
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2021 - 2022 Regular

Bill No: AB 2143 **Hearing Date:** June 29, 2022
Author: Carrillo
Version: June 21, 2022 Amended
Urgency: No **Fiscal:** Yes
Consultant: Jake Ferrera

SUBJECT: Net energy metering

KEY ISSUE

Should the Legislature require that prevailing wage be paid on renewable energy installation projects with a generating capacity of more than 15 kilowatts (kW) and which receive service pursuant to an electric utility's net energy metering (NEM) tariff?

Should the Legislature require an annual report on the growth of distributed energy resources to disadvantaged and low-income communities, as defined?

ANALYSIS

Existing law:

- 1) Requires the Public Utilities Commission to develop a standard contract or tariff for eligible customer-generators with a renewable electrical generation facility that is a customer of a large electrical corporation.
 - a) Defines "Eligible customer-generator" to mean a residential customer, small commercial customer or commercial, industrial, or agricultural customer of an electric utility, who uses a renewable electrical generation facility, or a combination of those facilities, with a total capacity of not more than one megawatt, that is located on the customer's owned, leased, or rented premises, and is interconnected and operates in parallel with the electrical grid, and is intended primarily to offset part or all of the customer's own electrical requirements.
 - b) Defines "Large electrical corporation" to mean an electrical corporation with more than 100,000 service connections in California.
 - c) Defines "Renewable electrical generation facility" to mean a facility that generates electricity from a renewable source, as defined.

(Public Utilities Code §§2827, 2827.1)

- 2) Requires the Public Utilities Commission to submit an assessment of the success of the California Solar Initiative program to the Legislature. (Public Utilities Code §913.7)
- 3) Requires that not less than the general prevailing rate of per diem wages be paid to all workers employed on a "public works" project costing over \$1,000 dollars and imposes misdemeanor penalties for violation of this requirement. (Labor Code §1771)

- 4) Defines "public work" to include, among other things, construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds. (Labor Code §1720)
- 5) Defines "paid for in whole or in part out of public funds" to mean fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations normally required in the execution of a contract that are paid, reduced, charged at less than fair market value, waived or forgiven. (Labor Code §1720)
- 6) Requires that the applicable general prevailing rate of per diem wages be determined by the Director of the Department of Industrial Relations (DIR) for each locality in which the public work is to be performed and for each craft, classification, or type of worker needed to execute the public works project. (Labor Code §1773)
- 7) Authorizes a public entity to require a bidder, contractor, or other entity to use a skilled and trained workforce to complete a contract or project, and requires that the commitment to use a skilled and trained workforce be made in an enforceable agreement that meets specified requirements. (Public Contract Code §2600, 2602)
- 8) Defines "Skilled and trained workforce" to mean a workforce where all the workers performing work in an apprenticeable occupation, as defined, in the building and construction trades are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the chief of the Division of Apprenticeship Standards. (Public Contract Code §2601)
- 9) Requires that at least 60% of the skilled journeypersons employed to perform work on these contracts or projects, on or after January 1, 2020, to be graduates of an apprenticeship program. (Public Contract Code §2601)

This bill:

- 1) Requires the construction of any **defined** renewable electrical generation facility and any associated battery storage comply with existing public works regulations, including the payment of prevailing wage.
 - a) **Does not apply** to residential renewable generation facilities that have a maximum generating capacity of 15 kilowatts or less.
 - b) Only applies to projects beginning after December 31, 2023
 - c) Affects projects that receive service pursuant to the standard contract or tariff developed pursuant to PUC §2827.1
- 2) Requires the Public Utilities Commission to annually include in their required assessment both of the following:
 - a) A report on the progress made to grow the use of distributed energy resources among residential customers in disadvantaged communities and in low-income households.

- b) An aggregated list, by census tract and ZIP Code, of all renewable electrical generation facilities, that began to receive service pursuant to a net energy metering contract or tariff during the preceding calendar year, including, but not limited to, median household income, home ownership, and racial composition, as applicable.

