

COMMISSION ON STATE MANDATES

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May 10, 2011

Mr. Keith Petersen
SixTen & Associates
P.O. Box 340430
Sacramento, CA 95834-0430

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

RE: Final Staff Analysis, Proposed Statewide Cost Estimate, and Hearing Date
Prevailing Wage Rate, 01-TC-28
Labor Code Section 1776; Statutes 1978, Chapter 1249
California Code of Regulations, Title 8, Sections 16400, Subdivisions (c) and (d); 16403,
Subdivision (a); and 16408, Subdivision (b)
Grossmont Unified School District, Claimant

Dear Mr. Petersen:

The final staff analysis and proposed statewide cost estimate for this matter are enclosed.

Hearing

This matter is set for hearing on Thursday, **May 26, 2011**, at 9:30 a.m. **Please note that the hearing will be conducted at the offices of Department of Finance, 915 L Street, Redwood Room, Sacramento, California, 95814.** This matter is proposed for the Consent Calendar. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Nancy Patton at (916) 323-8217 if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Drew Bohan".

Drew Bohan
Executive Director

ITEM 12
FINAL STAFF ANALYSIS
PROPOSED STATEWIDE COST ESTIMATE
\$480,655

Labor Code Section 1776

Statutes 1978, Chapter 1249

California Code of Regulations, Title 8,
Sections 16400, Subdivisions (c), and (d), 16403, Subdivision (a),
and 16408, Subdivision (b)

Prevailing Wage Rate
01-TC-28

Grossmont Union High School District, Claimant

STAFF ANALYSIS

Background and Summary of the Mandate

The test claim statute and regulations address changes to the California Prevailing Wage Law (CPWL), which is “a comprehensive statutory scheme designed to enforce minimum wage standards on construction projects funded in whole or in part with public funds.” Contractors for public works projects that exceed \$1,000 are required to pay local prevailing wages to construction workers on those projects. The provisions of the CPWL are only applicable when a district contracts with a private entity to carry out a public works project. The test claim statute and regulations mandate certain activities when the CPWL provisions are triggered by projects for repair or maintenance to school facilities and property,¹ when the project constitutes a public works project pursuant to the CPWL, and when the project must be let to contract.

The Commission adopted a statement of decision concluding that Labor Code section 1776, Statutes 1978, chapter 1249, and California Code of Regulations, Title 8, sections 16400, subdivisions (c) and (d), 16403, subdivision (a), and 16408, subdivision (b), constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The claimant filed the test claim on June 28, 2002. The Commission adopted a statement of decision on January 31, 2009, and the parameters and guidelines on January 29, 2010. The parameters and guidelines were corrected on May 25, 2010.² Eligible claimants were required to file initial reimbursement claims with the State Controller’s Office (SCO) by November 30, 2010, and late claims by November 30, 2011.

Eligible Claimants and Period of Reimbursement

Any “school district” as defined in Government Code section 17519, including community colleges, is eligible to claim reimbursement. The reimbursement period for this new mandate began on July 1, 2000.

¹ Pursuant to Education Code sections 17002, 17565, 17593, and 81601.

² Exhibit A.

Reimbursable Activities

The Commission approved the following activities for reimbursement:

- A. Upon a request made to the awarding body by the public for certified payroll records:
 - Obtain certified payroll records from the contractor, including specified information in the request. (Cal. Code Regs., tit. 8, § 16400, subd. (c).)
 - Send an acknowledgment to the requestor including notification of the costs to be paid for preparing the records. (Cal. Code Regs., tit. 8, § 16400, subd. (d).)
 - Provide copies of the records to the requestor. (Lab. Code, § 1776, subd. (b)(3).)
 - Retain copies of payroll records requested by the public and provided by the awarding body for at least 6 months. (Cal. Code Regs., tit. 8, § 16403, subd. (a).)
- B. Withhold penalties from contractor progress payments for noncompliance with the requirement to provide certified payroll records under Labor Code section 1776, upon request of the Department of Industrial Relations' Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. (Lab. Code, § 1776, subd. (g) (as amended by Stats. 1978, ch. 1249).)
- C. Insert stipulations regarding the contractor's and subcontractor's requirements pursuant to Labor Code section 1776 in the contract. (Lab. Code, § 1776, subd. (h) (as amended by Stats. 1978, ch. 1249); Cal. Code Regs., tit. 8, § 16408, subd. (b).)

