

TITLE 8. DEPARTMENT OF INDUSTRIAL RELATIONS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Industrial Relations (“Director”) proposes to adopt and amend regulations governing (1) certified payroll records, and (2) the approval and operation of labor compliance programs by state and local agencies involved with public works construction contracts. The existing regulations are found in Subchapter 3, Article 6 and Subchapter 4 of Chapter 8, commencing with Section 16400, of Title 8 of the California Code of Regulations. The proposed amendments will add new regulations and will change some existing regulations. The Director proposes to adopt these new regulations and amendments after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING, WRITTEN COMMENT PERIOD, AGENCY CONTACTS

Public Hearing:

A public hearing will be held on the proposals as follows:

January 23, 2008 at 10:00 a.m.

Hiram Johnson State Building
Senator Milton Marks Conference Center – Benecia Room
455 Golden Gate Avenue
San Francisco, California 94102

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The Director requests but does not require persons who make oral comments to submit a written copy of their testimony.

Written Comment Period:

Any person or authorized representative may submit written comments relevant to the proposed regulatory action to the contact person listed below. The written comment period closes on January 23, 2008, at 5:00 p.m., and the Director will only consider comments received by that deadline. Written comments may be submitted in person at one of the hearings or by letter, facsimile, or e-mail as follows:

Department of Industrial Relations
Office of the Director — Legal Unit
455 Golden Gate Avenue, Suite 9516
San Francisco, CA 94102
Facsimile: (415) 703-4277
E-mail: LCPCComments@dir.ca.gov

Agency Contacts:

Inquiries concerning the proposed regulations may be directed to:

Primary Contact:

John Cumming
Department of Industrial Relations
Office of the Director — Legal Unit
455 Golden Gate Avenue, Suite 9516
San Francisco, CA 94102
(415) 703-4265

Back-up Contact:

Tess Gormley
Department of Industrial Relations
Office of the Director
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
(415) 703-5063

Questions about the substance of the proposed regulations may be directed to either Mr. Cumming or Ms. Gormley.

AUTHORITY AND REFERENCE

Authority: Labor Code sections 54, 55, 1742(b), and 1773.5.

Reference: Sections 17250.30 and 81704, Education Code; sections 6250 et seq., 6531, and 87100, et seq., Government Code; sections 55, 90.5, 226, 1720, et seq., 1729, 1741-1743, 1771.5, 1771.6, 1771.7, 1771.8, 1771.9, 1773, 1773.1, 1773.2, 1773.3, 1775, 1776, 1777.5, 1777.7, 1778, 1813, 1815, and 3070, et seq., Labor Code; and sections 20133, 20175.2, 20209.7, 20209.13, 20209.24, and 20919.3, Public Contracts Code.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Overview:

The laws regulating public works projects require among other things that workers employed on such projects be paid not less than the general prevailing wage rates, as determined under the Labor Code. Public agencies that award public works contracts (known as “awarding bodies”) generally are required to inform public works contractors of this requirement, to monitor compliance by obtaining certified payroll reports from contractors, and to withhold contract payments when the relevant enforcing agency determines that a contractor has violated prevailing wage requirements. Prevailing wage laws are enforced primarily by the State Labor Commissioner (also known as the Division of Labor Standards Enforcement). However, under certain circumstances awarding bodies may set up their own enforcement agencies, known as “labor compliance programs,” to enforce prevailing wage requirements on public works contracts in which that awarding body participates.

Labor compliance programs were authorized with the adoption of Labor Code section 1771.5, which became effective in 1990. Subsection (b) of Labor Code section 1771.5 sets forth the general requirements for operating a labor compliance program, and subsections (c) and (d)

of section 1771.5 specify that labor compliance programs must be approved and are subject to revocation of approval in accordance with regulations adopted by the Director of Industrial Relations. In 1992 the Director of Industrial Relations adopted numerous regulations governing public works, including the first regulations governing the approval of labor compliance programs as well as their reporting, monitoring, and enforcement responsibilities. Under the original statute and regulations, which offered higher prevailing wage exemptions for awarding bodies that handled all their own public works enforcement, there were about a dozen approved labor compliance programs.

