



April 10, 2024

Assemblymember Liz Ortega  
Chair, Assembly Labor and Employment Committee  
1020 N St., Room 155  
Sacramento, CA 95814

**RE: AB 3190 (Haney) – Affordable Housing Fair Pay – STRONGLY SUPPORT**

Dear Assemblymember Ortega:

The Nor Cal Carpenters Union (NCCU) is proud to submit this letter in strong support of AB 3190, the Affordable Housing Fair Pay Act. For over 90 years, California’s Prevailing Wage Laws<sup>1</sup> have required contractors on publicly funded projects to pay construction workers occupation- and geographic area-specific prevailing wages. AB 3190 will close loopholes in the Prevailing Wage Laws that have allowed affordable housing developers to receive state and local public subsidies without paying prevailing wages. AB 3190 is a logical next step to recently enacted housing legislation such as AB 2011 (Wicks, 2022), SB 423 (Wiener, 2023), and SB 4 (Wiener, 2023) that condition state intervention in favor of housing production on prevailing wage standards.

In recent years, hundreds of millions of dollars in State Low Income Housing Tax Credits (LIHTCs) and below-market-rate interest state and local government loans have been awarded annually to private affordable housing developers in California without a requirement that contractors on these projects pay prevailing wages.

The affordable housing prevailing wage loopholes have perpetuated poverty- and near-poverty-levels of compensation for thousands of California residential construction workers building publicly financed projects without the benefit of prevailing wage standards.<sup>2</sup> Exploitative pay rates in the residential construction trades often are aggravated by contractor wage theft and tax fraud. Researchers estimate that “low road” construction contractor employment practices have a public cost that tallies in the billions of dollars annually in safety net program expenditures and foregone tax revenues.<sup>3</sup>

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<sup>1</sup> Lab. Code, §1720 *et seq.*

<sup>2</sup> Public Policy Institute of California Economic Policy Center director Sarah Bohn has shared estimates that 36.5% of California construction workers’ households fall below thresholds for either poverty or near poverty. That percentage that is 69% higher than the rate for all California workers (21.6%).

<sup>3</sup> For public social safety net program costs of \$3.35 billion in 2019 dollars, see Ken Jacobs and Kuochih Huang (2021). “The public cost of low-wage jobs in California’s construction industry.” Accessed via <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-californias-construction-industry/>. The UC researchers implied that low pay is particularly concentrated in the residential construction trades: “In both

The 37,000 members of the Nor Cal Carpenters Union have a deep vested interest in housing. Our union organizes and bargains for construction workers who build affordable housing, and our members and their families desperately need a more abundant supply of affordable housing. State and local government-subsidized affordable housing should be built by workers who do not add to mile-long waiting lists of Californians seeking spots in affordable housing developments. For these reasons, the NCCU urges members of the Assembly Labor and Employment Committee to support AB 3190.

### **The Problem: Workers Are Severely Harmed by the Gaps in the Prevailing Wage Laws**

From 2021 to 2023, almost \$2 billion of State LIHTC funding has been awarded to fund the construction of over 22,000 housing units. Of those, nearly 13,000 were built without any requirement to pay state prevailing wages. The NCCU estimates that over \$700 million below market-rate loans are awarded to affordable housing projects per year.

A patchwork of funding programs, all with different guidelines and requirements, allows developers to structure grants and loans in a way that avoids Prevailing Wage Laws. In other words, this influx of investment in housing ultimately comes at the expense of the workers.

The effects of the lack of prevailing wage standards and accompanying enforcement tools have a stark impact on our state's construction workers. According to HUD standards, over half of California's estimated 641,000 construction worker families are classified as either low-income or very low-income. Similarly, half of California construction workers either are uninsured or rely on Medi-Cal for their health care insurance. The rate at which construction workers do not have any health care insurance coverage is 2.6 times higher than the rate for all other California workers. The status quo of lower-than-average pay and rare fringe benefits impedes attracting roughly 100,000 more residential construction workers to meet the state's affordable housing production need.

