Ms. Donna Hitsman-Harper, Purchasing Manager
North County Purchasing Consortium
Carlsbad Unified School District
801 Pine Avenue
Carlsbad, California 92008

Re: Assembly Bill 1506 - Enactment of New Labor Code Section 1771.7
Regarding Prevailing Wage Compliance Programs

Dear Ms. Hitsman-Harper:

You requested that we provide the North County Purchasing Consortium advice regarding the addition to the California Labor Code of Section 1771.7. This legislation enacts Assembly Bill 1506 and is found in Chapter Law 868 of the Statutes of 2002. You asked specifically what are school districts and community college districts required to do to assure they are in compliance with this new law. The short answer to this question, as you know, is that districts that will receive funds for projects from the Kindergarten-University Public Education Facilities Bond Act of 2002 (hereafter the 2002 Bond Act) and later adopted bond acts, must establish and enforce or contract with a third party to establish and enforce a labor compliance program. This requirement, however, does not apply to public works projects that commence before April 1, 2003. Our understanding is that if physical work has actually commenced on a project before that date, the new legislation does not apply. For projects that will commence on or after April 1, 2003, and that will use funds from the 2002 Bond Act, districts must, of course, have a labor compliance program.
Ms. Hitsman-Harper

In this letter, we will very briefly review provisions of the California Labor Code which set forth the steps that will need to be taken to comply with the new law. Our review will be brief because we believe additional and essential resource information will be available to school districts in the next one to two months. In addition, we believe if the Consortium follows the recommendations we make in this letter, it will save attorney fee costs and will also obtain the best information for assuring compliance with the new law.

RECOMMENDATIONS

1) Under the new law districts must make a written finding that they have initiated and enforced or contracted with a third party to initiate and enforce the required labor compliance program. According to California Labor Code section 1771.7, subdivisions (d)(1) and (d)(2)(B), for school districts, the district finding must be provided to the State Allocation Board, and for community college districts, the district finding must be transmitted to the Director of the Department of Industrial Relations. We understand, therefore, that both the State Allocation Board (the SAB) and the Department of Industrial Relations (the DIR) are now drafting regulations to set forth precisely the requirements for an acceptable compliance program for school and community college districts. Consequently, our first recommendation is that you contact the SAB and the DIR to determine when draft regulations will be available for review and to request you be provided a copy of the draft regulations as soon as possible.

2) We also recommend that you consider requesting that the San Diego Unified School District provide the Consortium a workshop presentation to review the labor compliance program adopted by San Diego Unified School District and approved by the DIR. We understand San Diego Unified School District has had a labor compliance program in place for approximately two years. As you may know, when a district has a labor compliance program in place, it does not need to follow the usual rule set forth at California Labor Code section 1771 that prevailing wages must be paid on all public works projects over $1,000. With a generally applicable labor compliance program in place, prevailing wages are only called for on public works projects over $25,000 or on public works projects over $15,000 where the project is for alteration, demolition, repair or maintenance work. (Cal. Lab. Code § 1771.5). We understand the San Diego Unified School District labor compliance program applies to all projects, not just to projects involving state bond funds.

We have requested a complete copy of the San Diego Unified School District labor compliance program. When we receive it, we will forward it to you along with
information from the contact person involved with the program, Administrative Assistant, Pamela Tipp. We will also let you know at that time whether San Diego Unified has the resources to assist the Consortium with a workshop-training program should you be interested in making such a request.

3) We recommend that you maintain close contact with the California Association for Adequate School Housing (CASH), because that organization is also actively involved in determining what school districts are required to do to comply with California Labor Code 1771.7. As a result of our contacts with CASH members, we have obtained two enclosures for your reference. First, enclosed is a chart entitled, "Prevailing Wage Requirements on School Construction Jobs" from attorney Grant Herndon, of Schools Legal Service. Mr. Herndon is aware we are sharing this information. You will see that this chart has a column devoted to "AB 1506 Labor Compliance Programs." This enclosed chart sets forth the basic prevailing wage laws and the unique requirements of AB1506, California Labor Code 1771.7.

