

# *The* FISCAL REPORT *an informational update*

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## **Clarifications Regarding the New Contractor Registration Program (SB 854)**

School Services of California, Inc., (SSC) has written several articles and answered numerous questions regarding Senate Bill (SB) 854—the new public works contractor registration program that collects fees to fund the Labor Commissioner’s public works enforcement program, a Division within the Department of Industrial Relations (DIR). The most frequently asked questions have been regarding the applicability of the law (e.g., what is the minimum contract amount to which it applies, does the source of funds matter, and is it only for projects that are bid).

SSC has consistently stated that SB 854 applies to all public works projects as defined in Labor Code Section 1720 regardless of contract amount, source of funds, or whether the project is bid. Labor Code Section 1771 further defines maintenance as a public work and the dollar threshold triggering prevailing wage requirements is total project costs exceeding \$1,000. Any public funding could trigger prevailing wage requirements and requiring contractors to be registered with the Labor Commissioner’s Office.

We have heard recently a belief that SB 854 only applies to certain contracts and does not apply to projects that are paid for out of a district’s General Fund. In an effort to ensure that we are providing you with the most up-to-date and accurate information, SSC reached out to the DIR to seek clarification and has confirmed the following:

1. SB 854 pertains to projects that would be subject to prevailing wage. Per Labor Code Section 1771, all public works projects performed, with the exception of those for one thousand dollars (\$1,000) or less, must pay prevailing wage. Therefore, SB 854 applies to each contract awarded for a public works project with a value of \$1,001 or more, including those contracts let for maintenance work. This does not apply, however, to those public works projects performed by the public agencies’ own staff.
2. The definition of public works is specific to those projects completed under contract and paid for, in whole or in part, out of public funds by the state or political subdivision. Therefore, SB 854 applies to any project, over \$1,001, paid for by a school district regardless of whether those dollars are bond funds or General Fund dollars or whether they are local or state dollars.

In addition, SB 854 not only applies with the appropriation of public funds, but also when other forms of public “funds” are contributed to a project. Labor Code Section 1720(b) et. seq. defines “paid for in whole or in part out of public funds” as:

- a) The payment of money or the equivalent of money directly to, or on behalf of, a public works contractor, subcontractor, or developer
- b) Performance of construction work in execution of the project
- c) Transfer of an asset of value for less than fair market price

- d) Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of a contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven
- e) Money loaned that is to be repaid on a contingent basis
- f) Credits that are applied against repayment obligations

School districts should carefully examine any contracts into which they have entered that may require the payment of prevailing wage based on these definitions, in which case they would also be subject to SB 854.

Lastly, it is important that all school districts ensure that they are informing the DIR within five days of the award of any contract subject to prevailing wage and SB 854, per Labor Code Section 1773.3. The DIR has developed an online form (PWC-100) for the submittal of this notification.

As a side note, please be aware that while not typically subject to public works requirements, the above does apply to charter schools if they are using public funds (e.g., monies for the state's Charter Schools Facilities Program or local bond dollars).

*—Brianna García and Patti Herrera*

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