

TITLE 8. DEPARTMENT OF INDUSTRIAL RELATIONS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Industrial Relations (“Director”) proposes to amend regulations governing the approval and operation of Labor Compliance Programs by state and local agencies involved with public works construction contracts. The Director also proposes to adopt new regulations governing fees and compliance monitoring and enforcement standards for the Labor Commissioner on state bond-funded and other specified public works projects, as required under the provisions of Stats. 2009, ch. 7 [SBX2-9]. The existing Labor Compliance Programs regulations are found in Subchapter 4 of Chapter 8, commencing with section 16421, of Title 8 of the California Code of Regulations. The new regulations are being proposed as a new Subchapter 4.5 of Chapter 8, Division 1 (sections 16450 – 16464). In connection with these substantive proposals, the Director is also proposing to redesignate Articles 6 (Severability) and 8 (Debarment) of Subchapter 4 as Subchapters 4.6 and 4.8 respectively and make an additional technical revision to section 15000 (Severability).

PUBLIC HEARING, WRITTEN COMMENT PERIOD, AGENCY CONTACTS

Public Hearing:

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

January 6, 2010 at 10:00 a.m.

Hiram Johnson State Building
Senator Milton Marks Conference Center – Monterey 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 6, 2010, at 5:00 p.m., and the Director will only consider comments received by that deadline. Written comments may be submitted in person at the hearing *or* by letter, facsimile, or e-mail as follows:

DIR, 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:

Nance Steffen
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. Steffen.

AUTHORITY AND REFERENCE

Authority: Labor Code Sections 54, 55, 1742(b), 1771.55(b), and 1773.5.

Reference: Sections 17250.30 and 81704, Education Code; section 6531, Government Code; sections 90, 207, 226, 1726, 1729, 1741, 1742, 1771.2, 1771.3, 1771.5, 1771.55, 1771.7, 1771.75, 1771.8, 1771.85, 1771.9, 1773, 1773.1, 1773.2, 1773.3, 1775, 1776, 1781, and 1813, Labor Code; and sections 20133, 20175.2, 20193, 20209.7, 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 contractors and subcontractors pay their workers not less than the general prevailing wage rates as determined under the Labor Code. State prevailing wage requirements customarily are enforced by the State Labor Commissioner, as Chief of the Division of Labor Standards Enforcement, through the investigation of complaints and the issuance of civil wage and penalty assessments to compel the payment of sums found due. The Director also approves labor compliance programs to enforce state prevailing wage requirements on behalf of public agencies that award public works contracts.¹ In addition to enforcement, labor compliance programs have education and monitoring responsibilities and are subject to oversight by the Labor Commissioner and the Director.

¹ State and local agencies that award public works contracts are referred to in this Notice and in the Initial Statement of Reasons as “awarding agencies.” They are also referred to formally in public works laws and regulations as “awarding bodies.” (See Labor Code Section 1722.)

Labor compliance programs were first authorized through the adoption of Labor Code Section 1771.5, which became effective in 1990. Subsection (b) of Section 1771.5 sets forth general requirements for operating a labor compliance program, and subsections (c) and (d) specify that the programs must be approved and are subject to revocation in accordance with regulations adopted by the Director.

Subsequent legislation began to require awarding agencies either to have or to contract with an approved labor compliance program for monitoring and enforcement on projects using specified bond funds or other statutory authorizations.² These statutes, including most notably Labor Code Section 1771.7 (which required labor compliance programs for public works projects funded by the Kindergarten-University Public Education Facilities Bond Acts of 2002 and 2004), brought about a vast expansion in the number of approved programs and led to two sets of revisions to the regulations that govern these programs. In 2004, the labor compliance program regulations (at Title 8, California Code of Regulations, §§16421 – 16439) were amended to address new statutory requirements, provide some specific rules for third party contract programs, and incorporate other changes in the laws governing prevailing wage enforcement. In 2008, these regulations were further amended to clarify and set forth in greater detail the monitoring, enforcement, and reporting responsibilities of labor compliance programs.