In addition, enclosed is a copy of a letter dated December 5, 2002, to "Participants, C.A.S.H. State Conference on Proposition 47 Regulations and Labor Compliance" from attorney Steve Hartsell of School and College Legal Services of California. Mr. Hartsell's memo is written as an advocate for the position that districts should not be required under the new law to obtain approval from the DIR for the labor compliance programs they establish under the law. Based on our review of the statutes at issue, we agree with Mr. Hartsell. Mr. Hartsell informed me today, however, that a representative from DIR was present at the CASH conference last week, and he was not receptive to this approach and even suggested that the DIR had the necessary legislative influence to get clean-up legislation to require school districts to obtain DIR approval of their labor compliance programs. Therefore, we do recommend that districts obtain the DIR draft regulations for such programs as soon as they are available and plan to comply with them.

BRIEF REVIEW OF A.B. 1506

Assembly Bill 1506 was enacted in Chapter Law 868 of the Statutes of 2002. It enacts California Labor Code Section 1771.7. A copy of the Chapter Law is enclosed for your reference. The essential points of the statute as to school districts and community college districts are:

1) If districts are using the specified bond funds for projects, they must "initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in subdivision (b) of [California Labor Code] 1771.5 with respect to that
Ms. Hitsman-Harper

"public works project." Thus, the labor compliance program does not need to apply to all district projects. Mr. Hartsell has told me that Los Angeles Unified School District representatives advised CASH members that L.A. Unified has a labor compliance program which costs approximately $800,000 per year. Because of the cost involved in implementing a labor compliance program, a project specific program may be the most cost effective approach. In addition, the statute only requires a labor compliance program for projects using the specified state bond funds.

2) As noted above, the statute applies "to public works that commence on or after April 1, 2003." Work "performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, does not constitute the commencement of a public work." Therefore, if projects are moving forward rapidly at this time, an effort to have actual physical project work begin before April 1, 2003, could result in cost savings to districts if they do not have to implement a labor compliance program for the project.

3) Districts must make "a written finding that [the district] has initiated and enforced, or has contracted with a third party to initiate and enforce, the labor compliance program . . . ." School districts must transmit the finding to the SAB. Community college districts must transmit the finding to the DIR.

4) The SAB may not release the funds until the SAB has received the written finding from the district. The SAB may also conduct postaward audits to verify that the school district has complied with California Labor Code 1771.7.

5) Community college districts submitting findings to the DIR will need to await a determination from the DIR as to the "manner" in which findings are to be submitted.

6) The SAB "shall increase as soon as feasible, but no later than July 1, 2003, the per pupil grant amounts as described in Sections 17072.10 and 17074.10 of the California Education Code to accommodate the state's share of the increased costs of a new construction or modernization project due to the initiation and enforcement of the labor compliance program."

While the provisions of California Labor Code Section 1771.7 are relatively straightforward, they certainly do not explain what elements must be present in a labor compliance program. California Labor Code Section 1771.5 sets forth elements that must be included in a labor compliance program as follows at subdivision (b),

December 10, 2002
For the purposes of this section, a labor compliance program shall include, but not be limited to, the following requirements:

1. All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.

2. A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.

3. Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

4. The awarding body shall review, and if appropriate, audit payroll records to verify compliance with this chapter.

5. The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.

6. The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

As the chart from Mr. Herndon of Schools Legal Service indicates, many other California Labor Code provisions are applicable to the workings of a labor compliance program. The entire subject of prevailing wages is addressed in numerous statutes which are referred to in the chart.

In addition, the standard form School District Construction Contract Documents, Form 500, contains many basic provisions regarding prevailing wages at Articles 17, 18, and 19 (copies enclosed). These provisions and notice to bidders provisions will need to be revised for projects which will receive 2002 Bond Act funds. To the extent that these provisions place responsibilities on the DIR, with the initiation of a district labor compliance program, many if not all of these requirements will become the responsibility of the district.
Ms. Hitsman-Harper

December 10, 2002

SUMMARY AND CONCLUSIONS

It will be critical for Consortium members to obtain and review copies of the draft and final SAB and DIR regulations which implement AB 1506, California Labor Code 1771.7. Efforts to move currently planned projects forward so that physical work on such projects begins before April 1, 2003, may avoid the responsibilities and costs associated with the establishment and implementation of labor compliance programs for projects which use the applicable state bond funds and begin on or after April 1, 2003. We will be working to revise Notices to Bidders and the Form 500 contract documents for projects using the applicable bond funds and which begin on or after April 1, 2003.