The above-named activities are only reimbursable when those activities are triggered by projects for repair or maintenance to school facilities and property, pursuant to Education Code sections 17002, 17565, 17593, and 81601, when the project constitutes a public works project pursuant to the CPWL, and when the project must be let to contract under the following circumstances:

1. For *K-12 school districts*, when the project is not an emergency as set forth in Public Contract Code section 20113, and
 - a. for districts with an average daily attendance of less than 35,000, when the total number of hours on the job exceeds 350; or
 - b. for districts with an average daily attendance of 35,000 or greater, the total number of hours on the job exceeds 750 hours or the material cost exceeds \$21,000. (Pub. Contract Code, § 20114.)
2. For *community college districts*, when the project is not an emergency as set forth in Public Contract Code section 20654, and
 - a. for districts with full-time equivalent students of fewer than 15,000, when the total number of hours on the job exceeds 350; or
 - b. for districts with full-time equivalent students of 15,000 or more, the total number of hours on the job exceeds 750 hours or the material cost exceeds \$21,000. (Pub. Contract Code, § 20655.)
3. For any K-12 school district or community college district that is subject to the Uniform Public Contract Cost Accounting Act (UPCCAA), when a project is not an emergency as set forth in Public Contract Code section 22035, and the project cost will exceed:

- a. \$25,000 for projects completed by December 31, 2006;
- b. \$30,000 for projects completed on or after January 1, 2007. (Pub. Contract Code, § 22032.)

Activities that are performed as a result of a district's implementation of the Labor Compliance Program pursuant to labor Code section 1771.5 are **not** reimbursable.

Offsetting Revenue Provisions

Any fees received by school districts pursuant to Labor Code section 1776, subdivision (e), and title 8, California Code of Regulations, section 16402 for obtaining certified payroll records from the contractor, sending an acknowledgment to the requestor, and providing copies of the records to the requestor are identified as offsetting revenue in the parameters and guidelines.

Furthermore, any grant funds available to awarding bodies under the deferred maintenance program, or any other eligible grant program, when used for the newly mandated activities in this test claim, are identified in the parameters and guidelines as possible offsetting revenues.

Statewide Cost Estimate

Staff reviewed the claims data submitted by six community college districts, and one school district, and compiled by the SCO. The actual claims data showed that 23 claims were filed for fiscal years 2003-2004 through 2009-2010, for a total of \$540,729.³ Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

Assumptions

1. *The actual amount claimed for reimbursement may increase if late or amended claims are filed.*

There are 72 community college districts, and over 1,000 school districts in California. Of those, only 6 community college districts and 1 school district filed a total of 23 reimbursement claims for this program between 2003 and 2010. If other eligible claimants file late or amended claims, the amount of reimbursement claims may exceed the statewide cost estimate. Late claims for this program may be filed until November 30, 2011.

2. *There may be several reasons that non-claiming community college and school districts did not file reimbursement claims, including but not limited to:*

- The Commission approved only a small portion of this program as a mandate. Therefore, many community college districts and school districts cannot reach the \$1,000 threshold for filing reimbursement claims.
- There is grant money and fees available for this program that, if received, must be offset from reimbursement claims. This may also contribute to the fact that districts cannot reach the \$1,000 threshold for filing claims.
- They did not have supporting documentation to file a reimbursement claim.

3. *There is a wide variation in costs claimed for this program that appear to be eligible for reimbursement.*

Staff reviewed the reimbursement claims filed and found that the average cost of the 23 claims is \$20,898 per claim. Six claims exceed this amount.⁴ Staff found that the agencies

³ Claims data reported as of April 11, 2011.

⁴ Santa Clarita Community College District filed claims for: (1) \$29,300 in 2004-2005; (2) \$71,900 in 2005-2006; (3) \$52,275 in 2006-2007; (4) \$73,728 in 2007-2008; and (5) \$57,428

with higher-than-average costs hired outside consulting firms to complete the activities required by this program, including obtaining certified payroll records, sending an acknowledgment to the requestor, providing copies of the records to the requestor, and retaining copies of payroll records.

However, the parameters and guidelines and the law do not prohibit community college districts and school districts from using outside resources to implement a mandated program. Therefore, these costs appear to be eligible for reimbursement.