Prevailing wages paired with meaningful enforcement mechanisms elsewhere in the Labor Code are essential weapons in the fight to ending the widespread wage theft, tax fraud, and labor exploitation that takes place on residential job sites. Too many contractors, and the developers that hire them, have built their business models on paying construction workers the lowest wages possible, a practice that goes hand in hand with exploitative and criminal activity. Our field representatives walk jobs sites every day. Workers' declarations on State and local government-

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California and nationally, construction is a bifurcated industry, separated into two subsectors with strikingly different working conditions: a high wage, often unionized nonresidential construction sector, and a low-wage, often exploitative residential construction sector." For an estimate \$1 billion in costs to taxpayers from California construction cash pay or employee misclassification as independent contractors, see Map 2 of Laura Valle-Gutierrez, Russ Ormiston, Dale L. Belman and Jody Calemine\_(2023). "Up to 2.1 Million U.S. Construction Workers Are Illegally Misclassified or Paid Off the Books." Accessed via <https://tcf.org/content/report/up-to-2-1-million-u-s-construction-workers-are-illegally-misclassified-or-paid-off-the-books/>.

subsidized projects where developers have claimed prevailing wage exemptions regularly expose exploitation and violations of workers' rights. Public subsidies going to this "crime scene" of housing production must stop. A prevailing wage requirement on these projects would act as a barrier to entry for the worst actors in the construction industry, and level the playing field for the contractors and developers who are already doing right by construction workers.

### **The Solution: AB 3190 Will Clarify that Tax Credits and Below-Market Interest Rate Loans for Affordable Housing Projects Are Public Funding that Triggers the Payment of Prevailing Wages**

#### Tax Credits

Tax expenditures "represent[] 'government spending' for specific activities or groups, 'effected through the tax system rather than through direct grants, loans, or other forms of government assistance.'"<sup>4</sup> Tax credits, including the State LIHTC program, are one such form of government assistance.

The Department of Finance describes the State LIHTC program as follows:

*A tax credit is allowed for a portion of the costs [to private taxpayers] of investing in qualified low-income rental housing. The aggregate amount of the credit is capped, and specific credits are allocated to applicants by the California Tax Credit Allocation Committee. Credits are allocated to developers who, in turn, sell them to investors in exchange for project funding... Chapter 159, Statutes of 2019 expanded the program by \$500 million for 2020 and ongoing annually pursuant to an authorization in the Budget Act. The Budget Acts for 2020-21, 2021-22, 2022-23, and 2023-24 each authorized the \$500-million expansion.*<sup>5</sup>

DOF's 2023-24 Tax Expenditure report estimated that the "State General Fund Revenue Loss" from the program will increase from **\$250 million in 2023-24** to **\$390 million in 2025-26**.<sup>6</sup>

SB 975 (Alarcon, 2001) made substantial changes to California's Prevailing Wage Laws, amending definitions of public funds in expansive ways. Among other things, SB 975 added to Labor Code section 1720 subdivision (d)(3), a "grandfather" exemption for "[l]ow-income housing projects that are allocated federal or state low-income housing tax credits" before the end of 2003. The inclusion of this exemption suggests that SB 975's authors assumed that housing tax credits allocated after that date *would* trigger prevailing wages.

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<sup>4</sup> Legislative Analyst's Office (2015). Accessed via <https://lao.ca.gov/LAOEconTax/Article/Detail/60>

<sup>5</sup> California Department of Finance. Tax Expenditure Report 2023-24 at page 84. Accessed via <https://dof.ca.gov/wp-content/uploads/sites/352/2023/10/2023-24TaxExpenditureReport.pdf>

<sup>6</sup> California Department of Finance. *Tax Expenditure Report 2023-24*. Accessed via <https://dof.ca.gov/wp-content/uploads/sites/352/2023/10/2023-24TaxExpenditureReport.pdf>

However, SB 975 did not expressly add low-income housing or other tax credits to a preceding subdivision of Labor Code section 1720, subdivision (b), which defines “paid for in whole or in part out of public funds.” For this reason, a California appellate court held in 2008 that, in its current form, the Prevailing Wage Laws did not establish that tax credits amounted to public funds.<sup>7</sup> That court explained that Labor Code section 1720 was not well-written (“As statutes go, section 1720 is hardly a triumph of the drafter’s art”<sup>8</sup>), but that rewriting the statute was the job for the Legislature.

As tax expenditures, State LIHTCs do not fit cleanly into one of the listed meanings of “public funds” included in subdivision (b) of Section 1720 of the Labor Code.

