



# CLIENT NEWS BRIEF

October 2011

Number 64

## TWO NEW LAWS MAY IMPACT SOLAR PROJECTS INSTALLED ON PUBLICLY OWNED SITES

Governor Brown has signed two bills relating to public agency renewable energy projects. Senate Bill (SB) 136 requires the payment of the prevailing wage to workers who construct renewable energy generation and energy efficiency improvement projects on public property, even when those projects are financed and owned by private entities. SB 226 adds the installation of solar energy systems on the roof of an existing building or in an existing parking lot to the types of projects that are categorically exempt from compliance with the procedures set forth in the California Environmental Quality Act (CEQA). Both bills signal that the Legislature is aware of some of the key issues – such as prevailing wages and CEQA compliance – that arise as public agencies increasingly consider undertaking renewable energy projects.

### SB 136

The California Labor Code requires public entities to require contractors to pay prevailing wages on public works projects where more than \$1,000 in public funds is used to fund the project in whole or in part. The prevailing wage rate of per diem wages is determined by the director of the Department of Industrial Relations (DIR) and is required in order to ensure that a contractor is not awarded such a contract based on paying lower wage rates to employees.

Until the enactment of SB 136, it has been unclear whether a private entity must pay prevailing wages when constructing renewable energy generation and energy efficiency improvement projects, including solar photovoltaic projects, on public property for the benefit of a public agency. In 2010, the DIR issued non-precedential enforcement decisions finding that work performed pursuant to a private power purchase agreement, under which a private entity constructs and owns a renewable energy project, is not subject to prevailing wage requirements.

SB 136 adds renewable energy generation and energy efficiency improvement projects to the list of projects that require payment of prevailing wages to workers. The bill also expands the definition of “public works” to include work done under private contract for the construction or maintenance of renewable energy generating capacity when more than 50 percent of the energy generated is purchased or will be purchased by the public entity, or for energy efficiency improvements when those improvements are primarily intended to reduce energy costs that would otherwise be incurred by the state or one of its political subdivisions.

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## SB 226

Effective January 1, 2012, SB 226 exempts solar projects from CEQA. CEQA requires that the environmental effects of a public project be evaluated and gives the public opportunity to voice their concerns. CEQA also contains categorical exemptions for certain types of projects, meaning that those projects are not subject to CEQA's environmental assessment requirements. SB 226 now categorically exempts the installation of solar energy systems installed on the roof of an existing building or in an existing parking lot. The exemption does not apply if the project requires certain federal permits; the removal of a tree legally required to be planted, maintained, or protected unless that tree dies and there is no requirement to replace it; or the removal of a native tree over 25 years old.

Recent years have seen an explosive trend in public agencies undertaking renewable energy projects, either through power purchase agreements financed by private entities or with the agency's own funds. These two bills will help shape such transactions in the future.

LOZANO SMITH has extensive experience evaluating, structuring and negotiating solar electricity and other energy conservation projects for public agencies. If you have questions about your agency's options for such projects, or for more information about available incentives, please contact one of our [eight offices](#) located statewide, visit our [website](#), or follow Lozano Smith on [Facebook](#).

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