

DEPARTMENT: Public Works

Michael D. Edwards
Public Works Director

Phone: 966-5356

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes__ No X)

Resolution supporting the proposed regulatory changes by the Department of Industrial Relations (DIR) and authorizing the Chairman to sign a letter to the DIR director reaffirming support of the proposed regulatory changes as well as AB 138 (Goldsmith). The proposed regulatory reforms and legislation would relieve the burden of "prevailing wage" determinations on local government for public works projects.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

(Refer to attachments)

The Board recently acted to express support for prior Goldsmith bills, AB 35 and 36, both of which would have addressed economic hardships on state and local governments by artificially determined prevailing wage rates for public works projects. Prior to that, the Board supported other legislative proposals to reform prevailing wage determinations.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

No action. The Department of Industrial Relations and our legislative representatives will not be aware of our position on this issue.

<p>COSTS: (X) Not Applicable</p> <p>A. Budgeted current FY \$ _____</p> <p>B. Total anticipated costs \$ _____</p> <p>C. Required additional funding \$ _____</p> <p>D. Internal transfers \$ _____</p> <p>SOURCE: () 4/5th Vote Required</p> <p>A. Unanticipated revenues \$ _____</p> <p>B. Reserve for contingencies \$ _____</p> <p>C. Source description: _____</p> <p>Balance in Reserve Contingencies, if approved: \$ _____</p>	<p>SPECIAL INSTRUCTIONS: List the attachments and number the pages consecutively:</p> <p>1. Proposed letter to Director of Industrial Relations (1 pg) _____</p> <p>2. News Release from Dept. of Industrial Relations (11 pgs) _____</p> <p>_____</p> <p>_____</p> <p>_____</p>
--	---

<p>CLERK'S USE ONLY</p> <p>Res. No.: <u>95-426</u> Ord. No. _____ This item on agenda as:</p> <p>Vote - Ayes: <u>5</u> Noes: _____</p> <p>Absent: _____ Abstained: _____</p> <p>Approved () Denied ()</p> <p>() Minute Order Attached () No Action Necessary</p> <p>The foregoing instrument is a correct copy of the original on file in this office.</p> <p>Date: _____</p> <p>ATTEST: MARGIE WILLIAMS, Clerk of the Board County of Mariposa, State of California</p> <p>By: _____ Deputy</p>	<p>ADMINISTRATIVE OFFICER'S RECOMMENDATION:</p> <p><input checked="" type="checkbox"/> Recommended</p> <p><input type="checkbox"/> Not Recommended</p> <p><input type="checkbox"/> For Policy Determination</p> <p><input type="checkbox"/> Submitted with Comment</p> <p><input type="checkbox"/> Returned for Further Action</p> <p>Comment: _____</p> <p>A.O. Initials: <u>(Signature)</u></p>
--	--

Mariposa County Board of Supervisors



District 1.....PATTI A. REILLY
District 2.....DOUG BALMAIN
District 3.....ROBERT C. STEWART
District 4.....GARRY R. PARKER
District 5.....GERTRUDE R. TABER

MIKE COFFIELD
County Administrative Officer

MARGIE WILLIAMS
Clerk of the Board

P.O. Box 784
MARIPOSA, CALIFORNIA 95338
(209) 966-3222
1-800-736-1252

FAX (209) 966-5147

November 7, 1995

Lloyd W. Aubry, Jr., Director
California Department of Industrial Relations
P. O. Box 420603
San Francisco, CA 94142

Dear Director Aubry:

Today, the Mariposa County Board of Supervisors took action to support your agency's proposed regulatory efforts to reform prevailing wage determinations that cost state and local governments millions of dollars beyond federal Davis-Bacon requirements, as outlined in your October 12 press release. We appreciate your department's efforts.

We also recognize legislative reform is needed and, therefore, support AB 138 (Goldsmith). We have also supported other prior sensible legislative efforts for prevailing wage reform.

Mariposa County finances many local public works projects entirely with local funds, such as our proposed government center and library buildings and many smaller projects, including contracted maintenance. Current prevailing wage regulations add considerable additional burden to those projects. Often, important work is cancelled or delayed for years in order to accumulate enough funds to cover the additional costs entirely due to prevailing wage determinations. Those rates are usually double the true local prevailing wage rates.

Please let us know how we can further assist in this vital issue.

