

NEW DIR PUBLIC WORKS FUNDING LEGISLATION FACT SHEET

Legislative proposal to restructure funding for administration and enforcement of prevailing wage requirements by the Department of Industrial Relations and make related changes to project monitoring requirements.

Under existing law – DIR administers and enforces the prevailing wage and related requirements found in Division 2, Part 7, Chapter 1 (commencing with section 1720) of the Labor Code. This includes:

- Director's determination of prevailing wage rates for all parts of states
- Public Works coverage determinations by the Director
- Traditional enforcement through investigation of complaints by Labor Commissioner (including prevailing wage and apprenticeship violations)
- Proactive monitoring by Compliance Monitoring Unit (CMU), including review of all certified payroll records (CPRs), on state bond-funded projects and other specified projects
- Issuance and enforcement of civil wage and penalty assessments by Labor Commissioner
- Administrative appeal hearings conducted by DIR hearing officers
- Director's approval and oversight of labor compliance programs (LCPs) that are required for Proposition 84 projects and authorized in some other circumstances

Currently these activities are funded through (1) billing in arrears to awarding bodies for services provided on CMU projects; (2) portion of LECF assessment charged to all California employers; (3) General Fund; and (4) other minor sources.

This proposal will replace current funding sources with a public works contractor registration fee that pays for all DIR administration and enforcement of prevailing wage requirements (activities listed above with revisions in how projects are monitored).

Essentials of contractor registration program:

- Contractors will be subject to a registration and annual renewal fee that has been set initially at \$300. The fee is non-refundable and applies to all contractors and subcontractors who intend to bid on or perform work on public works projects (as defined under the Labor Code).
- Contractors will apply and pay the fee online and must meet minimum qualifications to be registered as eligible to work on public works:
 - Must have workers' compensation coverage for any employees and only use subcontractors who are registered public works contractors
 - Must have CSLB contractor license if applicable to trade
 - Must have no delinquent unpaid wage or penalty assessments due to any employee or agency
 - Not under debarment and no recent violation of this requirement to be registered in order to bid on or perform public work
 - Not in prior violation of registration requirement once it becomes effective. First time violators will be able to avoid 12 month disqualification by paying an additional penalty.
- The registration fee is not related to any project. It is more like a driver's license in that it entitles the registrant to bid on and perform public works.
- DIR will post a list of registered contractors and subcontractors on its website so that awarding bodies and contractors will be able to comply with requirement to only use registered contractors and subcontractors.
- Various protections built in so that
 - Contractor not in violation for working on a private job that is later determined to be public work;
 - Inadvertent listing of unregistered subcontractor on a bid does not necessarily invalidate that bid;
 - Contract with unregistered contractor or subcontractor is subject to cancellation but is not void as to past work;
 - Unregistered contractor or subcontractor can be replaced with one who is registered;
 - Contractor whose registration has lapsed given grace period within which to pay late fee and renew.

- Other miscellaneous information
 - Registrations will begin after July 1, 2014. Requirement to list only registered contractors and subcontractors on bids becomes effective on March 1, 2015. Requirement to only use registered contractors and subcontractors on public works projects applies to all projects awarded on or after April 1, 2015.
 - Payment will be by credit card.
 - The initial fee has been set at \$300 in anticipation that it will generate sufficient revenue to support the \$11.4 million cost of DIR's current public works program. The fee may be adjusted later (no more than annually) so that it continues to meet program costs.
 - Registration program is based on model that has been in use for several years in states of New Mexico and New Jersey.

Essentials of Public Works Enforcement Fund:

All fees will go into Public Works Enforcement Fund and will be used to fund the following items and for no other purposes --

- administration of contractor registration requirement
- all DIR costs for administering and enforcing public works laws
- other Labor Code enforcement by Labor Commissioner on monitored public works projects.

LECF assessment paid by all California employers, including vast majority not engaged in public works, will no longer be relied upon to fund public works enforcement.

DIR will no longer charge awarding bodies for prevailing wage compliance monitoring (as is done currently for CMU projects). *Note: DIR will continue to bill awarding agencies for CMU services provided through June 30, 2014.*

Related changes in DIR's administration and enforcement of public works requirements:

Current requirements to use CMU for state bond-funded and other specified projects will be eliminated and replaced by requirements that apply to all public works projects (as defined under the Labor Code).

- Awarding bodies will be required to submit PWC-100 (contract award notice) for all public works projects [*requirement currently applies to about 90% of all projects*]
- Contractors and subcontractors on all public works projects will be required to submit CPRs to the Labor Commissioner unless excepted from this requirement.
 - Requirement will be phased in as follows:
 - Will apply immediately to projects that have already been under CMU monitoring
 - Will apply to new projects awarded on or after April 1, 2015
 - May apply to other projects as determined by Labor Commissioner
 - Will apply to all projects, new or ongoing, on and after January 1, 2016
 - Labor Commissioner may make exception to this requirement for
 - Projects covered by qualifying project labor agreement
 - Projects undertaken by one of four remaining awarding bodies with legacy LCPs (Caltrans, City of Los Angeles, County of Sacramento, and Los Angeles Unified School District), so long as those programs remain approved by DIR
 - CPRs will be furnished online (as is done currently for CMU). DIR intends to continue making improvements to the process, including creating a means for general contractors to have online access to the CPRs submitted by their subcontractors.
- Although all CPRs will be furnished to the Labor Commissioner, the Labor Commissioner will have discretion to determine which records to review and what kind of additional monitoring to conduct based on enforcement priorities.
- Labor Commissioner's monitoring and enforcement staff will increase slightly though remaining well below the numbers originally projected for the CMU.