




Assembly Bill 1499 Workshop #3

California Department of Food and Agriculture

August 28, 2019



Welcome

- ▶ Introduction of California Department of Food and Agriculture staff
 - ▶ Webinar and Phone Conferencing Information
 - ▶ Purpose / Overview of Workshop
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Regulation Development

Estimated Timeline

- ▶ Workshops – June 12 / July 11 / August 28
- ▶ Submission of Regulatory Package to Office of Administrative Law (OAL) – late September 2019
- ▶ 45-day public comment period; CDFA receives input
- ▶ Public input will dictate if another public comment period is needed
- ▶ Department of Finance will review due to fiscal appropriation
- ▶ OAL makes a final determination/regulations adopted
- ▶ Regulation Development process is anticipated to take 6-8 months once Package is submitted to OAL




Assembly Bill 1499 – AB635 (current status)

- ▶ $\frac{3}{4}$ of 1% of the total amount of gross receipts when 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.
- ▶ State designated fair as defined in Bus. And Professional Code
- ▶ Specific uses of the monies generated as defined in B&P Code 19620.2
- ▶ Fairs must comply with specific working conditions for fair non-management employees, or non-management employees of a business (i.e., lessee) who leases land/property at the fairgrounds.
- ▶ AB635 introduced in late June – would exempt non-management employees covered by a valid collective bargaining agreement. Bill needs to be signed into law (urgency clause).
- ▶ Exception: Does not apply to full-time carnival operators employed by a traveling carnival



Assembly Bill 1499

Role of CA Department of Tax and Fee Administration (CDTFA)

- ▶ Tracks gross receipts of sales and use tax
 - ▶ Modified sales and use tax reporting forms
 - ▶ Created educational programs to inform vendors/business
 - ▶ Reports gross receipts to Department of Finance (Finance)
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Budget Process - Timeline

- ▶ CDTFA - First year estimate (July 2019-June 2020) based upon third quarter of 2018 (July – September 2018)
- ▶ CDTFA reported \$18.637M – added to Governor's FY1920 Budget May Revise
- ▶ CDTFA to adjust first year estimate; report to Finance on November 1, 2019
- ▶ CDFA anticipates receiving final (adjusted) amount in late 2019
- ▶ Monies deposited into the Fairs & Expo Fund (Continuously Appropriated)





AB635 – additional information

- ▶ Assembly Bill 635 was introduced and adds language to exempt non-management employees covered by a bargaining agreement as well as an urgency clause. AB635 has not been signed into law. Specifically, AB635 states:
- ▶ *For purposes of this subdivision, an employee shall not include an employee covered by a valid collective bargaining agreement if that agreement expressly provides for all of the following:*
- ▶ *Wages, hours of work, and working conditions of the employees.*
- ▶ *Meal periods for the employees, including final and binding arbitration of disputes concerning application of its meal period provisions.*
- ▶ *Premium wage rates for all overtime hours worked, and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage.*
- ▶ *Urgency Clause goes into effect immediately instead of January, 2020*



What has occurred since the last workshop?

- ▶ CDFA Legal and F&E staff have reviewed all workshop input received thus far.
 - ▶ Regulations have been updated based on workshop input.
 - ▶ Regulations have been updated assuming AB635 is signed into law.
 - ▶ Initial preparation for submission of regulation package to OAL has been initiated.
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Definitions – changes to

- ▶ §7020.1
- ▶ (e) AB 1499 Funding (Funding) will be referred to throughout document
- ▶ (g) Required work conditions add: “notwithstanding federal and state exemptions”
- ▶ (i) Lessee – removed: “non-governmental entity”
- ▶ (j) Lease – add: “continuous”
 - ▶ i.e., 52nd DAA leases space from Cal Expo does not meet definition of a lease
- ▶ (k) Carnival ride operator - refers to a full time ride operator who is “employed” by a traveling carnival
- ▶ (l) Added – Valid Collective Bargaining Agreement definition





Lessee and Contracting

- ▶ Legal is researching if a revenue-generating contract is treated differently than a non-revenue generating contract.
- ▶ No grace periods will be allowed to amend existing contracts once fair is granted “Qualified Fair Status”.
- ▶ A qualified fair could hire a JPA to write a grant to apply for Funding but the money would go to the fair.
- ▶ If the lessee breaches contract by not providing required working conditions, then the fair would not have to reimburse lessee for any improvements made by lessee.
- ▶ If a breach occurs, the DAA would need to obtain reassurance from the lessee that it intends to remedy and comply with lease requirements going forward.
- ▶ If a lessee fails to notify the fair about a receipt of complaint that would constitute a breach of contract.
- ▶ Contract Indemnification clause could allow DAA to sue lessee.



Compliance and Enforcement

- ▶ It is the responsibility of the Audit Office, or appropriate labor authority, to examine the lessee's payroll records.
 - ▶ The lease agreement between fair and lessee must contain requirement/clause that Audit Office has access to lessee payroll records.
 - ▶ A violation can be discovered in two ways:
 - ▶ Department Audit
 - ▶ Employee complains to union or the relevant labor authority and the complaint is verified
 - ▶ If a violation occurs, the fair shall take appropriate action to resolve the violation and report back to CDFA within 60 days. Course of resolution must be accepted by CDFA. Escalating enforcement.
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- ▶ Questions?
- ▶ Next Steps
 - ▶ Fairs should be performing a cost analysis (assuming AB635 is passed)
 - ▶ CDFA will finalize the regulations and ready for OAL submission
- ▶ Comments can be submitted to: john.quiroz@cdfa.ca.gov or jeff.cesca@cdfa.ca.gov
 - ▶ It is anticipated that CDFA will conduct workshops in Fall 2019 to receive input on what types of programs/projects could be funded by AB1499 funds. The industry and public are invited to attend.