Sincerely,

Garry R. Parker, Chairman

sm

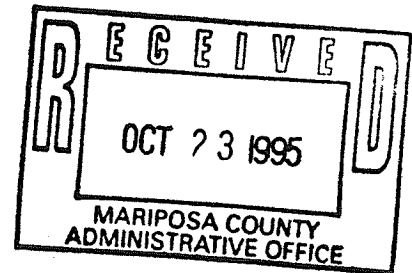
cc: State Senator Dick Monteith
State Assemblyman George House
California State Association of Counties
Regional Council of Rural Counties





GOVERNOR'S OFFICE

October 17, 1995



TO: County Administrators
City Manager

Please Transmit to: Mayors and Councilmembers & County Supervisors

FROM: Carol Whiteside
Director, Intergovernmental Affairs

SUBJECT: PREVAILING WAGE LAWS

Prevailing Wage Laws have long been a matter of concern for California local governments. At the Governor's direction, the Department of Industrial Relations has proposed regulatory changes which will reduce some of the disparate impact of the California laws and bring California into conformance with the federal Davis Bacon Act and 47 other states. The attached press release from the Department of Industrial Relations explains the impact of the proposed regulatory changes. It is estimated that the proposed changes can save state and local governments as much as \$200 million a year.

Additional relief requires legislative action and is contained in AB 138 (Goldsmith), are still under consideration.

Your comments on and support for these proposals are welcome. Please call at the Department of Industrial Relations at (415) 972-8835, or me, at (916) 323-5446 if you have questions or need more information.

1/2

DIR News Release

California Department of Industrial Relations, P.O. Box 420603, San Francisco, CA 94142

FOR IMMEDIATE RELEASE

Thursday, October 12, 1995

IR# 95-22

Internet: <http://www.dir.ca.gov>

CONTACT:

John Duncan

(415) 972-8835

Rick Rice

(714) 935-2812

DIR Issues Modified Prevailing Wage Regulations; Historic Change Will Save Taxpayers' Money and Makes Prevailing Wage Reform in California a Reality

SAN FRANCISCO -- In a historic reform to California's prevailing wage requirements at the direction of Governor Pete Wilson, the Department of Industrial Relations (DIR) today proposed regulations reforming certain prevailing wage requirements.

"In the interest of government efficiency, the Governor asked us to review California's prevailing wage requirements with an eye toward saving taxpayers' money on both the state and local levels," Director Lloyd W. Aubry, Jr. said. "We must face the fact that artificially inflated wage levels cost taxpayers money and work against competition. Taxpayers have not been getting the best use of their money. While most prevailing wage reforms would require legislation, the two changes today can be accomplished through the regulatory process."

The state Labor Code requires that contractors on public works projects pay workers the "prevailing wage" for a particular occupational classification in a geographic area, usually a county. State law generally defines a public works project as construction, alteration, demolition, repair or maintenance work performed under contract with a state or local agency and paid for in whole or in part by public funds. The project must have a value over \$1,000. Common types of public works projects are school, highway, hospital, and jail construction. Under the state constitution, charter cities can exempt themselves from prevailing wage requirements when projects are funded entirely by municipal funds.

In his January budget message, the Governor requested that DIR review existing prevailing wage requirements for any needed regulatory or legislative changes. At that time, the Governor stated, "The state must reconsider the requirement that bidders pay prevailing wage. Competition is about getting the best

-more-

2/2
☐

-2- 95-22

available service at the lowest cost. Artificial barriers to competition, including specified wage requirements, work against government efficiency and eliminate otherwise qualified providers -- including minority- and women-owned businesses -- from competing for state contracts."

Prevailing wage reform reducing costs to taxpayers is needed in California because the state's capital and infrastructure needs are so large while state and local governments continue to face limited resources. In its most recent annual 10-year forecast, the Department of Finance identified \$74.4 billion in projected needs. These demands could increase at any time as a result of an earthquake or any other natural disaster.

The regulatory reforms make two changes:

- **New method of calculating the prevailing wage.** The new regulations change the method for determining the prevailing wage to a 50 percent or weighted average from the present modal method. The proposed method is the same approach used by the federal government under the federal Davis-Bacon Act. Under this method, the prevailing wage rate will be the single rate paid to a majority of workers or a weighted average of the rates paid if there is no majority. This has been the federal rule since the early 1980's.

