

State of California

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MEMORANDUM

Date: April 24, 2020

To: Board of Directors
California Exposition & State Fair

Via: Rick Pickering, General Manager/CEO
California Exposition & State Fair

From: Samantha Brown, Deputy General
Manager Administration

Subject: AB 1499 – Three Quarters of 1% of Sales Tax to be distributed to the network of California Fairs via the California Department of Food & Agriculture

BACKGROUND

The Governor approved assembly Bill 1499 on October 14, 2017. Beginning July 1, 2018, the Bill allowed businesses to voluntarily report gross receipts for sales and use tax purposes where the place of sale is on or within the real property of a state-designated fair, or any real property of a state-designated fair that is leased to another party. The Bill required the California Department of Tax and Fee Administration (CDTFA) to report the amount of the total gross receipts segregated on the returns filed pursuant to these provisions to the Department of Finance on or before November 1 of each year. The Bill required the CDTFA to estimate the total gross receipts segregated for the 2019–20 fiscal year by January 31, 2019, based on the 3rd quarter of 2018, and would require that an amount equal to $\frac{3}{4}$ of 1% of this estimated amount be included in the Governor's revised budget in May 2019 for allocation to fairs. The amount estimated for fiscal year 2018/2019 was approximately \$18 million. The Bill required the CDTFA to reconcile the first-year estimate with actual return data from the full 2018–19 fiscal year, and to then adjust this figure as appropriate as the amount to be reported to the Department of Finance on November 1, 2019.

The Bill required that an amount equal to $\frac{3}{4}$ of 1% of the total amount of gross receipts reported to the Department of Finance be included in the next annual Governor's Budget for the Department of Food and Agriculture for allocation to fairs pursuant to the provisions of the Bill. The Bill requires, upon the enactment of the annual Budget Act, that this amount be transferred by the Controller to the Fair and Exposition Fund, which is continuously appropriated, and would allocate these moneys to state-designated fairs for specified fair projects and subject to certain conditions.

The Bill also included specific requirements for the fairgrounds to be eligible to receive AB 1499 funding as follows.

(1) Any revenues deposited into the Fair and Exposition Fund pursuant to AB 1499 shall only be allocated to a state-designated fair if non-management employees at that state-designated fair, or non-management employees at any real property of that state-designated fair that is leased to another party, are provided the following working conditions:

(A) The employee receives a meal period of not less than 30 minutes for a work period of more than five hours per day, unless the work period per day of the employee is less than six hours and the meal period is waived by mutual consent of both the employer and the employee.

(B) The employee receives a second meal period of not less than 30 minutes for a work period of more than 10 hours per day, unless the work period per day of the employee is less than 12 hours, the second meal period is waived by mutual consent of both the employer and the employee, and the first meal period was not waived.

(C) Any work in excess of eight hours in one workday, any work in excess of 40 hours in any one workweek, and the first eight hours worked on the seventh day of work in any one workweek is compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

(D) Any work in excess of 12 hours in one day is compensated at the rate of no less than twice the regular rate of pay for an employee.

(E) Any work in excess of eight hours on any seventh day of a workweek is compensated at the rate of no less than twice the regular rate of pay for an employee.

(2) This subdivision shall not apply to full-time carnival ride operators employed by a traveling carnival.

APPLICATION OF AB1499 REQUIREMENTS

Annually Cal Expo employees up to 850 employees. Approximately 45% of Cal Expo employees are covered by collective bargaining units. The remaining 55% of Cal Expo employees are seasonal/casual employment, that is hired to facilitate preparation and operation of the annual State Fair. These seasonal/casual employment classification is designated as State Fair Worker (Class Code 5999). This classification is seasonal in nature and the employee is employed for 6 months or less. Consequently, this classification is not covered by collective bargaining. Currently, Cal Expo and most other Fairs utilize a federal overtime exemption (Fair Labor Standards Act, FLSA, seasonal/recreational/entertainment), which does not require payment of overtime to employees in this classification because they are seasonal in nature.

Per the requirements of AB 1499, if Cal Expo was to accept the funds generated by AB 1499 Cal Expo would need to do the following:

- Relinquish its FLSA exemption for the seasonal State Fair Worker classification, and begin paying overtime as outlined in the Bill.
- Pay all of its bargained positions a wage not less than minimum wage plus 30%.
- Require all long-term ground leases (1 year or more), with companies that have more than 50 full-time employees at Cal Expo, to agree contractually to these same terms for their employees and to allow the California Department of Food & Agriculture (CDFA) the ability to audit their financial records for compliance.

COVID-19 EMERGENCY ADJUSTMENTS TO AB1499

Governor Newsom issued Executive Order N-40-20 on March 4, 2020, which included changes to the requirements for AB 1499 funds during the COVID-19 emergency. The Executive Order allows CDFA to distribute AB 1499 funds to all Fairs, including those Fairs that cannot currently meet the 30 percent above minimum wage requirement. However, all other workforce requirements in the Bill for meal and rest periods and overtime are still a requirement.

In accordance with this Executive Order, CDFA is making AB 1499 available for all Fairs in California for general operational support costs. Below is an outline from CDFA on how the estimated 2018/2019 AB 1499 funds will be allocated.

| Spending Plan | | |
|----------------------|-------------------|-------------------|
| Distribution | Amount | Percentage |
| F&E Fund | 1,739,000 | 9.3% |
| Allocation | 13,300,000 | 71.4% |
| Deferred Maintenance | 3,598,000 | 19.3% |
| TOTAL | 18,637,000 | 100.0% |

| Allocation Per Class Size | | |
|----------------------------------|-------------------|-------------------|
| Class Size | # of Fairs | Allocation |
| I | 9 | 198,700 |
| I-X | 3 | 194,550 |
| II | 9 | 190,400 |
| III | 14 | 182,100 |
| III+ | 14 | 173,850 |
| IV | 8 | 165,600 |
| IV+ | 6 | 157,350 |
| V | 4 | 149,000 |
| VI | 5 | 140,750 |
| VII (Cal Expo) | 5 | 132,500 |
| TOTAL | | 13,300,000 |

DOCUMENTATION NECESSARY TO RECEIVE AB 1499 FUNDING

CDFA is requiring the following be adopted by the Board, via a Roll Call Vote, with records of this acceptance in Cal Expo's Board Minutes, prior to receiving any AB 1499 funding.

- Board approved resolution signed by the CEO and Board Chair requesting the AB 1499 allocation. (Attached)
- Memorandum Of Understanding (MOU) with CDFA signed by the CEO and Board Chair certifying Board approval of the AB 1499 funding, Board approval to provide the required work conditions and the Board's approval to require lessees to provide the required work conditions to all of their non-management employees. (Attached)

The MOU for the current round of AB 1499 funding expires on December 31, 2020. Consequently, if Cal Expo agrees to accept the current year's \$132,500 in AB 1499 funding assistance, it would also be accepting AB 1499 requirements through the end of 2020.

RECOMMENDATION

Given unprecedented issues associated with COVID-19, Staff respectfully recommends:

- a) That the Board approve Cal Expo's participation in AB 1499 funding for the remainder of 2020, and
- b) That the Board adopt the supporting resolution and MOU for 2020 via a Roll Call Vote.

Staff understands from CDFA, that should new AB 1499 funds become available in the future, Cal Expo would at that time be allowed to accept or not accept such new funds. Future acceptance of new AB 1499 funds would be done through a future resolution and MOU.