Subsequent legislation began to require awarding bodies to adopt and enforce a labor compliance program, or to contract with a third party to adopt and enforce a labor compliance program as a condition for using specified funds or exercising certain contracting authority. Most notable among these statutes were Labor Code sections 1771.7 and 1771.8, which required awarding bodies to have labor compliance programs for any public works projects funded by the Kindergarten-University Public Education Facilities Bond Acts of 2002 and 2004 and the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002. Several hundred new labor compliance programs sought and obtained approval as a result of this legislation, including numerous private third party programs that were approved to operate labor compliance programs under contract with awarding bodies. In 2004, the regulations governing labor compliance programs were amended to address these new statutory requirements and other changes in the laws pertaining to prevailing wage enforcement. Those amendments included some specific rules to govern third party programs.

As was noted in the Final Statement of Reasons for the 2004 amendments, certain proposals from that rulemaking were withdrawn in order to allow for more study and discussion with interested persons. The withdrawn proposals focused in particular on monitoring and enforcement responsibilities and rules governing the withholding of contract payments. This rulemaking now puts forth revised proposals covering those subjects and as well as other matters suggested both by the regulated public and the Department's own regulatory experience. The purpose and intent of this rulemaking is to provide further clarity of reporting, monitoring, and enforcement responsibilities, to make it easier for labor compliance programs to carry out their statutory responsibilities in a proper and effective manner, while allowing for more effective oversight of that work by the Department. These proposals are also presented in response to concerns expressed by labor compliance program administrators, interest groups, legislators, and other agencies that a lack of specificity and measurable performance standards has led both to confusion and inefficient or lax enforcement by many labor compliance programs.

Proposed Amendments to Existing Regulations and New Regulations

The Director proposes to amend the regulations found in subchapter 3, Article 6, and subchapter 4 of Chapter 8 of Division 1, sections 16400 through 16439, title 8 of the California Code of Regulations, including through revisions to existing text and the addition of three new regulations.

The Director proposes to add a new *section 16404* to expressly authorize contractors and subcontractors to maintain and submit electronic payroll records, subject to specified conditions.

Existing *section 16421* pertains to the composition and components of a labor compliance program. The Director proposes to amend subpart (a)(3) to require that certified payroll records be furnished to the Labor Compliance program at least monthly or upon request. The Director also proposes to add a new subpart (e) to state policy standards on what constitutes appropriate labor compliance program enforcement, and a new subpart (f) to clarify that a labor compliance program's failure to meet monitoring and enforcement standards is not a defense to failing to pay the prevailing wage. The Director also proposes to add to the suggested pre-job conference check-list in Appendix A, a new item covering the Labor Code section 226 requirement to provide employees with itemized wage statements.

Existing *section 16422* pertains to applicable dates for labor compliance program enforcement. The Director proposes to delete the words, "initial or final" in subpart (b) to conform with proposals that will delete the concepts of "initial" and "final" approval in sections 16425 through 16427. The Director proposes to amend subpart (d) to clarify that the existing procedure for notifying awarding bodies of their responsibilities upon revocation pertains to in house awarding body programs that have been approved pursuant to section 16425. The Director proposes to add a new subpart (g) with specific notification and transition procedures to be followed by third party programs (approved pursuant to section 16426) upon receipt of notice of revocation by the Director.

Existing *section 16423* currently specifies that awarding bodies may not use certain bond funds unless they adopt labor compliance programs, and it sets forth requirements for adopting a written finding and giving notices to the Director and Labor Commissioner. The Director proposes to delete the existing language in subpart (a) and replace it with language clarifying that whenever an awarding body is required by statute to have a labor compliance program, it must have its own approved program unless it fully contracts out responsibilities to an approved third party program. The Director proposes to amend subpart (b) by deleting the requirement to provide the Labor Commissioner with the required notices, while adding language to require that the requisite notices be furnished to the Director prior to certifying to any other entity that the Awarding Body has complied with a statutory requirement to have a Labor Compliance Program. The Director also proposes to add a new subpart (c) to clarify that an approved labor compliance "program" refers to the entity that has applied for and obtained approval from the Director rather than the entity's manual or methodology for conducting labor compliance enforcement. The Director is proposing an additional new subpart (d) to specify that separate approvals are *not* required for different types of projects or funding sources. The Director proposes to redesignate existing subpart (c) as subpart (e) and then to list all state statutes with a labor compliance program requirement (11 in effect and one provisional as of 1-1-2008) in a separate Appendix B.