The repealed modal method inflated wages by causing wages to be considered prevailing even if they were significantly higher than the wages paid to a majority of workers in a locality. The modal approach required that the most frequently occurring wage rate be considered prevailing. This method often resulted in the wage rate under collective bargaining agreements qualifying as the prevailing wage. These rates will usually not be representative of the wages earned by a majority of workers in many areas. Union representation in construction has been declining in California. According to the Bureau of National Affairs, only 25.4 percent of construction workers in California were unionized in 1993. While difficult to quantify, savings under this provision could approach \$200 million.

Other than California, only Minnesota and Wisconsin use the modal method.

- **Repeal of "double asterisk" provision triggering an automatic increase in wage rates.** Current prevailing wage regulations contain the predetermined "double asterisk" provision. This rule requires that prevailing wage rates must automatically increase when a collective

-more-

3/2

-3- 95-22

bargaining agreement rate used as the basis for the prevailing wage determination contains an increase. In addition to an automatic escalation of wages, the provision has led to confusion for public agency awarding bodies and contractors. In some cases, this provision has led to changes in wage rates in the middle of a project, leaving contractors uncertain as to the proper rate and sometimes subject to civil penalties for paying a wage rate which was later revealed to be too low. In other cases, the parties to the collective bargaining agreement have rescinded the automatic increase, leaving the contractor and, in effect, the taxpayers to pay a rate which actually is higher than the prevailing wage rate under the collective bargaining agreement used as the basis for the determination.

The reform repeals the "double asterisk" requirement entirely. The federal Davis-Bacon Act contains no similar requirement. The California Department of Transportation estimates that the elimination of the rule will reduce labor costs by at least 1.6 percent on a project.

"No one should assume that these reforms are the only changes in the prevailing wage law that we would like to accomplish," Aubry said. "There are other requirements that are outmoded and result in an inefficient use of tax dollars. The Administration continues to support AB 138 by Assemblyman Goldsmith to make further changes that cannot be accomplished through the regulatory process."

AB 138, sponsored by the Department of Industrial Relations, is pending in the Assembly Labor and Employment Committee. Most of the changes would conform California's prevailing wage requirements with the federal Davis-Bacon Act. In addition to the two changes ordered by the Governor, AB 138 would:

- Require payment of prevailing wages on projects over \$100,000 rather than the current \$1,000 threshold. In his 1993 reinventing government plan, Vice President Al Gore proposed an identical threshold change in the Davis-Bacon Act. The current Davis-Bacon coverage threshold is \$2,000.
- Limit prevailing wage coverage to workers directly employed on the public works worksite.
- Eliminate the inclusion of travel and subsistence payments to covered workers under the prevailing wage.
- Under specified conditions, authorize a local agency, by a majority vote of its governing board, to adopt a resolution exempting its public works projects from prevailing wage requirements. Under the state constitution,

-more-

4/2

-4 95-22

charter cities currently can exempt themselves from prevailing wage requirements if a project is funded entirely by municipal funds.

AB 138 enjoys broad support from local governments in California, including the League of California Cities, the Association of California Hospital Districts, the California School Boards Association, and the Association of California Water Agencies, and the Community College League. The California Taxpayers' Association also supports AB 138. Despite support by local governments, AB 138 stalled on a 4-4 party line vote in the Assembly Labor and Employment Committee. Assemblyman Goldsmith has made the bill a two-year bill so that it will be considered again when the Legislature returns from recess.

Aubry added that these prevailing wage reforms must be kept in the proper perspective. "These reforms simply are not a wholesale attack on the prevailing wage law," he said. "What California actually is doing is working to bring its own prevailing wage requirements in line with the federal Davis-Bacon Act. These changes are in the interest of taxpayers and will not affect the quality of work. They will save tax dollars at a time when California's infrastructure needs are great while state and local governments face limited resources to meet these needs. These reasonable prevailing wage reforms will help us to make our tax dollars stretch further while still maintaining a prevailing wage in accordance with national standards."

Reform of prevailing wage requirements has gained increasing focus on the federal, state, and local levels. Committees in both houses of Congress have approved legislation repealing the Davis-Bacon Act. Last spring, voters in the Town of Truckee overwhelmingly approved an initiative to incorporate the town as a charter city in order to avoid prevailing wage requirements. Truckee estimated that the charter city exemption will save \$3.2 million over the next few years on a major street repair project. In November, San Francisco voters will consider an initiative to allow the San Francisco Board of Supervisors to suspend prevailing wage requirements in some cases in which public funds are used to provide job training and work experience for disadvantaged youths. As a charter city, San Francisco can decide to exempt itself or modify its prevailing wage requirements.