On February 20, 2009, the Governor signed into law Senate Bill 9 (Padilla), *i.e.* SBX2-9, one of several measures adopted in the Legislature's second extraordinary session to address California's budget crisis. SBX2-9 amended all but one of the laws that currently require awarding agencies to have or to contract with an approved labor compliance program as a condition for using specified bond funding or other particular statutory authorizations.³ In lieu of monitoring and enforcement by a labor compliance program, the statutes instead will require awarding agencies to pay a capped fee to the Department for prevailing wage monitoring and enforcement on projects subject to the fee. SBX2-9 also expanded the range of projects that are subject to or eligible for this fee-based monitoring and enforcement by the Department in two respects: (1) it will be required for projects funded by *any* state-issued public works construction bond (rather than just specified bonds); and (2) it will be available to awarding agencies that meet certain conditions and agree to pay the fee for compliance monitoring and enforcement by the Department on all of their projects in order to have higher prevailing wage exemptions.

SBX2-9 requires the Department to determine the amount of the fee that will be assessed for its monitoring and enforcement, subject to the approval of the Department of Finance and specified statutory caps. The statute also provides that the Department may waive this fee for awarding agencies with previously approved labor compliance programs that want to continue using their programs for their own projects; however, it does not permit waivers for awarding agencies that contract out their labor compliance program responsibilities to a third party. In addition, SBX2-9 requires the Department to adopt reasonable regulations setting forth the manner in which it will ensure compliance and enforce prevailing wage requirements on projects

² A list of these laws is available at <http://www.dir.ca.gov/lcp/StatutesRequiringLCPs.pdf>.

³ The exception is Public Resources Code §75075, which requires use of a labor compliance program for projects financed in any part by the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84). Because this measure was adopted by voter initiative, it can only be amended by another ballot measure.

subject to the fee, taking into consideration the duties of labor compliance programs under Title 8 California Code of Regulations sections 16421 – 16439. SBX2-9 further provides that the fee for compliance monitoring and enforcement by the Department will apply only to public works contracts awarded after both the fee and the regulatory monitoring standards have been adopted; for contracts awarded prior to that date, any pre-existing labor compliance program requirements will continue to apply.

The primary purpose of this rulemaking is to adopt the regulations needed to implement the requirements of SBX2-9. A secondary purpose is to make further revisions to the existing labor compliance program regulations to bring them into conformity with the requirements of SBX2-9 and make other isolated improvements suggested through the Department’s recent experience in regulating labor compliance programs. The proposals can be divided into four parts: (1) revisions to the labor compliance program regulations in Subchapter 4 of Chapter 8, Title 8 of the California Code of Regulations; (2) a new set of regulations governing notices, fees, and fee waivers under SBX2-9, which will constitute Article 1 of a new Subchapter 4.5 of Chapter 8, Title 8 of the California Code of Regulations addition; (3) another new set of regulations setting forth the Department’s compliance monitoring standards, which will constitute Article 2 of the new Subchapter 4.5; and (4) conforming technical revisions to the headings and text of subsequent regulations.

Proposed Amendments to Existing Regulations (Subchapter 4)

The Director proposes to amend the title and six of the regulations found in subchapter 4 of Chapter 8 of Division 1, sections 16421 through 16439, Title 8 of the California Code of Regulations.

The Director proposes to delete “Awarding Body” from the *title* of subchapter 4 so that the subchapter heading will read “Labor Compliance Programs.”

Section 16421 pertains to the composition and components of a labor compliance program. The Director proposes to delete subpart (c) pertaining to the governmental rights and responsibilities of private entities when operating labor compliance programs on behalf of awarding agencies.