Existing *section 16424* pertains to procedures for applications for approval of labor compliance programs. The Director proposes to delete the word "initial" in the text to conform to proposed changes in sections 16425 through 16427.

Existing *section 16425* pertains to applications for approval of awarding body or "in house" labor compliance programs. The Director proposes to delete the word "initial" wherever

it appears to conform to proposed changes in other regulations. The Director has redrafted the first paragraph (a) to improve its clarity. The Director proposes to amend subpart (b) by increasing the Director's deadline to grant approval or provide notice that an application is incomplete or disapproved from 30 to 60 days. The Director proposes to delete the language of subpart (c) pertaining to automatic expiration of initial approval and authorizing initial approvals up to 18-month in certain circumstances; and the Director proposes to substitute language that generally authorizes the Director to grant approval on an interim or temporary basis and to impose specific conditions on that approval, subject to reasonable conditions for removing the interim or temporary designation. The Director proposes to add conforming language to subpart (d) regarding the listing of programs with interim, temporary, or restricted approval. The Director also proposes to add a new subpart (e) to clarify that awarding bodies who intend to operate labor compliance programs on behalf of other awarding bodies must obtain approval pursuant to section 16426.

Existing *section 16426* pertains to applications for approval of third party labor compliance programs. The Director proposes to delete the word "initial" wherever it appears to conform to proposed changes in other regulations. The Director has redrafted the first paragraph (a) to improve its clarity. The Director proposes to add a new subdivision (9) to subpart (a) to require a specification of employees who will have governmental decision-making authority and how the program plans to handle Fair Political Practices Commission ("FPPC") reporting requirements. The Director proposes to amend subpart (b) to increase the deadline to grant approval or provide notice that an application is incomplete or disapproved from 30 to 60 days. The Director proposes to delete the language of subpart (c) pertaining to automatic expiration of initial approval and authorizing initial approvals up to 18-month in certain circumstances; and the Director proposes to substitute language that generally authorizes the Director to grant approval on an interim or temporary basis and to impose specific conditions on that approval, subject to reasonable conditions for removing the interim or temporary designation. The Director proposes to add conforming language to subpart (d) regarding programs with interim, temporary, or restricted approval.

Existing *section 16427* pertains to applications for final approval of a labor compliance program. The Director proposes to amend this section by deleting the words, "final approval" from the title and throughout the text, and substituting the words "extended authority." The Director proposes to amend subpart (a) to change the minimum experience required for final approval [current] or extended authority [proposed] from 11 months to three years. The Director also proposes to add language to subpart (b) clarifying that a program must demonstrate its "understanding and" ability to monitor compliance with the Labor Code and regulations. The Director proposes to extend the deadline in subpart (c) for granting or denying an application for final approval [current] or extended authority [proposed] from 30 to 90 days. In addition, the Director proposes to add a sentence to subpart (e) that would grandfather existing programs with "final approval" status into "extended authority" status if the other amendments are adopted.

Existing *section 16428* pertains to the Director's authority to revoke approval of a Labor Compliance Program. The Director proposes to add a new subdivision (5) to subpart (a) to specify that failing to comply with statutory requirements or the Director's conditions or restrictions is a cause for revocation. The Director also proposes to add a new subpart (e) to

authorize the Labor Commissioner to investigate programs and serve as prosecutor in revocation proceedings, subject to the Director's authority to make final determinations. The Director proposes to redesignate existing subpart (e) as subpart (f) and clarify that nothing in this regulation limits the Director from imposing conditions or restrictions in lieu of revocation.

Existing *section 16429* pertains to notices of approval. The Director proposes to delete the words "initial or final" from this regulation to conform to changes proposed for sections 16425 through 16427.

The Director proposes to add a new *section 16430* pertaining to the filing of economic interest statements by labor compliance program personnel. Subpart (a) would specify that awarding bodies must determine and designate which employees and consultants (employed by labor compliance programs) have Political Reform Act reporting responsibilities and then require the employees and consultants to comply with those responsibilities. Subpart (b) would require designated employees and consultants to meet those responsibilities and to file disclosure statements with the relevant awarding body unless the Director or the FPPC provides for a different filing location.

