



MENDOCINO COUNTY BOARD OF SUPERVISORS
ONLINE AGENDA SUMMARY

BOARD AGENDA #_4(o)_

- Arrangements for public hearings and timed presentations must be made with the Clerk of the Board in advance of public/media noticing
- Agenda Summaries must be submitted no later than *noon* Monday, 15 days prior to the meeting date (along with electronic submittals)
- Send 1 complete original single-sided set and 1 photocopy set – Items must be signed-off by appropriate departments and/or Co. Co.
Note: If individual supporting document(s) exceed 25 pages each, or are not easily duplicated, please provide 7 hard-copy sets)
- Transmittal of electronic Agenda Summaries, records, and supporting documentation must be emailed to: bosagenda@co.mendocino.ca.us
- Electronic Transmission Checklist: Agenda Summary Records Supp. Doc. If applicable, list other online information below
- Executed records will be returned to the department within one week. *Arrangements for expedited processing must be made in advance*

TO: Board of Supervisors **DATE:** March 28, 2013

FROM: Department of Transportation **MEETING DATE:** April 9, 2013

DEPARTMENT RESOURCE/CONTACT: Howard N. Dashiell **PHONE:** 463-4363 Present On Call

Consent Agenda Regular Agenda Noticed Public Hearing Time Allocated for Item: _____

■ AGENDA TITLE: Adoption of Resolution of the Board of Supervisors Authorizing the Road Commissioner to do Minor Road Reconstruction and New Construction with County Staff per PCC § 20395 (c) (Amended by AB 720) Prescribed 30% Maximum Force Account Work (County-wide)

■ PREVIOUS BOARD/BOARD COMMITTEE ACTIONS: On May 12, 2009, the Board endorsed testimony of the Director of Transportation before committees on AB 1409 (Perez) with regard to Public Contracts/County Highways. The Board approved a letter of opposition to AB 1409(Perez) to be sent to California Legislature members and the California State Association of Counties (CSAC), authorizing the Chair to sign the same. On July 14, 2009, the Board approved sending a second letter to the same. On March 28, 2011, the Board approved opposition to AB 720 (Hall) by a 4-1 vote. On July 26, 2011 Board withdrew opposition in favor of the compromise negotiated by CSAC.

■ SUMMARY OF REQUEST: The subject legislation has been amended seven times. AB 720 (Hall), as amended, restricts PCC § 22030 – the California Uniform Construction Cost Accounting Commission (CUCCAC) option for counties by limiting their Road Commissioner use of PCC § 20395 to 30% for new road construction and road reconstruction. CSAC, who has negotiated a compromise, also requires this declaration.

■ SUPPLEMENTAL INFORMATION AVAILABLE ONLINE AT: None.

■ ADDITIONAL INFORMATION ON FILE WITH THE CLERK OF THE BOARD (CHECKED BY COB IF APPLICABLE):

FISCAL IMPACT:			
Source of Funding	Current F/Y Cost	Annual Recurring Cost	Budgeted in Current F/Y
Road Fund	None	Limit County road maintenance staff doing reconstruction or new construction to 30%	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

■ SUPERVISORIAL DISTRICT: 1 2 3 4 5 All **■ VOTE REQUIREMENT:** Majority 4/5ths

■ RECOMMENDED ACTION/MOTION: By Resolution Authorize and direct Director of Transportation no more than 30% of the PCC § 20395 (c) (Amended by AB 720 per PCC Section 22031(b)(2)) prescribed force account work.

■ ALTERNATIVES: An alternative (not recommended) would be to not approve the authorization.

