

COMMISSION ON STATE MANDATES

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April 15, 2011

Mr. Keith Petersen
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And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

RE: **Draft Staff Analysis, Proposed Statewide Cost Estimate, and Hearing Date**
Prevailing Wage Rate, 01-TC-28
Labor Code Section 1776; Statutes 1978, Chapter 1249
California Code of Regulations, Title 8, Sections 16400, subdivisions (c) and (d); 16403,
Subdivision (a), and 16408, Subdivision (b)
Grossmont Unified School District

Dear Mr. Petersen:

The draft staff analysis and proposed statewide cost estimate for this matter are enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis and proposed statewide cost estimate by **Thursday, May 5, 2011**. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

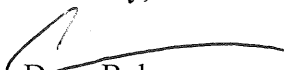
You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) However, this requirement may also be satisfied by electronically filing your documents on the Commission's website. Please see the Commission's website at http://www.csm.ca.gov/dropbox_procedures.shtml for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.) The comments will be posted on the Commission's website and the mailing list will be notified by electronic mail of the posting and the comment period. This procedure will satisfy all the service requirements under California Code of Regulations, title 2, section 1181.2, subdivision (c).

Hearing

This matter is set for hearing on **Thursday, May 26, 2011**. You will be notified of the location of the hearing at a later date. The final staff analysis will be issued on or about May 12, 2011. This matter is proposed for the Consent Calendar. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Nancy Patton at (916) 323-8217 if you have questions.

Sincerely,


Drew Bohan
Executive Director

ITEM ____
DRAFT STAFF ANALYSIS
PROPOSED STATEWIDE COST ESTIMATE
\$480,655

Labor Code Section 1776

Statutes 1978, Chapter 1249

California Code of Regulations, Title 8,
Sections 16400, Subdivisions (c), and (d), 16403, Subdivision (a),
and 16408, Subdivision (b)

Prevailing Wage Rate
01-TC-28

Grossmont Union High School District, Claimant

STAFF ANALYSIS

Background and Summary of the Mandate

The test claim statute and regulations address changes to the California Prevailing Wage Law (CPWL), which is “a comprehensive statutory scheme designed to enforce minimum wage standards on construction projects funded in whole or in part with public funds.” Contractors for public works projects that exceed \$1,000 are required to pay local prevailing wages to construction workers on those projects. The provisions of the CPWL are only applicable when a district contracts with a private entity to carry out a public works project. The test claim statute and regulations mandate certain activities when the CPWL provisions are triggered by projects for repair or maintenance to school facilities and property,¹ when the project constitutes a public works project pursuant to the CPWL, and when the project must be let to contract.

The Commission adopted a statement of decision concluding that Labor Code section 1776, Statutes 1978, chapter 1249, and California Code of Regulations, Title 8, sections 16400, subdivisions (c) and (d), 16403, subdivision (a), and 16408, subdivision (b), constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The claimant filed the test claim on June 28, 2002. The Commission adopted a statement of decision on January 31, 2009, and the parameters and guidelines on January 29, 2010. The parameters and guidelines were corrected on May 25, 2010.² Eligible claimants were required to file initial reimbursement claims with the State Controller’s Office (SCO) by November 30, 2010, and late claims by November 30, 2011.

Eligible Claimants and Period of Reimbursement

Any school district as defined in Government Code section 17519, including community college districts, are eligible claimants. The reimbursement period for this new mandate began on July 1, 2000.

¹ Pursuant to Education Code sections 17002, 17565, 17593, and 81601.

² Exhibit A.

Reimbursable Activities

The Commission approved the following activities for reimbursement:

- A. Upon a request made to the awarding body by the public for certified payroll records:
 - Obtain certified payroll records from the contractor, including specified information in the request. (Cal. Code Regs., tit. 8, § 16400, subd. (c).)
 - Send an acknowledgment to the requestor including notification of the costs to be paid for preparing the records. (Cal. Code Regs., tit. 8, § 16400, subd. (d).)
 - Provide copies of the records to the requestor. (Lab. Code, § 1776, subd. (b)(3).)
 - Retain copies of payroll records requested by the public and provided by the awarding body for at least 6 months. (Cal. Code Regs., tit. 8, § 16403, subd. (a).)
- B. Withhold penalties from contractor progress payments for noncompliance with the requirement to provide certified payroll records under Labor Code section 1776, upon request of the Department of Industrial Relations' Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. (Lab. Code, § 1776, subd. (g) (as amended by Stats. 1978, ch. 1249).)
- C. Insert stipulations regarding the contractor's and subcontractor's requirements pursuant to Labor Code section 1776 in the contract. (Lab. Code, § 1776, subd. (h) (as amended by Stats. 1978, ch. 1249); Cal. Code Regs., tit. 8, § 16408, subd. (b).)