Existing *section 16431* pertains to annual reports, and the Director is proposing two different options for amending the regulation, with both options designed to provide more specific reporting information. In addition to comments on the contents of these proposals, the Director invites comment on which option is preferable or whether some combination of the two or a different approach to annual reports would be more appropriate.

In Option A, the Director proposes to amend subpart (a) to require separate reporting for each awarding body covered in a third party program's annual report. Subpart (a)(4) would be amended and subparts (a)(5) and (a)(6) added to provide a separate breakdown of voluntary wage recoveries or wages recovered without seeking a penalty determination from the Labor Commissioner, as well as such additional information as the Director may require as a condition of approval. The Director proposes to redesignate existing subpart (a)(5) as subpart (b) and to make other non-substantive clarifying changes, while deleting existing subpart (b) (pertaining to use of summary reporting formats by statewide programs). The Director proposes to add a new subpart (c) to require reporting in sufficient detail to afford a basis for evaluating enforcement activity, and provide for the availability of suggested forms with the necessary detail on the Department's website. Existing subpart (c) would be redesignated as subpart (d) and a spelling error in the current language would be corrected (changing "proceeding" to "preceding").

In Option B, the Director proposes to amend subpart (a) by deleting the enumeration of subjects in subparts (a)(1) through (a)(4) and instead requiring programs to use specified Annual Report forms (designated LCP-AR1, LCP-AR2, and LCP-AR3) according to the type of program that is submitting the report, unless the Director has agreed to a different reporting format for a program with final approval or extended authority under section 16427. As in Option A, former subpart (a)(5) would be redesignated as subpart (b), with other non-substantive clarifying changes. In Option B, the Director also proposes to delete the existing subpart (b), pertaining to use of summary reporting formats by statewide programs, and add a new subpart (c) to require reporting in sufficient detail to afford a basis for evaluating enforcement activity. Existing

subpart (c) would be redesignated as subpart (d) and a spelling error in the current language would be corrected (changing “proceeding” to “preceding”).

Existing *section 16432* currently pertains to audits, and the Director is proposing two different options for amending this regulation, with both options designed to set forth minimum performance standards for monitoring, investigations, and audits in substantially greater detail than set forth in the existing regulation. In addition to comments on the contents of these proposals, the Director invites comment on which option is preferable or whether some combination of the two or a different approach to monitoring, investigation, and audit responsibilities would be more appropriate.

In Option A, the Director proposes to revise subpart (a) by adding language to require that a labor compliance program check that all weekly payroll records are submitted and are complete, with all appropriate data elements reported and the certifications completed and signed pursuant to Labor Code section 1776(a). A new proposed subpart (b) would require the labor compliance program to inspect all payroll records once during the initial quarter of a contractor’s or subcontractor’s work, allow for inspection by sampling to ensure that the appropriate prevailing wage rates are being used, and require inspections at least quarterly thereafter, consistent with demonstrated past compliance, provided that each contractor and subcontractor’s payroll is inspected at least once. A new proposed subpart (c) would require an investigation, which may include interviewing workers and inspecting other records, upon discovery of possible prevailing wage law violations or receipt of a credible complaint. Existing subpart (b) pertaining to audits would be redesignated as subpart (d), and language would be added to reiterate when audits may be conducted and specify that audits may be limited to specific contractors and workers identified during inspections or investigations. A new proposed subpart (e) would specify that once a program determines that violations have occurred, (1) notice and an opportunity to respond may be provided to the contractor and affected subcontractor, who would then have 30 days to provide exculpatory information that can be used to mitigate penalties under Labor Code section 1775. This new subpart would also authorize the labor compliance program to resolve wage deficiencies under certain circumstances without requesting a penalty determination by the Labor Commissioner, provided that the program supplies the Labor Commissioner with documentation of its actions, including proof of prompt payment and the contractor or affected subcontractor’s exculpatory information. Finally, in Option A, Appendix B would be redesignated as Appendix C in light of the proposal for a new Appendix B following section 16423.