DIR has filed official notices of these regulatory changes with the Office of Administrative Law (OAL) to open the formal rule making process. This process involves publishing new draft regulations for public review and comment and scheduling public hearings on the proposed regulations.

-- ## --

5/2

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS

Prevailing Wage Reform: Fact Sheet

Under the direction of Governor Wilson, the Department of Industrial Relations will be filing official notices of regulatory changes with the Office of Administrative Law (OAL) to open the formal rule making process. This process involves publishing proposed regulations for public review and comment and scheduling public hearings.

The regulatory reforms directed by the Governor make two changes:

1. New method of calculating the prevailing wage. The new regulations change the method for determining the prevailing wage to a 50 percent or weighted average from the present modal method.

- While difficult to quantify, savings under this provision could approach \$200 million.
- Under this method, the prevailing wage rate will be the single rate paid to a majority of workers or a weighted average of the rates paid if there is no rate paid to a majority of the workers.
- The 50% or weighted average method is the same approach used by the federal government under the federal Davis-Bacon Act. This has been the federal rule since the early 1980's.
- The repealed modal method inflated wages by causing wages to be considered prevailing even if they were significantly higher than the wages paid to a majority of workers in a locality.
 - With the repeal of the modal method in California, only two other states use it -- Minnesota and Wisconsin.
 - The modal approach required that the most frequently occurring wage rate be considered prevailing.
 - This method generally results in the wage rate under collective bargaining agreements qualifying as the prevailing wage, even though union membership in the construction industry in California was 25% in 1993, a 38% decline since 1983.
 - These rates are probably not representative of the wages earned by a majority of workers in many areas.

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Prevailing Wage Reform: Fact Sheet, continued

2. Repeal of the "double asterisk" provision which triggers an automatic increase in prevailing wage rates.

- The "double asterisk" rule requires that prevailing wage rates automatically increase during the term of a public works project when a collective bargaining agreement rate used as the basis for the prevailing wage determination contains an increase.
- In addition to an automatic escalation of wages, the provision has led to confusion for public agency awarding bodies and contractors.
- In some cases, this provision has led to changes in wage rates in the middle of a project, leaving contractors uncertain as to the proper rate and sometimes subject to civil penalties for paying a wage rate which later proved to be too low.
- In other cases, the parties to the collective bargaining agreement have rescinded the automatic increase, leaving the contractor and, in effect, the taxpayers to pay a rate which actually is higher than the prevailing wage rate under the collective bargaining agreement used as the basis for the determination.
- The federal Davis-Bacon Act contains no "double asterisk" requirement.
- The California Department of Transportation estimates that the repeal will reduce labor costs by at least 1.6 percent on a project.

Further Reforms to the Prevailing Wage Laws Under Consideration

- AB 138, (Jan Goldsmith) sponsored by the Department of Industrial Relations and supported by Governor Wilson, would make further changes. Most of the changes would conform California's prevailing wage requirements with the federal Davis-Bacon Act.
- DIR estimates that the provisions of AB 138 would save state and local taxpayers between \$200 million and \$250 million a year.
- AB 138 enjoys broad support from local governments in California, including the League of California Cities, the Association of California Hospital Districts, the California School Boards Association, and the Association of California Water Agencies, and the Community College League. The California Taxpayers' Association also supports AB 138.

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS**Prevailing Wage Reform: Fact Sheet, continued**

- AB 138 stalled on a 4-4 party line vote in the Assembly Labor and Employment Committee in the last legislative session. Assemblyman Goldsmith has made the bill a two-year bill so that it will be considered again when the Legislature returns from recess.
- Reform of national prevailing wage laws has gained increasing focus in Washington. Committees in both houses of Congress have approved legislation repealing the Davis-Bacon Act.
- On the local level, last spring voters in the Town of Truckee overwhelmingly approved an initiative to incorporate the town as a charter city in order to avoid prevailing wage requirements. Truckee estimated that the charter city exemption will save \$3.2 million over the next few years on a major street repair project.
- In a local urban environment, San Francisco voters will consider an initiative in November to allow the San Francisco Board of Supervisors to suspend prevailing wage requirements in some cases in which public funds are used to provide job training and work experience for disadvantaged youths. As a charter city, San Francisco can decide to exempt itself or modify its prevailing wage requirements.