4. *The total amount of reimbursement for this program may be lower than the statewide cost estimate, because the SCO may reduce any reimbursement claim for this program.*

The SCO may conduct audits on this program, and reduce any claim it deems to be excessive or unreasonable.

Methodology

Fiscal Years 2003-2004 through 2009-2010

The proposed statewide cost estimate for the above-named fiscal years was developed by totaling the 23 reimbursement claims filed with the SCO for these years.

The proposed statewide cost estimate includes seven fiscal years for a total of \$480,655 for the *Prevailing Wage Rate* program. This averages to \$68,665 annually in costs for the state for this seven-year period.

Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	Number of School District Claims Filed with SCO	Number of Community College District Claims Filed with SCO	Estimated Cost
2003-2004	0	3	\$28,285
2004-2005	0	3	\$39,068
2005-2006	1	3	\$83,591
2006-2007	0	3	\$72,835
2007-2008	0	4	\$184,792
2008-2009	1	3	\$67,892
2009-2010	0	2	\$4,192
SUB-TOTAL	2	21	\$480,655

Comments on the Proposed Statewide Cost Estimate

Commission staff issued the draft staff analysis and proposed statewide cost estimate for comment on April 15, 2011.⁵ No comments were submitted.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$480,655** for costs incurred in complying with the *Prevailing Wage Rate* program.

in 2008-2009. Yuba Community College District filed a reimbursement claim for \$103,622 in 2007-2008.

⁵ Exhibit B.

Commission on State Mandates

Original List Date: 7/8/2002
Last Updated: 5/11/2011
List Print Date: 05/11/2011
Claim Number: 01-TC-28
Issue: Prevailing Wage Rate

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Corrected: 5/25/10

Adopted: 1/29/10

CORRECTED PARAMETERS AND GUIDELINES

Labor Code Section 1776

Statutes 1978, Chapter 1249

California Code of Regulations, Title 8,
Sections 16400, Subdivisions (c), and (d), 16403, Subdivision (a),
and 16408, Subdivision (b)

Prevailing Wage Rate

01-TC-28

I. SUMMARY OF THE MANDATE

On January 30, 2009, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that the test claim legislation imposes a partially reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities:

- Upon a request made to the awarding body by the public for certified payroll records:
 - Obtain certified payroll records from the contractor, including specified information in the request. (Cal. Code Regs., tit. 8, § 16400, subd. (c).)
 - Send an acknowledgment to the requestor including notification of the costs to be paid for preparing the records. (Cal. Code Regs., tit. 8, § 16400, subd. (d).)
 - Provide copies of the records to the requestor. (Lab. Code, § 1776, subd. (b)(3).)
 - Retain copies of payroll records requested by the public and provided by the awarding body for at least 6 months. (Cal. Code Regs., tit. 8, § 16403, subd. (a).)
- Withhold penalties from contractor progress payments for noncompliance with the requirement to provide certified payroll records under Labor Code section 1776, upon request of the Department of Industrial Relations' Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. (Lab. Code, § 1776, subd. (g) (as amended by Stats. 1978, ch. 1249).)
- Insert stipulations regarding the contractor's and subcontractor's requirements pursuant to Labor Code section 1776 in the contract. (Lab. Code, § 1776, subd. (h) (as amended by Stats. 1978, ch. 1249); Cal. Code Regs., tit. 8, § 16408, subd. (b).)

The above-named activities are only reimbursable when those activities are triggered by projects for repair or maintenance to school facilities and property, pursuant to Education Code sections 17002, 17565, 17593 and 81601, when the project constitutes a public works project pursuant to the CPWL, and when the project must be let to contract under the following circumstances:

1. For *K-12 school districts*, when the project is not an emergency as set forth in Public Contract Code section 20113, and
 - a. for districts with an average daily attendance of less than 35,000, when the total number of hours on the job exceeds 350; or
 - b. for districts with an average daily attendance of 35,000 or greater, the total number of hours on the job exceeds 750 hours or the material cost exceeds \$21,000. (Pub. Contract Code, § 20114.)
2. For *community college districts*, when the project is not an emergency as set forth in Public Contract Code section 20654; and
 - a. for districts with full-time equivalent students of fewer than 15,000, when the total number of hours on the job exceeds 350; or
 - b. for districts with full-time equivalent students of 15,000 or more, the total number of hours on the job exceeds 750 hours or the material cost exceeds \$21,000. (Pub. Contract Code, § 20655.)
3. For any K-12 school district or community college district that is subject to the UPCCAA, when a project is not an emergency as set forth in Public Contract Code section 22035, and the project cost will exceed:
 - a. \$25,000 for projects completed on or before December 31, 2006;
 - b. \$30,000 for projects completed on or after January 1, 2007. (Pub. Contract Code, § 22032.)