Section 16423 pertains to the statutory requirement to have a labor compliance program pursuant to Labor Code Section 1771.5, including the findings an awarding agency must make and notices it must send when adopting such a program. The Director proposes to add language to this section to include paying a fee to the Department for fee-supported compliance monitoring and enforcement pursuant to a contract with the Labor Commissioner, as a third option for meeting an existing statutory requirement to have a labor compliance program. Specifically, the Director proposes to add language at the end of subpart (a) that identifies this third option, and a new subpart (b)(3), which would require the awarding agency to make a written finding that it had entered into a contract with the Labor Commissioner for monitoring and enforcement pursuant to Subchapter 4.5, if using this new third option.

Subpart (b) of this section also requires an awarding agency to transmit its written finding

(to adopt or contract for a labor compliance program) to the Department, along with notice of whether it intends to enforce the program for all projects and notice of any contract for third party enforcement. The Director proposes to add additional language to this notice provision to require awarding agencies to specify if they intend to use their own labor compliance program for all projects to which the notice, fee, and fee waiver provisions of Article 1 of new Subchapter 4.5 would apply. The words “if applicable” are also being added before the language pertaining to notice of any contract.

Section 16427 pertains to applications for “extended authority,” which is a status that entitles a program to automatic approval for forfeiture requests unless affirmatively disapproved within twenty days by the Division of Labor Standards Enforcement, and that also authorizes the program to enter an agreement with the Director for alternative reporting requirements. The Director proposes to amend subpart (a) to include having a record of submitting and obtaining approvals of forfeiture pursuant to section 16437 of the regulations as a specific criterion for obtaining extended approval. The Director also proposes to add a new subpart (e) to expressly authorize the Director to withdraw a program’s “extended approval” for “good cause,” which is defined as including the failure to request or obtain any approvals of forfeitures pursuant to section 16437 within the preceding three years.

Section 16428 pertains to the Director’s authority to revoke approval of a Labor Compliance Program, and subparts (a)(1) – (a)(5) sets forth a non-exclusive list of causes for revocation. The Director proposes to add language within subpart (a)(1) to provide that the specific cause of “failure . . . to monitor compliance with the requirements of the Labor Code and these regulations or to take appropriate enforcement action . . .” must include the following three factors: (1) the failure was serious or sustained; (2) the failure was harmful to the interests of workers on the project; and (3) the failure was not based on a good-faith interpretation of the law or the Labor Commissioner’s enforcement practices. The Director also proposes to amend subpart (b), pertaining to revocation complaints by interested parties, by adding language that would require service of a copy of the complaint and supporting evidence on the program that is the subject of the complaint.

Section 16431 pertains to the filing of annual reports. The Director proposes to delete the requirement to file annual reports within sixty days after the close of a prescribed annual reporting period and replace it with a requirement to file an annual report by no later than August 31 of each year, with the report to cover the standard fiscal year period of July 1 through June 30. Additional language would also permit the Director to authorize a different reporting period and submission deadline for good cause. The second and third sentences of existing subpart (a) (“The annual report shall be made on the appropriate form . . .”) will be redesignated as subpart(b), and the succeeding three subparts will be redesignated as (c), (d), and (e) respectively. The Director also proposes to delete all of the language in the last subpart which pertains to the annual reporting period, and replace it with new language that would require a program that ceases operations to file a closing annual report within 60 days following its last day of operation as an approved program.

Section 16433 pertains to the higher prevailing wage exemptions provided to awarding agencies with an approved labor compliance program for all public works projects. The Director proposes to amend the first sentence by adding an additional citation to new Labor Code Section

1771.55(a), which provides the same higher exemptions as Labor Code Section 1771.5(a).

Proposed New Regulations (Proposed subchapter 4.5) -- Article 1

Article 1 (sections 16450 through 16455) sets forth the standards and specific rules that will govern notices required for public works projects that are subject to fee-based monitoring and enforcement by the Department of Industrial Relations, the fees assessed for that work, and fee waivers.