In Option B the Director proposes to delete all of the existing language of section 16432 and replace it with a complete redraft of the standards governing investigations, payroll record review, audits, on-site visits, and early resolution of audits. Proposed subpart (a) contains introductory language setting forth the intent and scope of the regulation. Subpart (b) would set forth minimum standards for the review of contractor and subcontractor payroll records. Subpart (c) would set forth minimum standards for the confirmation of payroll records, defined as an independent corroboration of reported prevailing wage payments. Subpart (d) would set forth minimum standards for conducting on-site visits, and would require that such visits be undertaken during each week workers are present at the site where the contract for public work is being performed. Subpart (e) would define “audit” as “a written summary reflecting prevailing

wage deficiencies for each underpaid worker, and including any penalties to be assessed under Labor Code sections 1775 and 1813, . . . after consideration of the best information available . . .” Proposed subpart (e) enumerate types of available information that may be relevant to an audit, and it prescribes standards for the sufficiency of an audit (including suggested use of the audit forms within a new proposed Appendix C following section 16432), and the maintenance of audit records for use in review proceedings under Labor Code section 1742. Proposed subpart (f) would specify that once a program determines that violations have occurred, notice and an opportunity to respond may be provided to the contractor and affected subcontractor. The contractor and subcontractor would then have 10 days to provide exculpatory information that can be used to mitigate penalties under Labor Code section 1775. This new subpart would also authorize the labor compliance program to resolve wage deficiencies under certain circumstances without requesting a penalty determination by the Labor Commissioner, provided that the program supplies the Labor Commissioner with documentation of its actions, including proof of prompt payment and the contractor or affected subcontractor’s exculpatory information. Finally, in Option B, the Director proposes to delete the existing Appendix B and replaces it with a new Appendix C consisting of three Audit Record worksheets, traditionally used by the Labor Commissioner, that are referenced in proposed subpart (e) of this Option.

Existing *section 16434* pertains to labor compliance program duties, and the Director is proposing two different options. Each would designate the existing language as subpart (a) and modify that language to clarify that posted public works coverage determinations provide guidance for enforcement decisions. Each option would then provide an expanded list of specifically enumerated duties. In addition to comments on the contents of these proposals, the Director invites comment on which option is preferable or whether some combination of the two or a different approach to labor compliance program duties would be more appropriate.

In Option A, the proposed new subpart (b) would set forth a labor compliance program’s specific duties with respect to apprentices. Proposed subpart (c) would specify that a labor compliance program has the responsibility to demonstrate that it operates an effective program and would set forth standards for the contents and retention of enforcement records as well as requiring the program to supply the records to the Director upon written request.

In Option B, the proposed new subpart (b) would set forth procedures and standards for the handling of written complaints alleging that a contractor or subcontractor has failed to pay prevailing wages. A proposed new subpart (c) would set forth a labor compliance program’s specific duties with respect to apprentices [organized somewhat differently than the comparable proposal in Option A]. A new subpart (d) would require labor compliance programs to maintain a separate record of compliance activities for each public works project in order to demonstrate enforcement efforts consistent with the practice of the Labor Commissioner. This subpart refers to a suggested reporting format (Appendix D) and includes standards governing both the retention of enforcement records and the electronic maintenance and transmission of reports. A new proposed subpart (e) would authorize the Labor Commissioner to provide, sponsor, or endorse training on how to enforce prevailing wage requirements, which would include four specified components. A new proposed Appendix D for Option B only, would be a single project report form corresponding to the project summary required under proposed subpart (d).

Existing *section 16435* currently pertains to the withholding of contract payments for delinquent or inadequate payroll records or due to an underpayment of prevailing wages. The Director is proposing to split these withholding provisions into two separate regulations, returning to the format that existed prior to the 2004 amendments. Under the proposed amendments, section 16435 would address only withholding due to delinquent or inadequate payroll records. Non-substantive changes are proposed for existing subparts (a) through (d) to improve the clarity of the text. Existing subpart (e) would be deleted from this regulation and become subpart (c) in proposed new section 16435.5. The Director proposes to add a new subpart (e) to specify that withholding for delinquent or inadequate payroll records does *not* require prior approval by the Labor Commissioner, while prescribing limits on the amount of payments that may be withheld for delinquent or inadequate payroll records. A new subpart (f) would set forth notice requirements for this form of withholding, with the right to request an expedited hearing limited to this issue. Proposed subpart (g) would specify that withholding may not continue after required records are produced, and subpart (h) would specify that Labor Code Section 1776(g) penalties shall be assessed for noncompliance with a written request for certified payroll records, but that an assessment of those penalties does require the prior approval of the Labor Commissioner under Section 16436.