-- ## --

~~3~~

October 12, 1995

8/2

TOTAL P.08

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS

Prevailing Wage Reform: Questions and Answers

Question: How can you change "prevailing wage" laws without legislative action?

Answer: While legislative changes are preferable, there are two things that can be done to reform the current system which do not require legislative action. First, through regulatory reform the method of calculating the prevailing wage can be changed from the "modal method" now used in California to a 50% or "weighted average" which is currently used by the federal government. Secondly, current prevailing wage regulations contain the so-called "double asterisk" provision which requires that some prevailing wage rates automatically increase during the term of a public works project. This regulation will be repealed.

Question: What are prevailing wages?

Answer: Under both California law and the federal Davis-Bacon Act, wages paid by contractors to workers on public works projects must be those which "prevail" for each classification or type of worker in the area where the project is located.

Question: What is a public works project?

Answer: State law generally defines a public works project as construction, alteration, demolition, repair or maintenance work performed under contract with a state or local agency and paid for in whole or in part with public funds with a threshold project value of \$1,000. Common types of public works are school, highway, hospital, and jail construction. (Under the state constitution, charter cities may exempt themselves from prevailing wage requirements when projects are funded entirely by local funds.)

Question: How are prevailing wages determined?

Answer: California currently uses the "modal method." This regulatory change will require the state to change from the modal method to the 50% or "weighted average" which is used by the federal government. Modal means the most frequently occurring rate

Under the modal method, if there are 10 tradesmen in a particular craft and three of them earn the same hourly rate of pay while the remaining 7 each earn different hourly rates, then the "prevailing" rate would be the hourly amount earned by those three workers. This system can extravagantly inflate wages by

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Prevailing Wage Reform: Questions and Answers, continued

causing them to be considered "prevailing" when they do not reflect the wages paid to a majority of workers in a locality.

The 50% or "weighted average" method is the same approach used by the federal government under the federal Davis-Bacon Act. Under this method the prevailing wage rate will be the single rate paid to a majority of workers, or a weighted average of rates paid if there is no rate paid to a majority of the workers.

Question: Who determines how much a prevailing wage should be?

Answer: The Director of the Department of Industrial Relations, based on data compiled by the Department's Division of Labor Statistics and Research.

Question: What is the "double asterisk" provision?

Answer: Often the hourly rate of pay under a collective bargaining agreement is the basis for determining the prevailing wage rate in a locality (even though it may not be the rate paid to a majority of workers due to use of the modal methodology described above). If, during a project, there is a predetermined change in the collective bargaining agreement (CBA) used as the basis for the prevailing wage determination which provides for a higher hourly rate, the prevailing rate must automatically increase as well on that project. This is called the "double asterisk" provision because rates which rise pursuant to a provision in the CBA are marked with double asterisks (**) in the prevailing wage determination. This obviously leads to confusion among the governmental bodies awarding the contracts and to the contractors as well, and can also result in taxpayers paying a rate which actually is higher than the prevailing wage.

Under the regulatory reform proposals, the double asterisk provision would be repealed. There is no double asterisk provision for federal projects under the Davis-Bacon Act. The initial wage rate is good for the life of the project.

Question: Is there any pending legislation that addresses the current prevailing wage laws?

Answer: AB 138 (Goldsmith) was introduced in the last legislative session and would have made several important changes that would have brought California's more generous prevailing wage laws into conformity with the federal Davis-Bacon Act. Unfortunately, this bill stalled in committee on a straight party line vote. It has since been made a two-year bill, and negotiations for its passage will be pursued again next session.

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Prevailing Wage Reform: Questions and Answers, continued

Question: Do any other states use the modal method over the 50% or weighted average method used by the federal government?

Answer: Only Minnesota and Wisconsin.

Question: Why has this regulatory action not been taken sooner? The Governor has been in office four and a half years.

Answer: For a number of reasons. This issue is highly symbolic for various groups involved in public works construction. During the Governor's first term the Department was actively pursuing workers' compensation reform. Additionally, the release of Vice President Gore's National Performance Review suggesting increasing the Davis-Bacon threshold to \$100,000 made it clear reform of prevailing wage was not a partisan issue.

--##--

11/2

October 12, 1995