payroll records are submitted to the CPUC, [visit the CPUC’s](#)

[Frequently Asked Questions](#). A.B. 2143 states that the CPUC shall retain these records as public records for five years.

5. What is the prevailing wage rate for a worker on an A.B. 2143 project?

The prevailing rate depends on the craft, classification, or type of work or worker needed to complete the project. Please consult the [DIR Director's Prevailing Wage Determinations](#) for more information or contact the [Office of the Director, Research Unit](#).

6. Which prevailing wage determination is applicable on an A.B. 2143 project?

In most cases, the date of “the first notice inviting bids was published in a newspaper of general circulation or promulgated in a legally sufficient manner which results in a contract being awarded with or without competitive bidding” or the bid advertisement date (sometimes also referred to as the call for bids) determines which prevailing wage determination is applicable to a public works project. (Lab. Code, § 1773.2; Cal. Code Regs., tit. 8, §§ 16000, 16204.)

In situations where the project is not procured through the traditional design-bid-build public procurement process (which applies to the majority of public works projects), DIR has generally used the date the parties entered into the agreement as the date to determine which prevailing wage determination is applicable (sometimes referred to as the “benchmark date”). (See, e.g., [PW 2005-002, Golf Course Site, Northwest Golf Course Community – City of Oxnard \(Aug. 7, 2006\)](#) [benchmark date is “date of the formative agreement”]; [PW 2005-039, Kiwi Substation – Orange County Water District \(Apr. 25, 2007\)](#) [benchmark date is date agreement was entered into]; [PW 2004-037, Bella Terra Entertainment Lifestyle Center – Redevelopment Agency of the City of Huntington Beach \(Jan. 31, 2008\)](#) [benchmark date is date parties entered into agreement].) However, which date to use depends on the facts of each unique case. Please contact [Office of the Director, Research Unit](#) for more information.

7. Are A.B. 2143 contractors required to hire apprentices?

Yes, unless an exception applies. An A.B. 2143 project is a “public works project for purposes of Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code.” The apprenticeship requirements for public works projects are in Labor Code section 1777.5, within Article 2. Projects for less than \$30,000 are exempt from the public works apprenticeship requirements. (Lab. Code, § 1777.5, subd. (o).) Please see [Apprenticeship Requirements](#) for more information.

8. Are A.B. 2143 contractors required to register with DIR?

Yes, unless an exception applies. An A.B. 2143 project is a “public works project for purposes of Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code.” Labor Code section 1771.1, within Article 2, requires all public works contractors to be currently registered and qualified pursuant to Labor Code

section 1725.5. Projects for less than \$25,000 are exempt from the registration requirements. Please see [Contractors and Contractor Registration](#) for more information on contractor registration.

9. Are A.B. 2143 contractors required to maintain certified payroll records?

Yes. A.B. 2143 specifically requires A.B. 2143 contractors to maintain certified payroll records, as does Labor Code section 1776. However, contractors are not required to provide the certified payroll records to any entity other than DIR and the CPUC.

Unless otherwise exempt, A.B. 2143 contractors must also submit electronic certified payroll records to the Labor Commissioner using the DIR's online system. (Lab. Code, § 1771.4, subd. (a)(3).) Please see [Frequently Asked Questions on Certified Payroll Reporting](#).

In addition to the requirements above, A.B. 2143 specifically requires that contractors submit digital copies of its certified payroll records to the CPUC on July 1 and December 31 of each year. [Please see the CPUC's Frequently Asked Questions on how to submit digital copies of certified payroll records to the CPUC.](#)

10. Must the entity awarding the construction contract on an A.B. 2143 project provide notice of the contract to DIR?

Yes, unless an exception applies. Labor Code section 1773.3 requires an awarding body to provide notice of any public works contract to DIR. Projects for less than \$25,000 are exempt from the notice requirements. (Lab. Code, § 1773.3, subd. (j).)

11. Can I use volunteers on A.B. 2143 projects?

Yes. If the volunteer or "volunteer coordinator" meets all of the strict requirements set forth in Labor Code section 1720.4, the prevailing wage law does not apply to the volunteer or volunteer coordinator's work on a public works project.

To be considered a volunteer:

- The volunteer must perform work for civic, charitable, or humanitarian reasons for a public agency or corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, without promise, expectation, or receipt of any compensation for work performed. However, the volunteer may receive reasonable meals, lodging, transportation, and incidental expenses or nominal nonmonetary awards without losing volunteer status if, in the entire context of the situation, those benefits and payments are not a substitute form of compensation for work performed.
- The volunteer's services must be offered freely and without pressure and coercion, direct or implied, from an employer.

- The volunteer must not, at any time, be:

(A) employed for compensation in the construction, alteration, demolition, installation, repair, or maintenance work on the same project; or

(B) employed for compensation by a contractor, other than a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, that receives payment to perform construction, alteration, demolition, installation, repair, or maintenance work on the same project.

A “volunteer coordinator” means an individual paid by a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, to oversee or supervise volunteers. An individual may be considered a volunteer coordinator even if the individual performs some nonsupervisory work on a project alongside the volunteers, so long as the individual’s primary responsibility on the project is to oversee or supervise the volunteers rather than to perform nonsupervisory work.

12. The CPUC has set local hiring and job training requirements for certain solar project programs. (See, e.g. [CPUC’s Solar on Multifamily Affordable Housing Program \(SOMAH\) handbook](#).) How do CPUC’s hiring requirements work with the prevailing wage requirements?

Any project subject to A.B. 2143 must comply with all prevailing wage requirements as set forth in response #4 above. Please contact the CPUC for more information regarding the specific local hiring and job training requirements that apply to certain solar project programs.