

DEPARTMENT OF INDUSTRIAL RELATIONS  
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## Public Works Compliance Monitoring Unit 2011 Report

In February 2009, SBx2-9 (Padilla) was enacted, establishing the "State Public Works Enforcement Fund" to appropriate funds to the Department of Industrial Relations (DIR) for enforcement of prevailing wage requirements on certain public works projects. The bill required DIR to adopt regulations setting forth the manner in which the department would ensure compliance with and enforce prevailing wage requirements on the covered projects undertaken by DIR, utilizing the funding, and to report to the Legislature on its administration of the fund and prevailing wage enforcement activities. Public entities with projects subject to compliance review by DIR were required to pay a fee to the Department for its services. The fee was not to exceed one-fourth of one percent of the bond proceeds or project costs of the design-build projects and was to be assessed on any awarding body using funds derived from any state public works bond issued, as well as certain specific projects using design-build procurement authority. The fee is to be used only for enforcement of prevailing wage requirements on the covered projects.

The Department's proposal for 10 positions and \$1.283 million to support the development of regulations and prepare for program implementation was approved in the 2009 Budget Act for fiscal year 2009-10. The source of funding was a \$1.3 million loan from the General Fund.

In October 2009, DIR selected and hired a Program Director responsible for the creation of the program and its staffing. A Deputy Labor Commissioner was hired in July 2009 to observe and report on the best practices of DIR approved labor compliance programs operating for many years in the Los Angeles area. Staff also met with other labor compliance programs to elicit their input for DIR's program.

The Department contracted with the Department of Finance (DOF), Office of State Audits and Evaluations to conduct a study to help the Department determine its workload. Beginning in December 2009, the DOF staff contacted public entities at all levels of government and obtained information concerning their projections for public works projects over the next 5 years. The results of the study were used in the Department's budget request.

Shortly after the enactment of SBx2-9, and before the beginning of fiscal year 2009-10, DIR redirected resources internally and began drafting proposed regulations which it believed allowed it to perform the necessary compliance work and allowed the affected agencies to come into compliance with the new requirements. In July 2009, DIR conducted meetings with interested parties to discuss the proposed regulations and to determine what, if any, changes may be needed to address concerns of those who would be impacted. As a result of those meetings, the Department made changes to the draft regulations and, in November 2009 filed the proposed regulations with the Office of Administrative Law (OAL). The Department conducted a public hearing on the regulations in early January 2010 and again, in response to public comments, amended its proposed regulations further. DIR submitted the final version to OAL in May 2010. The OAL reviewed the regulations and made suggestions to DIR to bring the regulations into compliance with their requirements. The regulations were approved, effective on August 1, 2010. The Department held a series of informational meetings with various affected parties in preparation of the regulations becoming effective. Department staff met with construction contractors, school districts, cities, counties, and other state agencies to advise them of the new regulations and ensure their compliance. DIR also used technology and conducted webinars providing information to interested parties.

During the rulemaking process, DIR also developed the necessary forms, public outreach documents, and poster required as part of the regulations. The Department also prepared manuals for the staff to use in conducting onsite audits and investigations to ensure compliance with prevailing wage laws; and developed a website which provided further information for the public and responded to a string of questions which it formatted into a "Frequently Asked Questions" which provided over 100 answers.

After the regulations were adopted DIR continued its outreach efforts through staff attendance at a variety of public meetings. The staff also met with contractors and public entities preparing to contract with construction companies to perform the public work.

Early in the development of the program, the Department determined that it would be necessary to establish an electronic reporting system to receive and review certified payroll reports from the contractors performing the public work due to the large volume of reports expected. DIR researched and found several vendors which provided electronic payroll reporting services to California entities as well as other states. Staff contacted the local agencies utilizing an electronic reporting service and reviewed the various options. DIR determined that due to the short time frame the Department had established for the implementation of the provisions of SBx2-9, it would be more cost

effective and efficient to enter into a contract with a private vendor to provide the electronic reporting service.

In September 2009, the Department established its criteria for the electronic service and in October 2009 released a "Request for Proposal" to solicit vendors. Through the State's procurement process, the Department narrowed the number of vendors to two. The two vendors were invited to submit cost proposals which were reviewed and shortly thereafter a contract was awarded to the responsible vendor. However, the unsuccessful vendor filed a request to have the process reviewed which caused delays in the implementation of the service. Nonetheless, the original successful vendor was awarded the contract and diligently worked to ensure that the electronic certified payroll reporting service (eCPR) was operational by August 1, 2010 when the Department's program officially began its operations.