Proposed *section 16450* sets forth the four categories of projects that will be governed by the regulations in this subchapter: (1) projects funded in any part by state-issued public works construction bonds; (2) projects under any other statutory mandate to pay a fee for monitoring and enforcement by the Department; (3) projects subject to a labor compliance program requirement under existing law that enter into an agreement with the Department for fee-based monitoring and enforcement; and (4) all projects undertaken by an awarding agency that opts to comply with Labor Code Section 1771.55(a) in exchange for higher prevailing wage exemptions.

Proposed *section 16451* prescribes three different notice requirements for awarding agencies. Subparts (a) and (b) address the notice that an awarding body will be required to send to inform the Department of a project that is subject to fee-based monitoring and enforcement under SBX2-9 and these rules. Subparts (a)(1) and (2) provide for this notice to be sent either when bond funding is awarded or released, or when the initial prime contract is awarded if there is no bond funding. Subpart (a)(3) requires this notice to be sent to the Director's headquarters in San Francisco and requires that the notice include information about the date of the public works contract, the parties, the work to be performed, location, estimated starting date, sources of funds, amount awarded for the project, and the name and contact information for the awarding agency's representative. Subpart (a)(4) provides an exception to the requirements in (a)(1) – (3) in the case of an ongoing project for which the awarding agency seeks to enter into a contract with the Department in order to meet an existing labor compliance program requirement. Subpart (b) provides that the Director may provide for the required subpart (a) notice to be submitted on a single form together with the information that awarding agencies are required to submit to the Division of Apprenticeship Standards under Labor Code Section 1773.3.

Subpart (c) of this section requires awarding agencies to include language in bid advertisements and public works contracts concerning (1) prevailing wage requirements, and (2) the fact that the project is subject to fee-based monitoring and enforcement by the Department and will require direct submission of certified payroll records to the Labor Commissioner. Subpart (d) requires and prescribes the contents of a notice to be posted at each project job site.

Proposed *section 16452* sets forth standards governing the calculation, payment, and use of fees assessed for monitoring and enforcement by the Department. Subpart (a) sets the amount of the fee as follows: (1) one-fourth of one percent of bond proceeds for any project that is subject to the fee solely due to the receipt of state-issued bond funds; and (2) for any other project, either one-quarter of one percent of the bond proceeds or one-quarter of one percent of "total project costs," whichever is higher. Subpart (a)(3) provides that the term "total project costs" does not include amounts paid for land acquisition, and subpart (a)(4) authorizes the Department to accept a lesser or pro rata fee in the case of an ongoing project for which the

awarding agency is requesting fee-based enforcement and monitoring by the Department in lieu of meeting a continuing requirement to have or contract for a labor compliance program.

Subpart (b) of this section requires fees to be paid at the same time project notices must be submitted to the Department under section 16451(a). Subpart (c) requires the fees to be deposited in the State Public Works Enforcement Fund and used only for the monitoring and enforcement of prevailing wages on projects subject to the fee. Subpart (d) authorizes the Director to enter into agreements with other agencies that award state public works bond funds for the purpose of receiving project notices and fee payments directly from those agencies.

Proposed *section 16453* sets forth standards governing the voluntary payment of fees for compliance monitoring and enforcement by the Department as an option for meeting an existing requirement to have a labor compliance program. Subpart (a) specifies that awarding agencies have the option to enter into an agreement with the Labor Commissioner for fee-based monitoring in lieu of having their own labor compliance program or contracting with an approved third party program. Subpart (b) requires fees to be calculated in the same manner as prescribed in section 16452, subject to the possibility of a negotiated reduction for ongoing projects under section 16452(a)(4). Subpart (c) requires an agreement for services under this section to be in writing and authorizes the Labor Commissioner to decline to enter into an agreement due to the inadequacy of the fee or a lack of sufficient staff or resources to provide the necessary services.

Proposed *section 16454* sets forth specific rules that apply to awarding agencies that elect to have fee-based monitoring and enforcement by the Department on all projects in exchange for higher prevailing wage exemptions. Subparts (a) and (c) require the awarding agency to comply with all of the notice requirements in section 16451 and to pay the fees prescribed by section 16452. Subpart (b) sets forth the obligation to conduct a prejob conference and the requirement to keep a checklist of items discussed, with the use of Appendix A (following section 16421 in the existing labor compliance program regulations) constituting presumptive compliance.