The NCCU strongly urges Committee members to support AB 3190. As a form of government assistance, tax credits allocated to projects that involve construction work done under contract ought to trigger State prevailing wages. AB 3190 would close the gap in the Prevailing Wage Laws identified in 2008 by expressly including tax credits in the Labor Code section 1720 subdivision (b) definition of “paid for in whole in part out of public funds.”

#### Below-Market Rate State and Local Loans

One year after SB 975 became law, the Legislature passed SB 972 (Costa, 2002). Committee staff’s analysis of the bill stated that supporters intended SB 972 to fix SB 975’s “unintentional [subjection of] certain self-help housing and housing rehabilitation projects to prevailing wage requirements.” Such projects, ostensibly would not be built if required to pay prevailing wages.

While the stated purpose of SB 972 was narrowly focused on self-help housing and housing rehabilitation projects, the actual language of the bill broadly exempted all affordable housing construction funded by low-interest loans from the Prevailing Wage Laws. That exemption is now Labor Code section 1720(c)(5)(E).

At the time of SB 972’s negotiation and codification, State affordable housing loan programs were limited in number and in scale. The sponsors and supporters of SB 975 from 2001 may have acceded to SB 972’s exemptions for public loans to affordable housing projects because the Legislature amended the Health & Safety Code in 2000 to require a prevailing wage requirement for the State’s then-primary affordable housing loan program, the Multifamily Housing Program (AB 1901, Steinberg, 2000, adding Section 50675.4).

Two decades later, however, the affordable housing funding landscape has changed dramatically. Budgeted funds for the MHP are often dwarfed by newer publicly funded loan programs and affordable housing trust fund loans with no explicit prevailing wage requirements. In addition, affordable housing developers have grown more sophisticated in attempting to convert grants and waivers into loans—one example is through the Affordable Housing and Sustainable Communities (AHSC) Program.

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<sup>7</sup> *State Building & Construction Trades Council of Cal. v. Duncan* (2008) 126 Cal.App.4th 289, 323-24.

<sup>8</sup> *Id.* at 308.

The loopholes included in SB 972 have proven over the years to be a boon for developers who creatively assemble financing structures that change grants, waivers, and donations into loans or “deferrals.” Lawyers have argued over several dozen prevailing wage “coverage determination” cases involving affordable housing projects since 2006.

The NCCU strongly urges Committee members to support AB 3190. AB 3190 would establish that below-market rate loans on affordable housing projects are public funds that trigger prevailing wage requirements, while preserving the exemptions for self-help and housing rehabilitation projects.

### **Conclusion**

While State LIHTC and below market-rate interest loans have been excluded from prevailing wage requirements for the last twenty years, ample precedent has been established in recent years to expand the Labor Code to cover these public subsidies. Both the Inflation Reduction Act (2022) and the CHIPS and Science Act (2022), which offer tax credits in exchange for investment, require construction workers to be paid prevailing wages. Regarding prevailing wage requirements on public funds for affordable housing specifically, the Minnesota Housing Finance Agency has written into law requirements comparable to AB 3190. Prevailing wages are required on all new construction housing projects that receive funding from their State Housing Tax Credit program, as well as grants and below market-rate interest loans made by state agencies. The Minnesota law was written to address the same issues we face in California, where, without prevailing wage requirements and meaningful enforcement mechanisms, public investment in affordable housing is at risk of flowing to developers and contractors that exploit vulnerable workers who earn too little to afford the very homes they build.

The Legislature has clearly established that state intervention in favor of housing development should require strong labor standards. It is time to bring California tax credits and loan funds for affordable housing development and construction under the Prevailing Wage Laws. Since their inception, the purpose of the Prevailing Wage Laws has been to prevent public funds from benefitting employers at the expense of workers, and only through lobbying and legislative inaction have affordable housing projects remained exempt from those aims. Construction workers should be paid prevailing wages when they are employed on affordable housing projects funded with capital raised from the State LIHTCs and/or below-market State or local loans, the same wages they are paid on any other project receiving public funds.

The members of the Nor Cal Carpenters Union appreciate the leadership of Assemblymember Haney on this important issue and urge Committee members to support AB 3190.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jay Bradshaw", with a long horizontal flourish extending to the right.

Jay Bradshaw  
Executive Officer