We hope that the information above, and in particular the enclosed Chart are helpful to you in identifying the many prevailing wage laws which pertain to any district labor compliance program.

We look forward to working with you to provide you additional resource information as it becomes available to us and to address questions regarding California Labor Code 1771.7 as they arise. If you have any questions regarding the above discussion, please do not hesitate to call me.

Very truly yours,

JOHN J. SANSONE, County Counsel

By

ELLEN R. MICHAELS, Senior Deputy

ERM:cle
02-02075
Enc.
ATTACHMENT 1

CHART
OF
PREVAILING WAGE REQUIREMENTS ON SCHOOL CONSTRUCTION JOBS

INCLUDING AB 1506 LABOR COMPLIANCE PROGRAMS
(LABOR CODE § 1771.7)
<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliance Program required.</td>
<td>Voluntary Labor Compliance Programs.</td>
</tr>
<tr>
<td>Program (8 CCR 1942)</td>
<td>AB 1506 Labor Compliance Programs.</td>
</tr>
<tr>
<td>Department of Labor, Prevailing Wage Requirements (LC 1771)</td>
<td>Prevailing Wage Requirements on School Construction Jobs.</td>
</tr>
<tr>
<td>Prevailing Wage</td>
<td>Prevailing Wage</td>
</tr>
<tr>
<td>Thresholds:</td>
<td>Thresholds:</td>
</tr>
<tr>
<td>$1,000 &amp; Over</td>
<td>$1,000 &amp; Over</td>
</tr>
<tr>
<td>$3,500 or Over</td>
<td>$3,500 or Over</td>
</tr>
<tr>
<td>$15,000 or Over</td>
<td>$15,000 or Over</td>
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</tbody>
</table>

From: Grant Hamdon, Schools Legal Service
To: Ellen R. Michale, Deputy County Counsel 1/2020
<table>
<thead>
<tr>
<th>School's Legal Service</th>
<th>CCR 16400(c)(6)(f)</th>
<th></th>
<th>Contractor's Certificate</th>
<th>Partial Public Records</th>
<th>School's Legal Service</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>prevailing wage</strong></td>
<td></td>
<td><strong>prevailing wage</strong></td>
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<td><strong>prevailing wage</strong></td>
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<td></td>
<td></td>
<td><strong>prevailing wage</strong></td>
</tr>
</tbody>
</table>

**prevailing wage** requirements on school construction jobs

To: Ellen R. Michels, Senior Deputy County Counsel 1/22
From: Grant Hammond, School's Legal Service

<table>
<thead>
<tr>
<th>prevailing wage requirements on school construction jobs</th>
<th>prevailing wage requirements on school construction jobs</th>
</tr>
</thead>
<tbody>
<tr>
<td>prevailing wage requirements on school construction jobs</td>
<td>prevailing wage requirements on school construction jobs</td>
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<tr>
<td>prevailing wage requirements on school construction jobs</td>
<td>prevailing wage requirements on school construction jobs</td>
</tr>
</tbody>
</table>
### Traffic Light Beat Report

| Situation | Color Code | Action
|-----------|------------|-------|
| Low speed, turns | Red | Police car to be placed in front of the vehicle.

### School Curfew

- **Instruction:** Stop all traffic at 10 PM on weekdays.
- **Note:** Period will be extended to 11 PM on weekends.

### Traffic Lights

- **Red:** Stop.
- **Green:** Go.
- **Yellow:** Slow down.

### School District Policy

- **Prohibition:** No planting of flowers in the school parking lot.
- **Permit:** Required for any planting activity.