COMMENTS

1. Need for this bill?

There has been much discussion on this bill and other public works expansions, as to whether imposing additional limits on construction projects could impact local governments' ability to stimulate and encourage private development with subsidies. Stakeholders in the construction industry cite higher costs in their opposition to AB 2143 and argue that this will have a chilling effect on public-private partnerships in solar and battery storage construction projects. However, while that it might logically follow that increased wages would lead to higher overall construction costs, there is good evidence to suggest that this might not correlate quite so strongly. Research by the Federal Highway Administration which examined highway construction projects found that "There is no basis to the claim that lower wage rates result in lower construction costs." This was based on the findings that construction companies could save in the short term by paying lower wages, but that in the long run construction projects which adhered to higher prevailing wage standards lowered costs by having lower rates of injury and a higher quality of final product, reducing the need for future upkeep.¹

Furthermore, this bill's provisions have been tailored to capture large projects. According to the Senate Energy, Utilities, and Communication Committee analysis:

"Based on data collected as part of the CSI, the interconnection of all customer-sited renewable generating facilities has been tracked and updated on a regular basis. Based on this data, about three percent of the NEM systems interconnected to the three large electric investor-owned utilities are greater than 15 kW in size, with 3.6 percent in Pacific Gas & Electric (PG&E) service territory, and 2.5 percent in each of the territories of Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E). In aggregate, across all three utilities, there are nearly 40,000 NEM connected systems greater than 15 kW of the nearly 1.3 million NEM connected systems."

With amendments further limiting the scope of the bill, the projects covered under the provisions of AB 2143 should be quite large and less likely to be disrupted by more payroll reporting requirements and payment of prevailing wages.

2. Proponent Arguments

The California State Association of Electrical Workers and the Coalition of California Utility Employees, the sponsors of the bill, write in support:

¹ Manzo FP. "The Effect of "Federal -Aid Swap" Programs and Davis-Bacon Prevailing Wages on Highway Construction Costs and Contractor Composition: Evidence From Iowa." *Labor Studies Journal*. 2022;47(1):75-98.

“**AB 2143 addresses two critical issues surrounding the rooftop solar.** First, it addresses the exclusion of lower income communities from participating in rooftop solar. AB 2143 would require the Public Utilities Commission (PUC) to submit an annual report to the Legislature documenting the progress of rooftop solar deployment by zip code and census tract to fix rooftop solar inequities in communities facing the largest cost shifts. This would create an essential mechanism to allow decision makers to pinpoint where the most need is and to adequately address communities that have been ignored by the solar revolution.

Second, AB 2143 would apply prevailing wage requirements to the construction of any renewable electrical generation facility, and any associated battery storage, after December 31, 2023, that would have a maximum generating capacity of 15 kilowatts. These labor protections will stop large corporations and wealthy homeowners from taking advantage of rooftop solar installers, while insuring the highest level of competence and safety over the lifetime of the project.

These two provisions will provide decision makers with the data necessary to ensure that underserved communities are no longer bearing the brunt of solar costs while receiving none of the benefits. It also notably includes worker protection by guaranteeing a prevailing wage.”

3. Opponent Arguments:

The California Solar and Storage Association writes in opposition:

“AB 2143 would move California backwards. Here are a few examples:

AB 2143 would slow down California’s clean energy goals. California needs at least three times more solar than we have today, and we need it as quickly as possible. California also needs five times more sun-charged batteries, as quickly as possible. AB 2143 would increase costs and slow down the adoption of solar power and energy storage, especially in low- and middle-income neighborhoods where solar is currently growing at the fastest rate.

AB 2143 is unsound. Why would the state of California consider independent, behind-the-meter solar projects contracted by and for individual consumers “public works projects”? The solar systems are not funded by taxpayers, like a road or a bridge, but rather are the result of private investments in on-site renewable energy. The Net Metering tariff, per Public Utilities Code section 2827.1, is not a subsidy program. There are no state taxpayer dollars exchanged when a homeowner or business applies for interconnection to the utility with a net metered solar system.

AB 2143 would kill small businesses and hurt the industry’s diversity goals. Over 80% of California’s solar contractors are small businesses with fewer than 100 employees. Small businesses are the pathway to opportunity for underrepresented communities looking for economic opportunity and for ways to give back to their communities. AB 2143 would make running a small contracting business, already a challenge in California, untenable.

AB 2143 will hurt the state’s affordable housing and commercial solar market. By applying prevailing wage requirements across the board to California’s non-residential solar market, AB 2143 will increase costs for affordable housing projects, farms, and other business consumers.