II. ELIGIBLE CLAIMANTS

Any "school district" as defined in Government Code section 17519, including community colleges, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement. Charter schools are not eligible claimants.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the test claim on June 28, 2002, establishing eligibility for the 2000-2001 fiscal year. Therefore, costs incurred are reimbursable on or after July 1, 2000.

Actual costs for one fiscal year shall be included in each claim. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

- A. Upon a request made to the awarding body by the public for certified payroll records:
 - o Obtain certified payroll records from the contractor, including specified information in the request. (Cal. Code Regs., tit. 8, § 16400, subd. (c).)
 - o Send an acknowledgment to the requestor including notification of the costs to be paid for preparing the records. (Cal. Code Regs., tit. 8, § 16400, subd. (d).)
 - o Provide copies of the records to the requestor. (Lab. Code, § 1776, subd. (b)(3).)
 - o Retain copies of payroll records requested by the public and provided by the awarding body for at least 6 months. (Cal. Code Regs., tit. 8, § 16403, subd. (a).)
- B. Withhold penalties from contractor progress payments for noncompliance with the requirement to provide certified payroll records under Labor Code section 1776, upon request of the Department of Industrial Relations' Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. (Lab. Code, § 1776, subd. (g) (as amended by Stats. 1978, ch. 1249).)

- C. Insert stipulations regarding the contractor's and subcontractor's requirements pursuant to Labor Code section 1776 in the contract. (Lab. Code, § 1776, subd. (h) (as amended by Stats. 1978, ch. 1249); Cal. Code Regs., tit. 8, § 16408, subd. (b).)

The above-named activities are only reimbursable when those activities are triggered by projects for repair or maintenance to school facilities and property, pursuant to Education Code sections 17002, 17565, 17593 and 81601, when the project constitutes a public works project pursuant to the CPWL, and when the project must be let to contract under the following circumstances:

1. For *K-12 school districts*, when the project is not an emergency as set forth in Public Contract Code section 20113, and
 - a. for districts with an average daily attendance of less than 35,000, when the total number of hours on the job exceeds 350; or
 - b. for districts with an average daily attendance of 35,000 or greater, the total number of hours on the job exceeds 750 hours or the material cost exceeds \$21,000. (Pub. Contract Code, § 20114.)
2. For *community college districts*, when the project is not an emergency as set forth in Public Contract Code section 20654; and
 - a. for districts with full-time equivalent students of fewer than 15,000, when the total number of hours on the job exceeds 350; or
 - b. for districts with full-time equivalent students of 15,000 or more, the total number of hours on the job exceeds 750 hours or the material cost exceeds \$21,000. (Pub. Contract Code, § 20655.)
3. For any K-12 school district or community college district that is subject to the UPCCAA, when a project is not an emergency as set forth in Public Contract Code section 22035, and the project cost will exceed:
 - a. \$25,000 for projects completed by December 31, 2006;
 - b. \$30,000 for projects completed on or after January 1, 2007. (Pub. Contract Code, § 22032.)

Activities that are performed as a result of a district's implementation of the Labor Compliance Program pursuant to labor Code section 1771.5 are **not** reimbursable.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved.

After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

Any fees received by school districts pursuant to Labor Code section 1776, subdivision (e), and title 8, California Code of Regulations, section 16402 for obtaining certified payroll records from the contractor, sending an acknowledgment to the requestor, and providing copies of the records to the requestor shall be identified as offsetting revenue in

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

the parameters and guidelines. Furthermore, any grant funds available to awarding bodies under the deferred maintenance program, or any other eligible grant program, when used for the newly mandated activities in this test claim, shall be identified in the parameters and guidelines as possible offsetting revenues.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