<table>
<thead>
<tr>
<th>Topic</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traffic</td>
<td>To be obeyed at all times.</td>
</tr>
<tr>
<td>Speed</td>
<td>Limited to 20 mph.</td>
</tr>
<tr>
<td>Lights</td>
<td>Turn on when required.</td>
</tr>
</tbody>
</table>

### Prevailing Wage Requirements on School Construction Jobs

> From Grant Herndon, Schools Legal Service

**To:** Ellen R. Michaels, Senior Deputy County Counsel 1/20/2023

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prevailing wage determination</td>
<td>Required.</td>
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<tr>
<td>Labor Compliance Program</td>
<td>Required.</td>
</tr>
<tr>
<td>Written Finding of Violation</td>
<td>Required.</td>
</tr>
</tbody>
</table>

**Notes:**
- **Traffic Light** system for enforcement.
- **School Curfew** applies during school hours.
- **Traffic Lights** must be followed at all times.

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**Annual Report**

- **Program** for labor compliance.
- **Enforcement** of written finding of violation.
<table>
<thead>
<tr>
<th>Regulation</th>
<th>Action to DIR (6 CCR 16439)</th>
<th>Court Action</th>
<th>Disposition of Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>1774.7(a)</td>
<td>Force Labor Compliance Program, (LC 1771.6)</td>
<td>Not Applicable</td>
<td>Deposited in State General Fund</td>
</tr>
<tr>
<td>Column 1:</td>
<td>Employee deposition with Lab. Commissioner.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Column 3:</td>
<td>Whitewash wages/benefits belonging to an</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Column 4:</td>
<td>Disbursements, (6 CCR 16439).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Column 5:</td>
<td>WHERE Court Action Pending and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Column 6:</td>
<td>Disbursements pending a determination &amp; not lienable. (LC 1734).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Column 7:</td>
<td>Deposition of Penalties.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Column 8:</td>
<td>Disposition of Penalties follows Column 2. but remains.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Prevailing Wage Requirements on School Construction Jobs

From: Grant Hermann, Schools Legal Service
To: Ellen R. Michels, Senior Deputy County Counsel 1/202
ATTACHMENT 2

MEMORANDUM OF DECEMBER 5, 2002
TO: PARTICIPANTS, C.A.S.H. STATE CONFERENCE ON
PROPOSITION 47 REGULATIONS AND LABOR COMPLIANCE

FROM: STEVE HARTSELL, ASSOCIATE GENERAL COUNSEL
SCHOOL AND COLLEGE LEGAL SERVICES OF CALIFORNIA
MEMORANDUM

TO: Participants, C.A.S.H. State Conference on Proposition 47 Regulations and Labor Compliance

FROM: Steve Hartsell, Associate General Counsel

SUBJECT: DIR Approval of AB 1506 Labor Compliance Programs

December 5, 2002

It is clear that AB 1506 (Wesson) (Stats. 2002, Chap. 868) imposes additional duties and costs on county offices of education and school districts (collectively “School Districts”) (as well as the University of California, the California State University, and community college districts) on most state-funded public works projects. One of the questions raised about the bill is whether a labor compliance program (“LCP”) initiated by a School District under AB 1506 must be approved by the Department of Industrial Relations (“DIR”). Another is whether an AB 1506 LCP is subject to the DIR’s existing regulations (8 C.C.R. §§ 16000 & 16425 et seq.) (“Regulations”) which are now applicable to LCP which public agencies elect to initiate under Labor Code Section 1771.5(a).