Proposed *section 16455* sets forth the standards governing fee waivers for awarding agencies with approved labor compliance programs that want to continue using those programs for projects that otherwise would be subject to the fee. Subpart (a) provides that an awarding agency that has and uses an approved labor compliance program for all of its own projects will not be subject to the fee, notice, or other compliance monitoring provisions of this subchapter. Subpart (b) provides that an awarding agency that has and uses an approved labor compliance program for just those projects that otherwise would be subject to this subchapter, shall be exempt from the fee and other compliance monitoring provisions of this subchapter, but will have to provide the notices required by sections 16423(b) and 16451. Subpart (b) provides that an awarding agency may lose the fee exemption in subparts (a) or (b) by contracting out its labor compliance responsibilities in whole or in part to a third party. Subpart (d) provides that an exempt awarding body may obtain or withhold the fee that otherwise would be due to the Department under this subchapter and use that fee to fund its own labor compliance activities.

Proposed New Regulations (Proposed subchapter 4.5) -- Article 2

Article 2 (sections 16460 through 16464) sets forth the standards and specific rules that will govern monitoring and enforcement activities by the Labor Commissioner on public works projects for which fees are paid to the Department under Article 1.

Proposed *section 16460* provides in subpart (a) for the establishment of a Compliance and Monitoring Unit within the Division of Labor Standards Enforcement to carry out the Department's compliance monitoring and enforcement responsibilities under this subchapter. Subpart (b) provides that nothing in this new subchapter shall limit the prevailing wage enforcement authority and responsibilities of awarding agencies under state law, nor preclude the availability and use of other legal remedies to remedy prevailing wage violations.

Proposed *section 16461* sets forth the specific manner in which the Compliance and Monitoring Unit will monitor and enforce compliance with prevailing wage requirements on fee-based projects. Subpart (a) explains the purposes of the Unit and this regulation, which include providing common terminology to awarding agencies, contractors, and the Department with respect to prevailing wage compliance. Subpart (b) requires contractors and subcontractors to furnish certified payroll records to the Compliance and Monitoring Unit at least monthly or within 10 days of any separate request. It requires the records to be submitted in the format prescribed by section 16401 of Title 8 of the California Code of Regulations. It also states that in lieu of paper forms, the Compliance and Monitoring Unit may provide for and require electronic submission of these records.

Subpart (c) of this section requires the Compliance and Monitoring Unit to review payroll records within thirty days after receipt, with "review" defined as an inspection of records furnished to determine whether all required data has been reported, the legally required certification has been made, and the reported rates of pay are no less than the legal prevailing rates for the classifications listed. Subpart (d) requires the Unit to confirm the accuracy of payroll reports on a random basis and at such other times as it deems appropriate, with "confirmation" defined as the corroboration of reported information through independent sources, which may include worker interviews, examination of other pay records, and any other legal and reasonable means of corroboration.

Subpart (d) of this section provides for on site inspection by representatives of the Compliance and Monitoring Unit, to be undertaken randomly or whenever deemed necessary. This subpart provides that such visits may include visual inspections of required job site notices, inspections of records, observations of the site and work activities, interviews of workers and others, and any other activity deemed necessary to ensure compliance with prevailing wage requirements. This subpart also sets forth the Unit's right, as an agent of the Labor Commissioner, to have free access to any project site and to obtain information pertaining to compliance with any laws enforced by the Labor Commissioner, including but not limited to the duty of employers to provide itemized wage stubs to employees.

Subpart (e) requires the Compliance and Monitoring Unit to prepare an "audit," defined as a written summary reflecting prevailing wage deficiencies and corresponding penalties for each worker, whenever the Unit determines that there has been a violation of prevailing wage requirements resulting in an underpayment of wages.