AB 2143 is a bad solution in search of a problem. Solar installers are already paid a living wage. CALSSA’s survey of member data shows the average solar installer salary in the Bay Area, for example, is \$74,000 per year plus benefits and can exceed \$110,000 for senior project managers. Furthermore, many solar projects are already at prevailing wage rates due to the strong demand for on-site solar among government agencies, public schools, and the like.”

4. Amendments

Amendments taken in Committee make the following changes:

- 1) Clarify that the bill does not apply to a residential renewable electrical generation facility that is installed on a single family home.
- 2) Requires that contractors who enter into a contract to perform work on a renewable electrical generation facility or associated battery storage must pay all construction workers employed on the project prevailing wage or apprentice prevailing wage, when applicable.
- 3) Requires contractors who enter into contracts covered by AB 2143 to maintain and verify payroll records in accordance with existing public works law under Section 1776 of the Labor Code, except that the contractor only must provide copies of the records to DIR and the PUC.
 - a) These records must be submitted electronically to the PUC biannually on July 1 and December 31 of each year. The PUC will retain these as public records for 5 years.
- 4) Allows the enforcement of the prevailing wage requirement for construction workers employed by contractors by any of the following mechanisms:
 - a) By the Labor Commissioner, through the issuance of a civil wage and penalty assessment within 18 months of the violation.
 - b) By an underpaid construction worker or apprentice through an administrative complaint or civil action.
 - c) By a joint labor-management committee through a civil action under Section 1771.2 of the Labor Code.
- 5) Prohibits a customer with a violation of the above sections or another provision of AB 2143 from being an eligible customer-generator, as defined.
- 6) Requires each large electrical corporation, as defined, to include the requirements of AB 2143 in any standard contract or tariff offered pursuant to Section 2827.1 of the Public Utilities Code.

These amendments are intended to capture a wider swath of construction workers that might be employed on a residential renewable electrical generation facility project within required payment of prevailing wages. The amends would broaden prevailing wage requirements to also include workers hired by contractors, which normally would not be covered, and

includes reporting requirements and enforcement mechanisms that largely mirror existing public works regulations.

Finally, the amendments adjust the size of projects covered by the bill to exempt projects that are installed on a single family home. This will ensure that smaller solar projects aren't subject to more stringent pay and reporting requirements and AB 2143 will apply, as intended, to larger solar installation and battery storage projects.

5. Prior Legislation:

AB 841 (Ting) Chapter 372, Statutes of 2020: required that all electric vehicle charging infrastructure and equipment located on the customer side of the electrical meter that is funded or authorized, in whole or in part, by state entities shall be installed by a contractor with the appropriate license and at least one electrician on each crew, at any given time, who holds an Electric Vehicle Infrastructure Training Program certification.

SB 350 (De León) Chapter 547, Statutes of 2015: specified that construction, alteration, demolition, installation, or repair work on the electric transmission system located in California constitutes a public works project, subjecting these projects to prevailing wage.

AB 327 (Perea) Chapter 611, Statutes of 2013: instituted several rate reforms and required the CPUC to adopt a successor NEM tariff no later than December 31, 2015.

6. Double Referral

AB 2143 was previously heard and passed out of the Senate Energy, Utilities, and Communications Committee.

SUPPORT

Coalition of California Utility Employees (Co-Sponsor)
California State Association of Electrical Workers (Co-Sponsors)
California Labor Federation, AFL-CIO
Engineers and Scientists of California, IFPTE Local 20, AFL-CIO
State Building & Construction Trades Council of California

OPPOSITION

350 South Bay Los Angeles
California Solar & Storage Association
Cloverdale Indivisible
Desert Valleys Builders Association (DVBA)
Indivisible Alta Pasadena
Indivisible California Green Team
Indivisible Marin
Indivisible Media City Burbank
Indivisible Mendocino
Indivisible Resistance San Diego
Indivisible Riverside

Indivisible Ross Valley
Indivisible Sacramento
Indivisible San Jose
Indivisible Sonoma County
Indivisible Stanislaus
Long Beach Alliance for Clean Energy
Northridge Indivisible
Progressive Democrats of Santa Monica Mountains
Silicon Valley Leadership Group
Social 350
Stand Strong LA Indivisible
Valley Women's Club of San Lorenzo Valley

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