Reviewing AB 1506 in light of established rules of statutory construction, we conclude that the answer to each question is “No.” The words used by the Legislature in AB 1506 clearly and unambiguously impose only three duties on an awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or 2004:

- “[I]nitiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in subdivision (b) of Section 1771.5, with respect to that public works project.” (§ 1771.7(a), emphasis added)\(^1\)
- “[M]ake a written finding that it has initiated and enforced, or has contracted with a third party to initiate and enforce, the [required LCP]” (§ 1771.7(d)(1))
- “Transmit a copy of its written finding” to the State Allocation Board (“SAB”) (if it is a School District) or to the Director of the DIR (if it is the University of California, the California State University, or a community college district). (§ 1771.7(d)(2) & (3))

\(^1\) AB 1506 also provides that “in addition to the requirements imposed on the [University of California and the California State University] by subdivision (b) of Section 1771.5, the payroll records described in paragraphs (3) and (4) of subdivision (b) of Section 1771.5 shall be reviewed on at least a monthly basis to ensure the awarding body’s compliance with the labor compliance program.” No similar requirement is imposed on School Districts or community college districts.
The language used in AB 1506 to impose each of these requirements demonstrates that the Legislature did not intend that a LCP initiated and enforced under AB 1506 requires DIR approval or is subject to existing DIR Regulations:

- In establishing the first requirement, the Legislature made specific and exclusive reference to subdivision (b) of Section 1771.5, pointedly avoiding reference to Section 1771.5 as a whole. Moreover, its use of the phrase "as described" instead of "in accordance with" or "pursuant to" emphasizes the fact that Section 1771.7 was intended by the Legislature to be the sole authority for the LCP, and not Section 1771.5, or the Regulations adopted by DIR to implement and interpret Section 1771.5. If the Legislature had intended that an AB 1506 LCP required DIR approval and was subject to the Regulations, it would have used language like that found in Education Code Section 17210 et seq.

- In establishing the second requirement, the Legislature clearly authorizes an awarding body to certify its own compliance with AB 1506. This is in stark contrast with the Regulations which require an awarding body to:
  1. "submit evidence of its ability to operate its LCP" prior to initial approval (8 C.C.R. § 16426),
  2. "bear the burden of producing evidence that it...has satisfactorily demonstrated its ability to monitor compliance with the requirements of the Labor Code and these regulations, and has filed timely, complete, and accurate reports as required by these regulations" prior to final approval (8 C.C.R. § 16427), and
  3. continue filing those reports to avoid having the approval later revoked (8 C.C.R. § 16428).

Again, if the Legislature had intended that the DIR approve and supervise an AB 1506 LCP, it would have used language like that found in Education Code Section 17210 et seq.\(^2\)

- In establishing the third requirement as it relates to a School District, the Legislature also imposes two duties on the State Allocation Board: 1) To not release funds until it has received the written finding required of a School District; and 2) if it conducts a post award audit, to verify, in the manner it determines, that a School District has complied with subdivision (d) of Section 1771.7.

Again, if the Legislature had intended to have the DIR involved, it would have used language like that found in Education Code Section 17210 et seq. Instead the Legislature does not even mention the DIR in the context of School Districts. (As to the University of California, the California State University, or a community college district, the Legislature does mention the DIR, but does not require—or authorize—the DIR to verify the awarding body’s compliance with subdivision (d) of Section 1771.7.)

For these, and other reasons, we conclude that a LCP initiated by a School District under AB 1506 does not have to be approved by DIR and is not subject to DIR’s existing Regulations.

SLH:bkd

\(^2\) Moreover, if the DIR’s approval were actually required for an AB 1506 LCP, an awarding body could not legitimately make a written find that it had, in fact, initiated and enforced a LCP unless it already had that approval. If it had that approval, that approval (and the fact that the DIR had not revoked its approval per 8 C.C.R. § 16428) would be best evidence of compliance, and not a written finding by the awarding body. This would mean that the requirement for a written finding by the awarding body (and in the case of the University of California, the California State University, or a community college district, transmittal of that finding to the Director of the DIR) would be mere surplusage.
ATTACHMENT 3

CHAPTER LAW 868 OF THE STATUTES OF 2002
ENACTING AB 1506 - LABOR CODE § 1771.7

SECTION 1 - STATEMENT OF LEGISLATIVE INTENT
SECTION 2 - NEW LABOR CODE § 1771.7
SECTION 3 - OPERATIVE DATES & APPLICABLE BOND ACTS
A.B. No. 1506

AN ACT to add Section 1771.7 to the Labor Code, relating to public works.

[Filed with Secretary of State September 26, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1506 Wesson. Public works.