Proposed *section 16462* sets forth standards and procedures governing the submission of complaints to the Compliance and Monitoring Unit. Subpart (a) requires the Unit to accept complaints from workers or the public alleging violations of prevailing wage requirements on fee-based projects. This subpart specifies that complaints must be made in writing to the Division of Labor Standards Enforcement and provides that the Division may decline to investigate claims filed more than 90 days after the completion of a project. Subpart (b) requires the Compliance and Monitoring Unit to notify the contractor and subcontractor of any non-compliance as soon as practicable where that notice may enable the contractor or subcontractor to correct the problem. The early notice need only describe the nature of the violation and does not have to provide a full summary of wages due.

Proposed *section 16463* sets forth standards and procedures governing the withholding of contract payments to contractors, when required payroll records are delinquent or inadequate. Subparts (a) through (d) define the terms “withhold,” “contracts,” “delinquent payroll records,” and “inadequate payroll records” for purposes of exercising this authority. Subpart (d) specifies that the Labor Commissioner may require the awarding agency to withhold contract payments when payroll records are delinquent or inadequate, with prescribed limitations on the amount that may be withheld based on the potential liability of the contractor or subcontractor whose records are delinquent or inadequate. This subpart also requires a contractor to cease making payments to a subcontractor whose records are delinquent or inadequate until the Labor Commissioner provides notice that the problem has been cured.

Subpart (f) of this section requires the Labor Commissioner to provide written notice to the contractor and subcontractor when contract funds are withheld pursuant to this section and requires the notice to specify (1) what records are delinquent or why submitted records are deemed inadequate, (2) what amounts the awarding agency has been directed to withhold, and (3) that the contractor or subcontractor has a right to request an expedited hearing pursuant to Labor Code Section 1742 to challenge the action. Subpart (f) prohibits continued withholding pursuant to this section once the required records have been provided, and subpart (g) specifies that in addition to the withholding authorized by this section, penalties may also be assessed under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records.

Proposed *section 16464* provides that if the Compliance and Monitoring Unit determines that there has been a violation of prevailing wage requirements, the Labor Commissioner will issue and serve a civil wage and penalty assessment pursuant to Labor Code Section 1741.

Technical Revisions to Succeeding Regulations on Severability and Debarment

Current *Article 6* of subchapter 4 pertains to the severability of public works regulations within Subchapters 3 (Payment of Prevailing Wages Upon Public Works [commencing with section 16000]) and 4 (Awarding Body Labor Compliance Programs [commencing with section 16421]). The Director proposes to change the heading from Article 6 to “Subchapter 4.6.” Within the text of *section 16500*, the Director propose to replace the word “Group” with the word “Subchapter” in two places in the first line of the regulation.

Current *Article 8* of Subchapter 4 (commencing with section 16800) pertains to the debarment of contractors and subcontractors by the Division of Labor Standards Enforcement. The Director proposes to change the heading from Article 8 to “Subchapter 4.8.” No changes to the text of the regulations within this article are being proposed.

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.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Director has made the following initial determinations with respect to these proposals. The Director notes that these proposals implement SBX2-9’s duties to assess fees “sufficient to support the department’s costs in ensuring compliance with and enforcing prevailing wage requirements” and to “adopt reasonable regulations setting forth the manner in which the department will ensure compliance with and enforce prevailing wage requirements” on projects subject to the fees. These proposals impose no significant mandates, costs, or savings that are different or distinct from what the Legislature has required by statute, although the Director is trying to implement these proposals in a manner that will minimize costs and create some savings for awarding agencies and contractors in relation and comparison to existing obligations under other statutes and regulations. 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. 17 of the 18 statutory sections that were added or amended by SBX2-9 require local agencies and school districts to do one or both of the following as a condition for obtaining construction bond funds, using specified contracting authority, or having higher prevailing wage exemptions: (1) establish or contract for use of an approved labor compliance program, or (2) pay a fee to the Department for prevailing wage monitoring and enforcement. Under SBX2-9, most existing requirements to use a labor compliance program will be replaced by a requirement to pay a fee to the Department for monitoring and enforcement for any project awarded after these regulatory proposals become effective. Under SBX2-9, the new fee requirement also will apply to projects funded by any state-issued public works construction bond rather than just to projects funded by specific bonds. The choice to undertake public works projects that are subject to either requirement is voluntary. For local agencies and schools districts that choose to undertake these projects, the fees required for compliance monitoring and enforcement by the Department under SBX2-9 will be