The Director proposes a new *section 16435.5* to address withholdings due to underpayments of prevailing wages separately from withholdings due to delinquent or inadequate payroll records (which will remain in section 16435). Proposed subpart (a) would incorporate the definitions of “withhold” and “contracts” from subparts (a) and (b) respectively of section 16435. Subpart (b) would require that a general contractor receive notice of a subcontractor’s violations [same as requirement found in section 16435(a)]. Proposed subpart (c) restates without modification the language now found in subpart (e) of section 16435 (prescribing what constitutes “amount equal to the underpayment”). Proposed subpart (d) would specify that withholding of contract payments due to underpayments of prevailing wages does require the prior approval of the Labor Commissioner under Sections 16436 and 16437.

Existing *section 16436* pertains to forfeitures requiring the Labor Commissioner’s approval. The Director proposes to delete the existing language of subpart (a) and replace it with an expanded and more specific definition of the term “forfeitures.” The Director also proposes to delete all of the existing language of subpart (b), enumerating types of violations that lead to underpayments and forfeitures, and to replace it with language allowing for assessments of less than \$1000.00 in aggregate to be deemed approved automatically upon service of prescribed paperwork on the Labor Commissioner. A new subpart (c) would specify that all other forfeitures require the Labor Commissioner’s approval in accordance with section 16437.

Existing *section 16437* pertains to determinations of forfeiture amounts by the Labor Commissioner. Subpart (a) sets forth information a labor compliance program is required to provide with a request for approval of forfeiture. The Director proposes to amend subparts (a)(1), (4), and (9), respectively to include within the request, the amount of funds being held in retention by the awarding body, any audit summary showing amounts due [Option A] or the Audit required under the Option B proposal for section 16432 [Option B], and revised information concerning the labor compliance program’s approval status. Minor grammatical changes are proposed for subpart (d). The Director is also proposing non-substantive revisions

to subparts (e)(1) and (e)(2) to conform to proposed changes in sections 16425 through 16427.

Existing *section 16439* pertains to formal review proceedings following the issuance of a Notice of Withholding of Contract Payments pursuant to Labor Code section 1771.6. The Director proposes to add a new subpart (c) to specify that, except for review proceedings in which the Labor Commissioner has intervened, a labor compliance program has full authority to prosecute and settle its own cases, subject to a duty to document its reasons for any settlement or requested dismissal of a Notice of Withholding of Contract Payments.

Comparable Statutes and Regulations:

Federal law requires the payment of prevailing wages and adherence to other minimum employment standards for work performed on federal public works projects through the Davis-Bacon Act, 40 U.S.C. sections 276a — 276a-7, the Contract Work Hours and Safety Standards Act, 40 U.S.C. sections 327 — 334, and related statutes that incorporate these requirements into specific federal programs. (See 29 C.F.R. § 5.1 for a list of 60 such laws.) Some local entities, including the City and County of San Francisco, have their own prevailing wage ordinances. However, these laws all have distinct requirements in terms of the types of work covered, how prevailing wages are determined, and how prevailing wage requirements are enforced. California's system of labor compliance programs appears to be unique in terms of delegating the state's enforcement authority under state prevailing wage statutes to local agencies and further authorizing those local agencies to contract with private entities to carry out their labor compliance responsibilities.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Director has made the following initial determinations with respect to these proposals. The Director notes that these proposals clarify existing statutory and regulatory standards. As such, these proposals impose no mandates, costs, or savings that are different or distinct from what the Legislature has required by statute. The Director invites further comment on these specific impacts.

Mandates on Local Agencies or School Districts:

The proposals do not impose mandates on local agencies or school districts. The adoption of Labor Code sections 1771.7 and 1771.8 made it mandatory for local agencies and school districts to maintain and operate a labor compliance program in order to obtain certain school and water project construction funds. Other statutes have imposed the same requirement as a condition for exercising other authorities, such as entering into design-build contracts. Labor Code section 1771.5(c) requires these statutorily-mandated labor compliance programs to be approved by the Director of Industrial Relations as specified in state regulations, and currently there are over four hundred approved labor compliance programs.