The above-named activities are only reimbursable when those activities are triggered by projects for repair or maintenance to school facilities and property, pursuant to Education Code sections 17002, 17565, 17593, and 81601, when the project constitutes a public works project pursuant to the CPWL, and when the project must be let to contract under the following circumstances:

1. For *K-12 school districts*, when the project is not an emergency as set forth in Public Contract Code section 20113, and
 - a. for districts with an average daily attendance of less than 35,000, when the total number of hours on the job exceeds 350; or
 - b. for districts with an average daily attendance of 35,000 or greater, the total number of hours on the job exceeds 750 hours or the material cost exceeds \$21,000. (Pub. Contract Code, § 20114.)
2. For *community college districts*, when the project is not an emergency as set forth in Public Contract Code section 20654, and
 - a. for districts with full-time equivalent students of fewer than 15,000, when the total number of hours on the job exceeds 350; or
 - b. for districts with full-time equivalent students of 15,000 or more, the total number of hours on the job exceeds 750 hours or the material cost exceeds \$21,000. (Pub. Contract Code, § 20655.)
3. For any K-12 school district or community college district that is subject to the Uniform Public Contract Cost Accounting Act (UPCCAA), when a project is not an emergency as set forth in Public Contract Code section 22035, and the project cost will exceed:

- a. \$25,000 for projects completed by December 31, 2006;
- b. \$30,000 for projects completed on or after January 1, 2007. (Pub. Contract Code, § 22032.)

Activities that are performed as a result of a district's implementation of the Labor Compliance Program pursuant to labor Code section 1771.5 are **not** reimbursable.

Offsetting Revenue Provisions

Any fees received by school districts pursuant to Labor Code section 1776, subdivision (e), and title 8, California Code of Regulations, section 16402 for obtaining certified payroll records from the contractor, sending an acknowledgment to the requestor, and providing copies of the records to the requestor shall be identified as offsetting revenue in the parameters and guidelines. Furthermore, any grant funds available to awarding bodies under the deferred maintenance program, or any other eligible grant program, when used for the newly mandated activities in this test claim, shall be identified in the parameters and guidelines as possible offsetting revenues.

Statewide Cost Estimate

Staff reviewed the claims data submitted by six community college districts, and one school district, and compiled by the SCO. The actual claims data showed that 23 claims were filed for fiscal years 2003-2004 through 2009-2010, for a total of \$540,729.³ Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

Assumptions

1. *The actual amount claimed for reimbursement may increase if late or amended claims are filed.*

There are 72 community college districts, and over 1,000 school districts in California. Of those, only 6 community college districts and 1 school district filed a total of 23 reimbursement claims for this program between 2003 and 2010. If other eligible claimants file late or amended claims, the amount of reimbursement claims may exceed the statewide cost estimate. Late claims for this program may be filed until November 30, 2011.

2. *There may be several reasons that non-claiming community college and school districts did not file reimbursement claims, including but not limited to:*

- The Commission approved only a small portion of this program as a mandate. Therefore, many community college districts and school districts cannot reach the \$1,000 threshold for filing reimbursement claims.
- There is grant money and fees available for this program that, if received, must be offset from reimbursement claims. This may also contribute to the fact that districts cannot reach the \$1,000 threshold for filing claims.
- They did not have supporting documentation to file a reimbursement claim.

3. *There is a wide variation in costs claimed for this program that appear to be eligible for reimbursement.*

Staff reviewed the reimbursement claims filed and found that the average cost of the 23 claims is \$20,898 per claim. Six claims exceed this amount.⁴ Staff found that the agencies

³ Claims data reported as of April 11, 2011.

⁴ Santa Clarita Community College District filed claims for: (1) \$29,300 in 2004-2005; (2) \$71,900 in 2005-2006; (3) \$52,275 in 2006-2007; (4) \$73,728 in 2007-2008; and (5) \$57,428

with higher-than-average costs hired outside consulting firms to complete the activities required by this program, including obtaining certified payroll records, sending an acknowledgment to the requestor, providing copies of the records to the requestor, and retaining copies of payroll records.

However, the parameters and guidelines and the law do not prohibit community college districts and school districts from using outside resources to implement a mandated program. Therefore, these costs appear to be eligible for reimbursement.

4. *The total amount of reimbursement for this program may be lower than the statewide cost estimate, because the SCO may reduce any reimbursement claim for this program.*

The SCO may conduct audits on this program, and reduce any claim it deems to be excessive or unreasonable.

Methodology

Fiscal Years 2003-2004 through 2009-2010

The proposed statewide cost estimate for the above-named fiscal years was developed by totaling the 23 reimbursement claims filed with the SCO for these years.

The proposed statewide cost estimate includes seven fiscal years for a total of \$480,655 for the *Prevailing Wage Rate* program. This averages to \$68,665 annually in costs for the state for this seven-year period.

Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	Number of School District Claims Filed with SCO	Number of Community College District Claims Filed with SCO	Estimated Cost
2003-2004	0	3	\$28,285
2004-2005	0	3	\$39,068
2005-2006	1	3	\$83,591
2006-2007	0	3	\$72,835
2007-2008	0	4	\$184,792
2008-2009	1	3	\$67,892
2009-2010		2	\$4,192
SUB-TOTAL	2	21	\$480,655

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$480,655** for costs incurred in complying with the *Prevailing Wage Rate* program.

in 2008-2009. Yuba Community College District filed a reimbursement claim for \$103,622 in 2007-2008.

Commission on State Mandates

Original List Date: 7/8/2002
Last Updated: 4/15/2011
List Print Date: 04/15/2011
Claim Number: 01-TC-28
Issue: Prevailing Wage Rate

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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