substantially less than the fees they have been paying for labor compliance programs under existing statutory requirements.

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:

The proposals impose substantial costs on the Division of Labor Standards Enforcement within the Department of Industrial Relations and to a lesser extent on the Office of the Director of the Department of Industrial Relations, including the Director's Legal Office, to implement the monitoring and compliance provisions, administer the payment of fees, and handle appeals from enforcement actions generated by the new monitoring unit. These costs are expected to be born by the fees generated pursuant to the requirements of SBX2-9 and these proposals.

Other state agencies that undertake bond-funded public works construction may have costs or saving associated with SBX2-9 and these proposals. For agencies that have been subject to an existing labor compliance program requirement on such construction, the proposals should reduce administrative costs associated with labor compliance since they impose negligible obligations (sending and posting notices and incorporating language into bid and contract documents), while eliminating the ongoing and potentially substantial costs of internal management or external contract administration of labor compliance programs. For agencies that have not been subject to an existing labor compliance program requirement, the costs of sending and posting notices and incorporating additional language into bid and contract documents represent new albeit negligible costs associated with bond-funded construction that the agencies elect to undertake.

Local agencies and school districts that undertake public works construction that has been subject to a labor compliance program requirement under existing law and that will be subject to fee-based monitoring and enforcement by the Department under SBX2-9 should have the same costs and savings outlined in the preceding paragraph. No nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action, and 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 minimal obligations imposed on public agencies by these proposals are required to implement the requirements of SBX2-9 and are only imposed on agencies that voluntarily decide to seek state bond-funding or exercise other statutory contracting authority that is subject to fee-based monitoring and enforcement by the Department.

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 revise how compliance with prevailing wage requirements will be monitored and enforced on projects that are subject to the new fee-based monitoring and enforcement requirements of SBX2-9. The only change these proposals will make for private persons or businesses is that contractors on these projects will be required to furnish certified payroll records directly to the Division of Labor Standards Enforcement on a regular and ongoing basis in lieu of submitting them regularly to a labor compliance program or the awarding agency or holding the records and furnishing them only on request. The Director believes that most contractors engaged in public works construction use electronic payroll systems, and the Director intends to provide for no-cost web-based reporting that will reduce costs for contractors that currently are required to prepare and submit paper copies of their records.

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 revise the annual reporting requirements for labor compliance programs, which include private businesses that have been approved as contract third party programs (currently about forty 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 revised 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 are directed toward public agencies that elect to enforce public works prevailing wage requirements by adopting and enforcing a labor compliance program and toward the new fee requirements and monitoring and enforcement responsibilities of the Department under SBX2-9. 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 amendments to existing regulations governing labor compliance programs and new regulations governing the assessment of fees and compliance monitoring and enforcement by the Department on specified public works construction projects. In light of the limitation on fees authorized under SBX2-9, the Director believes that these proposals provide the most cost-effective means for complying with the statute's objectives and specific requirements. The Director has looked for ways to achieve greater efficiency and savings through agreements with bond-funding agencies for notices and fee payments, the combining of multiple notices into a single reporting requirement, and providing for web-based reporting at no cost to agencies and contractors in lieu of requiring the continued use or submission of paper forms. Other alternatives, including a more detailed process for the assessment and collection of fees from awarding agencies and imposing more compliance obligations directly on public works contractors would be both more burdensome and less effective in meeting the goals of SBX2-9. 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. 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.