Costs or Savings to State Agencies; Reimbursable Costs Imposed on Local Agencies or School Districts; other nondiscretionary costs or savings imposed on local agencies; and costs or savings in federal funding to the state:

No savings or increased costs to any State agency will result from the proposed regulatory action.

No nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action. The proposed regulatory action does not impose costs on any local agency or school district which must be reimbursed in accordance with Government Code Section 17561. The requirement to adopt and enforce a labor compliance program is imposed only if an awarding body voluntarily decides to participate and utilize funding for public works projects.

The proposals do not involve any costs or savings in federal funding to the state.

Initial Determination of Economic Impact on Business:

The Director has made an initial determination that these proposals will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The prevailing wage statutes impact only businesses that choose to enter into public works contracts, and they are neutral in their treatment of California businesses as compared to businesses from other states.

Known Cost Impacts on Representative Private Person or Business:

These proposals are directed primarily toward local agencies and school districts that maintain and operate labor compliance programs. The Director is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Creation, Elimination, or Expansion of Jobs or Businesses (Results of Assessment under Government Code section 11346.3, subpart (b)):

The Director has made initial determinations that (1) these proposals will not affect the creation or elimination of jobs within the State of California; (2) these proposals will not affect the creation of new businesses or the elimination of existing businesses within the State of California; and (3) these proposals will not affect the expansion of businesses currently doing business within the State of California.

Reporting Requirements (Finding under Government Code section 11346.3, subpart (c)):

These proposals impose specific reporting requirements on businesses that have been approved as contract third party labor compliance programs (currently about sixty in number statewide). Such businesses conduct this work as agents of local and state government rather than as a private enterprise, and the Director makes a preliminary finding that the increased reporting responsibilities are necessary for the proper enforcement of the state's prevailing wage laws and therefore necessary for the welfare of the people of the State of California.

Effect on Housing Costs:

These proposals have no effect on housing costs.

Effect on Small Business:

The Director has made an initial determination that these proposals will not affect small business. The proposals and the regulations they would amend are directed toward public agencies that elect to enforce public works prevailing wage requirements by adopting and enforcing a labor compliance program. None of the proposals are regulations that small businesses legally would be required to comply with or that small businesses legally would be required to enforce. Small business will derive no new or distinct benefit nor will they incur any new or distinct detriment from the enforcement of these proposals.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Director must determine that no reasonable alternative considered by the Director or that otherwise has been identified and brought to the Director's attention would either be more effective in carrying out the purpose for which the action is proposed or be as effective as the proposed action and less burdensome to affected private persons. These proposals consist of a series of amendments to existing regulations governing labor compliance programs and appear to be the most feasible approach for clarifying and making more specific the reporting, monitoring, and enforcement responsibilities of labor compliance programs. Other alternatives, including more Department-sponsored training and legislative proposals to establish performance standards at this time would appear to be both more burdensome and less effective in addressing these issues. The Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

AVAILABILITY OF INFORMATION PERTAINING TO THE PROPOSED ACTION

The Director will have the rulemaking file available for inspection and copying through out the rulemaking process. Initially the file will consist of this notice, the initial statement of reasons, and the text of the proposed regulations, including proposed forms. The text of the file will be available at the following location:

Department of Industrial Relations
Office of the Director — Legal Unit
455 Golden Gate Avenue, Suite 9516
San Francisco, CA 94102

or from contact person John Cumming.

Website:

Rulemaking records, including the text of the proposed regulations may be accessed through the Department's Internet website at <http://www.dir.ca.gov/DIRRulemaking.html>.

Availability of Changed or Modified Text:

After holding the hearings and considering all timely and relevant comments received, the Director may adopt the proposed regulations substantially as described in this notice. If the Director makes modifications which are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be made available to the public for at least 15 days before the Director adopts the regulations as revised. Any such modifications will also be posted on the Department's website. Please send requests for copies of any modified regulations to the attention of the contact persons listed above. The Director will accept written comments on the modified regulations for 15 days after the date on which they are made available.

Availability of the Final Statement of Reasons and the Rulemaking File:

Upon completion, the Final Statement of Reasons will be available and the entire rule making file may be obtained from the contact persons named in this notice.