Existing law generally requires the payment of the general prevailing rate of per diem wages for public works projects costing over $1,000, unless the awarding body elects to initiate and enforce a labor compliance program, as defined, for every public works project under the authority of that awarding body.

This bill would require an awarding body that chooses to use funds from either the Kindergarten–University Public Education Facilities Bond Act of 2002 or the Kindergarten–University Public Education Facilities Bond Act of 2004 for a public works project to initiate and enforce, or to contract with a third party to initiate and enforce, a labor compliance program for that public works project. The bill would provide that the labor compliance law applies to a public works project that commences, as provided, on or after April 1, 2003.

This bill would also provide that, if any campus of the California State University chooses to use those funds and is required to implement a labor compliance program as provided, the “awarding body” for the purposes of this bill is the Chancellor of the California State University, in which case the Chancellor of the California State University would be required to review certain payroll records on at least a monthly basis, as provided. This bill would also require the review of similar payroll records on at least a monthly basis if any campus of the University of California is required to implement a labor compliance program under the bill. This bill would also require awarding bodies to make a written finding that the body has compiled with this bill, and require the State Allocation Board or the Director of the Department of Industrial Relations, as applicable, to verify that this written finding has been made.

This bill would not become operative unless either the Kindergarten–University Public Education Facilities Bond Act of 2002 or the Kindergarten–University Public Education Facilities Bond Act of 2004 is approved by the voters.

This bill would also state legislative findings and declarations regarding the bill’s intent.

The people of the State of California do enact as follows:

SECTION 1. In enacting this act, the Legislature finds and declares all of the following:

(a) Payment of the prevailing rate of per diem wages to workers employed on public works is necessary to attract the most skilled workers for the project and to ensure that work of the highest quality is performed on those projects.

(b) Public works projects should never undermine the wage base in a community and ensure that workers on public works projects be paid the prevailing rate of per diem wages such that the wage base is not lowered.

(c) It is a matter of statewide concern that every school district in California pay the prevailing rate of per diem wages to workers employed on public works undertaken by those districts.
(d) Therefore, it is the intent of the Legislature in enacting this act that every school district in California pay the prevailing rate of per diem wages to workers employed on public works undertaken by these school districts.

(e) It is further the intent of the Legislature to preserve the constitutional autonomy of the University of California, as described in Section 9 of Article IX of the California Constitution, by providing that this act apply to that university only to the extent that the university chooses to use the funds described in this act.

SEC. 2. Section 1771.7 is added to the Labor Code, to read:

1771.7. (a) An awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project, shall initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in subdivision (b) of Section 1771.5, with respect to that public works project.

(b) This section shall apply to public works that commence on or after April 1, 2003. For purposes of this subdivision, work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, does not constitute the commencement of a public work.

(c)(1) For purposes of this section, if any campus of the California State University chooses to use the funds described in subdivision (a), then the “awarding body” is the Chancellor of the California State University. For purposes of this subdivision, if the chancellor is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, the labor compliance program described in that subdivision, then in addition to the requirements imposed upon an awarding body by subdivision (b) of Section 1771.5, the Chancellor of the California State University shall review the payroll records described in paragraphs (3) and (4) of subdivision (b) of Section 1771.5 on at least a monthly basis to ensure the awarding body’s compliance with the labor compliance program.

(2) For purposes of this subdivision, if an awarding body described in subdivision (a) is the University of California or any campus of that university, and that awarding body is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, the labor compliance program described in that subdivision, then in addition to the requirements imposed upon an awarding body by subdivision (b) of Section 1771.5, the payroll records described in paragraphs (3) and (4) of subdivision (b) of Section 1771.5 shall be reviewed on at least a monthly basis to ensure the awarding body’s compliance with the labor compliance program.

(d)(1) An awarding body described in subdivision (a) shall make a written finding that the awarding body has initiated and enforced, or has contracted with a third party to initiate and enforce, the labor compliance program described in subdivision (a).

(2)(A) If an awarding body described in subdivision (a) is a school district, the governing body of that district shall transmit to the State Allocation Board, in the manner determined by that board, a copy of the finding described in paragraph (1).