Hearing: May 26, 2011
j:mandates/tc/2001/01tc28/sce/dsa

ITEM ____
DRAFT STAFF ANALYSIS
PROPOSED STATEWIDE COST ESTIMATE
\$480,655

Labor Code Section 1776

Statutes 1978, Chapter 1249

California Code of Regulations, Title 8,
Sections 16400, Subdivisions (c), and (d), 16403, Subdivision (a),
and 16408, Subdivision (b)

Prevailing Wage Rate
01-TC-28

Grossmont Union High School District, Claimant

STAFF ANALYSIS

Background and Summary of the Mandate

The test claim statute and regulations address changes to the California Prevailing Wage Law (CPWL), which is “a comprehensive statutory scheme designed to enforce minimum wage standards on construction projects funded in whole or in part with public funds.” Contractors for public works projects that exceed \$1,000 are required to pay local prevailing wages to construction workers on those projects. The provisions of the CPWL are only applicable when a district contracts with a private entity to carry out a public works project. The test claim statute and regulations mandate certain activities when the CPWL provisions are triggered by projects for repair or maintenance to school facilities and property,¹ when the project constitutes a public works project pursuant to the CPWL, and when the project must be let to contract.

The Commission adopted a statement of decision concluding that Labor Code section 1776, Statutes 1978, chapter 1249, and California Code of Regulations, Title 8, sections 16400, subdivisions (c) and (d), 16403, subdivision (a), and 16408, subdivision (b), constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The claimant filed the test claim on June 28, 2002. The Commission adopted a statement of decision on January 31, 2009, and the parameters and guidelines on January 29, 2010. The parameters and guidelines were corrected on May 25, 2010.² Eligible claimants were required to file initial reimbursement claims with the State Controller’s Office (SCO) by November 30, 2010, and late claims by November 30, 2011.

Eligible Claimants and Period of Reimbursement

¹ Pursuant to Education Code sections 17002, 17565, 17593, and 81601.

² Exhibit A.

Any school district as defined in Government Code section 17519, including community college districts, are eligible claimants. The reimbursement period for this new mandate began on July 1, 2000.

Reimbursable Activities

The Commission approved the following activities for reimbursement:

- A. Upon a request made to the awarding body by the public for certified payroll records:
 - Obtain certified payroll records from the contractor, including specified information in the request. (Cal. Code Regs., tit. 8, § 16400, subd. (c).)
 - Send an acknowledgment to the requestor including notification of the costs to be paid for preparing the records. (Cal. Code Regs., tit. 8, § 16400, subd. (d).)
 - Provide copies of the records to the requestor. (Lab. Code, § 1776, subd. (b)(3).)
 - Retain copies of payroll records requested by the public and provided by the awarding body for at least 6 months. (Cal. Code Regs., tit. 8, § 16403, subd. (a).)
- B. Withhold penalties from contractor progress payments for noncompliance with the requirement to provide certified payroll records under Labor Code section 1776, upon request of the Department of Industrial Relations' Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. (Lab. Code, § 1776, subd. (g) (as amended by Stats. 1978, ch. 1249).)
- C. Insert stipulations regarding the contractor's and subcontractor's requirements pursuant to Labor Code section 1776 in the contract. (Lab. Code, § 1776, subd. (h) (as amended by Stats. 1978, ch. 1249); Cal. Code Regs., tit. 8, § 16408, subd. (b).)

The above-named activities are only reimbursable when those activities are triggered by projects for repair or maintenance to school facilities and property, pursuant to Education Code sections 17002, 17565, 17593, and 81601, when the project constitutes a public works project pursuant to the CPWL, and when the project must be let to contract under the following circumstances:

1. For *K-12 school districts*, when the project is not an emergency as set forth in Public Contract Code section 20113, and
 - a. for districts with an average daily attendance of less than 35,000, when the total number of hours on the job exceeds 350; or
 - b. for districts with an average daily attendance of 35,000 or greater, the total number of hours on the job exceeds 750 hours or the material cost exceeds \$21,000. (Pub. Contract Code, § 20114.)
2. For *community college districts*, when the project is not an emergency as set forth in Public Contract Code section 20654, and
 - a. for districts with full-time equivalent students of fewer than 15,000, when the total number of hours on the job exceeds 350; or
 - b. for districts with full-time equivalent students of 15,000 or more, the total number of hours on the job exceeds 750 hours or the material cost exceeds \$21,000. (Pub. Contract Code, § 20655.)

