

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject:	Prevailing Wage Legislative Update	
Meeting Date:	July 14, 2017	INFORMATION
Agenda Number:	8k	

RECOMMENDATION:

Accept Prevailing Wage Legislative Update

BACKGROUND/DISCUSSION:

At the May 12, 2017 Board meeting, the Prevailing Wage Report noted pending legislative language, within Budget Trailer Bill 502, proposed revising contractor registration amounts, increasing penalties to public agencies (and others) who violate state labor laws and other revisions. On June 27, 2017, the Governor signed SB96 which, as a budget trailer bill, took effect immediately.

This report summarizes the changes as adopted by the Governor's execution.

The "good" news:

- Annual registration for public works contractors increased from \$300 to \$400 dollars, a more modest increase than previously anticipated
- Contractors on small projects are exempt from registration and e-filing certified payroll records. **Note contractors exempted from registration and e-filing are still required to pay prevailing wages and maintain certified payroll records on a continuous basis and provide them to the Labor Commissioner's office upon request.** "Small projects" applies to public works projects that do not exceed \$25,000 for new construction, alteration, installation, demolition or repair and \$15,000 for maintenance.
- Beginning June 1, 2019, contractors will have the option to renew their annual registration for up to three (3) years at a time.

The "not-so-good" news:

For the first time, the Department of Industrial Relations (DIR), has been given authority to impose monetary and non-monetary penalties, including stop orders, criminal prosecution and denial of state funding on a public agency (or awarding body) that does not comply with the new requirements.

- Prior law required the public agency (or **awarding body**) to file a PWC-100 with the DIR within five (5) days of the award of the contract. The new law requires that a public agency (or awarding body) file the PWC-100 within the lesser of thirty (30) days from the award of contract or the first day on which the contractor has workers employed on the project. The **penalty** is \$100 per day with a cap of \$10,000 for filing a late PWC-100. In addition, if there is a final payment to an unregistered contractor within 30 days of filing a late PWC-100, up to \$100 per day with a cap of \$10,000 may be assessed.
- Hiring unregistered contractors to perform public works comes with a penalty of \$100 per day with a cap of \$10,000. In addition, the DIR now has the ability to issue a stop order until the contractor or subcontractor is registered. A public agency (**or awarding body**) which fails to comply with the stop order is subject to criminal prosecution, punishable as a misdemeanor, by imprisonment not to exceed 60 days or a fine not to exceed \$10,000 or both.

- Finally, if DIR determines that a public agency (**or awarding body**) has willfully violated the new requirements on two or more public works contracts in any 12-month period, the public agency shall be ineligible to receive state funding or financial assistance for any construction project undertaken by or on behalf of the public agency for one year.

The language of SB96 can be found at this link: [SB 96](#). You are encouraged to consult counsel and/or labor compliance monitors for more information about compliance with the new rules. As many of the jurisdictions are aware, so far, they have not been construed to be "Awarding Bodies" and therefore have been provided some insulation from the public works rules. However, SB96 now includes the following language "construction project undertaken by or **on behalf of the public agency...**" which may lead to new interpretations of who is construed to be the "Awarding Body" and/or provide a vehicle for DIR to require the jurisdictions/public agencies who have approved or will approve projects on Fort Ord to comply with the new rules and be subject to the penalties outlined above. Over the past year, there have been multiple violations on projects within Fort Ord, if these violations continue unchecked, this could substantially affect a jurisdictions' ability to obtain state funding or financial assistance for *any project* within the jurisdiction for one year. Road improvement grants, housing assistance grants and other state funding sources could be jeopardized. We look to DIR to clarify how it will interpret and apply the above language on Fort Ord projects.

Now more than ever, having an effective public works compliance program within each jurisdiction is essential to minimizing the risk. FORA continues to have its monitoring software available to the jurisdictions for their use and FORA has expanded the ability of the jurisdictions to utilize the Elation software for all projects on Fort Ord as well as a jurisdictions' other public works projects. The FORA Prevailing Wage Coordinator also is ready to provide ongoing assistance and support.

FISCAL IMPACT:

Reviewed by FORA Controller 

Authority Counsel

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Approved by 

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