In addition to the eCPR service, the Department also reviewed other programs to allow it to capture management data related to the work performed by the program staff. The Division of Labor Standards Enforcement (DLSE) partially implemented a data management program in late 2006/early 2007 which had originally included public works enforcement activities. Staff determined that DLSE's "Case Management System" (CMS) could be used to capture some of the enforcement data with very little effort or cost. Staff undertook a complete review of the CMS, added some forms and has developed management statistical reports which will help provide a complete picture of the new program's activities.

The Department named its new program the Public Works Compliance Monitoring Unit (CMU) and began accepting and reviewing certified payroll reports in mid-August as awarding bodies started entering into contracts and beginning construction work requiring the submission of certified payroll reports by their contractors.

A Budget Change Proposal (BCP) was submitted and approved for fiscal year 2010-11 but with restrictions on the hiring and spending for the Unit. The CMU was authorized to hire an additional 100 staff contingent on verification that public works projects requiring monitoring were actually scheduled to begin. In anticipation, CMU staff conducted interviews during the months of August and September and conducted background checks on the candidates who would be offered jobs when the budget allowed. Shortly after completion of the interview process, a statewide hiring freeze was implemented and all hiring stopped.

On July 29, 2010, DIR was notified of potential concerns with the regulations by the Department of Finance. The Director determined that absent clear reasoning for delaying the implementation, the program would proceed as planned. Over the next two months, the Department engaged in extensive discussions to ascertain whether the concerns could be addressed without statutory or regulatory changes. In early October 2010, DIR was advised that the Attorney General had opined that an unqualified bond could not be issued without such changes. Without the unqualified bond letter, the State would be unable to sell bonds.

On October 28, 2010, DIR filed emergency regulations with the OAL to temporarily suspend the operation of the CMU. The emergency regulations became effective November 3, 2010 and remain in effect until May 4, 2011 unless DIR takes additional action.

Since October, DIR has continued discussions to determine the statutory and regulatory changes which will enable the Attorney General to issue an unqualified bond opinion, while still maintaining the ability to fund prevailing wage enforcement work on all state bond-funded construction projects.

Staff continues to complete the frame work for the program so that when any remaining issues are resolved, the CMU can quickly be reinstated.

During its three month operation, the CMU monitored 19 projects with 27 contractors performing work and 135 employees. When violations were detected, the CMU staff contacted the contractors and the violations were quickly corrected. See enclosed charts which outline the projects monitored where violations were found and corrected, certified payroll reports reviewed, and fees collected (returned in November 2010).

Respectfully submitted,

A handwritten signature in cursive script that reads "Christine Baker".

Christine Baker  
Acting Director

COMPLIANCE MONITORING UNIT

Legislative Report 2011

*Administration of State Public Works Enforcement Fund*

Amount Collected in fees: \$31,331.97

Expenditures including staffing and OE&E

*Public Works Enforcement Activities \$ Spent*

Number of projects monitored 19

Number of contractors 27

Number and types of violations (see attachment 2)

Number of certified payroll reports reviewed 43

Total # of workers (all projects) 135

COMPLIANCE MONITORING UNIT

Breakdown Of Violations	
Violation type	No. of violations
<b>Project: 15725 Mt. Olive Rd, Grass Valley, CA 95945</b>	
Underpaid Basic Hourly Rate	5
Underpaid Fringe Benefits Hourly Rate	1
Underpaid Training Contributions Rate	1
<i>Total no. of violations of the contract/project</i>	7
<b>Project: Sunset Elementary</b>	
Underpaid Basic Hourly Rate	1
<i>Total no. of violations of the contract/project</i>	1
<b>Project: Fort Bragg High School Culinary Arts Room</b>	
Underpaid Basic Hourly Rate	2
Underpaid Fringe Benefits Hourly Rate	1
Underpaid Training Contributions Rate	1
<i>Total no. of violations of the contract/project</i>	4
<b>Project: Oroville High School Science Baseball Field</b>	
Underpaid Basic Hourly Rate	3
<i>Total no. of violations of the contract/project</i>	3
<b>Project: TBD</b>	
Underpaid Fringe Benefits Hourly Rate	1
<i>Total no. of violations of the contract/project</i>	1