(B) The State Allocation Board may not release the funds described in subdivision (a) to an awarding body that is a school district until the State Allocation Board has received the written finding described in paragraph (1).

(C) If the State Allocation Board conducts a postaward audit procedure with respect to an award of the funds described in subdivision (a) to an awarding body that is a school district, the State Allocation Board shall verify, in the manner determined by that board, that the school district has complied with the requirements of this subdivision.

(3) If an awarding body described in subdivision (a) is a community college district, the Chancellor of the California State University, or the elected or the President of the University of California or any campus of the University of California, that awarding body shall transmit, in the manner determined by the Director of the Department of Industrial Relations, a copy of the finding described in paragraph (1) to the director of that department, or the director of any successor agency that is responsible for the oversight of employee wage and employee work hours laws.
PUBLIC OFFICERS AND EMPLOYEES—ORGAN DONORS—LEAVE REQUIREMENTS

CHAPTER 869

A.B. No. 1825

AN ACT to add Sections 99519.5 and 92611.5 to the Education Code, and to add Section 19991.11 to the Government Code, relating to public employment.

[Filed with Secretary of State September 26, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1825, Nakano. Leaves of absences: organ donors.

Existing law authorizes, and in certain cases requires, that the appointing power of any state agency, department, board, or commission grant leaves of absence. These provisions also differ as to whether these leaves of absence are to be with or without pay.

This bill would require the appointing power of every state agency, department, board, or commission to grant up to a 30-day leave of absence with pay to employees who have exhausted all available sick leave and who are organ donors and up to a 5-day leave of absence with pay to employees who have exhausted all available sick leave and who are bone marrow donors, subject to specified requirements.

The bill would impose the same employee leave requirements on the Trustees of the California State University, and would allow the Regents of the University of California to adopt, by resolution, the same employee leave requirements.

The people of the State of California do enact as follows:

SECTION 1. Section 99519.5 is added to the Education Code, to read:

99519.5. (a) Subject to subdivision (b), the trustees shall grant to an employee, who has exhausted all available sick leave, the following leaves of absence with pay:

(1) A leave of absence not exceeding 30 days to any employee who is an organ donor in any one-year period, for the purpose of donating his or her organ to another person.

(2) A leave of absence not exceeding five days to any employee who is a bone marrow donor in any one-year period, for the purpose of donating his or her bone marrow to another person.

(b) To receive a leave of absence pursuant to subdivision (a), an employee shall provide written verification to the trustees that he or she is an organ or bone marrow donor and that there is a medical necessity for the donation of the organ or bone marrow.
ATTACHMENT 4

COPY OF LABOR CODE § 1771.5
REGARDING CONTENTS OF LABOR COMPLIANCE PROGRAMS
§ 1771.5. Labor compliance program

(a) Notwithstanding Section 1771, an awarding body shall not require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars ($25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars ($15,000) or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body elects to initiate and enforce a labor compliance program pursuant to subdivision (b) for every public works project under the authority of the awarding body.

(b) For the purposes of this section, a labor compliance program shall include, but not be limited to, the following requirements:

(1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.

(2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.

(3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

(4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.

(5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.

(6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that
underpayment has occurred.

**HISTORY:**
Added Stats 1989 ch 1224 § 2.
Amended Stats 1999 ch 83 § 132 (SB 966).

**NOTES:**
COLLATERAL REFERENCES:
LAW REVIEW ARTICLES:

Service: Get by LEXSTAT®
TOC: Deering's California Code Annotated > / > ARTICLE 2. Wages > § 1771.5. Labor compliance program
Citation: Cal Lab 1771.5
View: Full
Date/Time: Monday, December 9, 2002 - 11:16 AM EST
ATTACHMENT 5

EXCERPTS FROM: SCHOOL DISTRICT CONSTRUCTION
CONTRACT DOCUMENTS

ARTICLE 17. WAGE RATES
ARTICLE 18. APPRENTICES
ARTICLE 19. HOURS OF WORK
b. Any person in the employ of the Contractor whom District may deem incompetent or unfit shall be dismissed from work and shall not again be employed on it except with the written consent of District.