3. For any K-12 school district or community college district that is subject to the Uniform Public Contract Cost Accounting Act (UPCCAA), when a project is not an emergency as set forth in Public Contract Code section 22035, and the project cost will exceed:
 - a. \$25,000 for projects completed by December 31, 2006;
 - b. \$30,000 for projects completed on or after January 1, 2007. (Pub. Contract Code, § 22032.)

Activities that are performed as a result of a district's implementation of the Labor Compliance Program pursuant to labor Code section 1771.5 are **not** reimbursable.

Offsetting Revenue Provisions

Any fees received by school districts pursuant to Labor Code section 1776, subdivision (e), and title 8, California Code of Regulations, section 16402 for obtaining certified payroll records from the contractor, sending an acknowledgment to the requestor, and providing copies of the records to the requestor shall be identified as offsetting revenue in the parameters and guidelines. Furthermore, any grant funds available to awarding bodies under the deferred maintenance program, or any other eligible grant program, when used for the newly mandated activities in this test claim, shall be identified in the parameters and guidelines as possible offsetting revenues.

Statewide Cost Estimate

Staff reviewed the claims data submitted by six community college districts, and one school district, and compiled by the SCO. The actual claims data showed that 23 claims were filed for fiscal years 2003-2004 through 2009-2010, for a total of \$540,729.³ Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

Assumptions

1. *The actual amount claimed for reimbursement may increase if late or amended claims are filed.*

There are 72 community college districts, and over 1,000 school districts in California. Of those, only 6 community college districts and 1 school district filed a total of 23 reimbursement claims for this program between 2003 and 2010. If other eligible claimants file late or amended claims, the amount of reimbursement claims may exceed the statewide cost estimate. Late claims for this program may be filed until November 30, 2011.

2. *There may be several reasons that non-claiming community college and school districts did not file reimbursement claims, including but not limited to:*
 - The Commission approved only a small portion of this program as a mandate. Therefore, many community college districts and school districts cannot reach the \$1,000 threshold for filing reimbursement claims.
 - There is grant money and fees available for this program that, if received, must be offset from reimbursement claims. This may also contribute to the fact that districts cannot reach the \$1,000 threshold for filing claims.
 - They did not have supporting documentation to file a reimbursement claim.

³ Claims data reported as of April 11, 2011.

3. *There is a wide variation in costs claimed for this program that appear to be eligible for reimbursement.*

Staff reviewed the reimbursement claims filed and found that the average cost of the 23 claims is \$20,898 per claim. Six claims exceed this amount.⁴ Staff found that the agencies with higher-than-average costs hired outside consulting firms to complete the activities required by this program, including obtaining certified payroll records, sending an acknowledgment to the requestor, providing copies of the records to the requestor, and retaining copies of payroll records.

However, the parameters and guidelines and the law do not prohibit community college districts and school districts from using outside resources to implement a mandated program. Therefore, these costs appear to be eligible for reimbursement.

4. *The total amount of reimbursement for this program may be lower than the statewide cost estimate, because the SCO may reduce any reimbursement claim for this program.*

The SCO may conduct audits on this program, and reduce any claim it deems to be excessive or unreasonable.

Methodology

Fiscal Years 2003-2004 through 2009-2010

The proposed statewide cost estimate for the above-named fiscal years was developed by totaling the 23 reimbursement claims filed with the SCO for these years.

The proposed statewide cost estimate includes seven fiscal years for a total of \$480,655 for the *Prevailing Wage Rate* program. This averages to \$68,665 annually in costs for the state for this seven-year period.

Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	Number of School District Claims Filed with SCO	Number of Community College District Claims Filed with SCO	Estimated Cost
2003-2004	0	3	\$28,285
2004-2005	0	3	\$39,068
2005-2006	1	3	\$83,591
2006-2007	0	3	\$72,835
2007-2008	0	4	\$184,792
2008-2009	1	3	\$67,892
2009-2010		2	\$4,192
SUB-TOTAL	2	21	\$480,655

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$480,655** for costs incurred in complying with the *Prevailing Wage Rate* program.

⁴ Santa Clarita Community College District filed claims for: (1) \$29,300 in 2004-2005; (2) \$71,900 in 2005-2006; (3) \$52,275 in 2006-2007; (4) \$73,728 in 2007-2008; and (5) \$57,428 in 2008-2009. Yuba Community College District filed a reimbursement claim for \$103,622 in 2007-2008.