**Article 17. WAGE RATES**

a. Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2 of the Labor Code of California, the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute the contract. Copies of said determination are on file at District's principal office and are available to any interested party on request.

b. Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the general prevailing rate of per diem wages as determined by the Director of Industrial Relations, unless otherwise specified.

c. Each worker of the Contractor or any of his subcontractors engaged in work on the project shall be paid not less than the general prevailing rate of per diem wages determined by the Director of Industrial Relations, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such workers.

d. The Contractor shall, as a penalty to the District, forfeit not more than fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any subcontractor under him or her. Prevailing wage rates shall also be used when determining wages paid for change order items. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the Contractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor in meeting his or her prevailing wage obligations, or the Contractor's willful failure to pay the correct rates of prevailing wages. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor, and the Contractor shall be bound by the provisions of Labor Code section 1775.

e. Any worker employed to perform work on the project, which work is not covered by any classification listed in the general prevailing rate of per diem wages determined by the Director of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to work to be performed by him. Such minimum wage rate shall be retroactive to the time of initial employment of such person in such classification.

f. Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel, subsistence, apprenticeship or other specified training programs and similar purposes.
g. Contractor shall post at appropriate conspicuous points on the site of project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

h. Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

i. The payroll records required above shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

2. A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

3. A certified copy of all payroll records shall be made available upon request to the public for inspection or copies thereof made, provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal office of the Contractor.

j. Contractor shall file a certified copy of the records required above with the District or entity that requested such records within ten days after receipt of a written request.

k. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor shall not be marked or obliterated.

l. Contractor shall inform the District of the location of the records required above, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

m. In the event of noncompliance with the requirements of this article regarding maintenance of records, the Contractor shall have ten days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this article. Should noncompliance still be evident after such ten-day period, the Contractor shall, as a penalty by the District, forfeit twenty-five dollars ($25) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalty shall be withheld from progress payments then
due. A Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

Article 18. APPRENTICES

Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly indentured to the Contractor in full compliance with provisions of the Labor Code. The prime contractor shall bear the responsibility of compliance with Labor Code section 1777.5 for all apprenticeable occupations and agrees that he will comply with said section which reads:

"(a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either (1) the apprenticeship standards and apprentice agreements under which he or she is training or (2) the rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval or denial of the apprenticeship program shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that the program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would

GENERAL CONDITIONS
Page 14
be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program’s standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:
(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life, safety, property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(i) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract. At the end of each fiscal year the California Apprenticeship Council shall make grants to each apprenticeship program in proportion to the number of hours of training provided by the program for which the program did not receive contributions, weighted by the regular rate of contribution for the program. These grants shall be made from funds collected by the California Apprenticeship Council during the fiscal year pursuant to this subdivision from contractors that employed registered apprentices but did not contribute to an approved apprenticeship program. All these funds received during the fiscal year shall be distributed as grants.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars ($30,000) or 20 working days.

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.
Article 19. HOURS OF WORK

a. As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this contract upon the work or upon any part of the work contemplated by this contract is limited and restricted to eight (8) hours during any one-calendar day and forty (40) hours during any one-calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

b. The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the work or any part of the work contemplated by this contract. The record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

c. The Contractor shall pay to the District a penalty of twenty-five dollars ($25) for each worker employed in the execution of this contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code.

d. Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to District.

Article 20. WORKERS' COMPENSATION INSURANCE

a. The Contractor shall provide, during the life of this contract, workers' compensation insurance for all of his employees engaged in work under this contract, or at the site of the project, and, in case any of his work is sublet, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this contract, on or at the site of the project, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor shall file with the District certificates of his insurance protecting workers.

b. Company or companies providing insurance coverage shall be acceptable to the District, and in the following form and coverage.

1. Statutory Workers' Compensation and Employer's Liability Coverage: Contractor shall maintain insurance to afford protection for all claims under California Workers' Compensation Act and other employee benefit acts, and in addition, shall