■ CEO REVIEW (NAME): _____ **PHONE:** 463-4441

RECOMMENDATION: Agree Disagree No Opinion Alternate Staff Report Attached

BOARD ACTION (DATE: _____): Approved Referred to _____ Other _____

RECORDS EXECUTED: Agreement: _____ Resolution: _____ Ordinance: _____ Other _____

RESOLUTION NO. 13-

**RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS
AUTHORIZING THE ROAD COMMISSIONER TO DO MINOR ROAD
RECONSTRUCTION AND NEW CONSTRUCTION WITH COUNTY STAFF PER PCC
§ 20395 (C) (AMENDED BY AB 720) PRESCRIBED 30% MAXIMUM FORCE
ACCOUNT WORK (COUNTY-WIDE)**

WHEREAS, the Mendocino County Department of Transportation (MCDOT) has used Public Contract Code Section 20395 to do work with County Road Staff (Force Account) for over 50 years; and

WHEREAS, Section 20395 (c) of the State of California Public Contract Code (PCC) and 2.56.020 of the Mendocino County Code define and govern the Road Commissioner; and

WHEREAS, Assembly Bill 720 has placed a 30% limit of the on certain Force Account work related to New Road Construction and Road Reconstruction as well as a declaration.

NOW, THEREFORE, BE IT RESOLVED that the Mendocino County Board of Supervisors:

That the Mendocino County Department of Transportation is hereby authorized and directed to use road maintenance field staff do no more than 30% new road construction and road reconstruction pursuant to the PCC § 20395 (c) (Amended by AB 720 per PCC Section 22031(b)(2)) prescribed force account work (adjusted for Capital Project Delivery Force Account efforts and other eligible items).

The foregoing Resolution introduced by Supervisor _____, seconded by Supervisor _____, and carried this _____ day of _____, 2013, by the following vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared said Resolution adopted and SO ORDERED.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

Deputy

APPROVED AS TO FORM:
THOMAS R. PARKER, County Counsel

Deputy

DAN HAMBURG, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy

Memo

To: California Uniform Construction Cost Accounting Commission Members

From: Cathryn A. Hilliard, CIFAC Executive Director

Date: June 7, 2013

Re: Item 10 b. CIFAC's Position on AB 720 – County Road Commissioner Project Declaration Requirements

In regards to item 10 b. on the California Uniform Construction Cost Accounting Commission Agenda for the June 20, 2013 meeting, I offer the following comments describing CIFAC's position on the declaration of new county road commissioner projects.

A CIFAC-led public works construction industry coalition and CSAC/CEAC representatives reached agreement that after the 2013 effective date, a California Uniform Construction Cost Accounting Act (the Act) signatory county, declaring a road commissioner project, could undertake road reconstruction and new construction up to a maximum of 30% of the value of all roadwork done by force account other than maintenance as the county reported to, and was subsequently published in the State Controller's Streets and Roads Annual Report as of January 1 of each year.

There was another major provision in the law that was a part of the discussion throughout the legislative process; to have projects declared prior to the commencement of work, with the location and other cost accounting information available to the County Boards of Supervisors and the public. It was not the intent of the law to allow for a blanket, non-specific declaration once each year at budget time, that covers all work for an entire year, without any details. A blanket declaration without specifics does not provide elected or appointed officials or the public with clarity or transparency and leaves room for backfilling numbers and manipulating the data.

More importantly, as a Commission, you need to know whether or not an individual project has exceeded the limit. How would the Commission be able to make a determination without this information? Without declarations that include details about each individual project, Commissioners would have to assume that all projects over the \$45,000 threshold are out of compliance and should be sanctioned. This would not be fair to the counties or to CIFAC.

Signatory counties can do force account work up to \$45,000 under the guidelines of CUCCAA. If they choose to do new road construction and road reconstruction projects up to the 30% of all force account work, as defined in the law, and they declare those projects prior to commencing the work, they can do so.

All counties may continue to do unlimited emergency road construction work as needed when the Board of Supervisors declares the project is an emergency.

CIFAC's intention is to work with the appropriate counties and to act as a resource, especially as we go through the first year of implementation. We have evidence that this process has already begun. Please note that several CUCCAA signatory counties are already following the new law in the correct fashion by declaring projects prior to commencing work.

Requested Action: CIFAC requests that Commissioners do not take action to support the use of blanket, non-specific road commissioner project declarations. A position of support is in conflict with the intent of the law and undermines the Commission's ability to make project-by-project determinations based on facts and figures. CIFAC worked closely with county representatives for more than a year before AB 720 became the law and Mendocino County's approach would subvert that effort.

Director's Report – May 14, 2013

- **Road Commissioner/County Engineer Activities:** On April 9, 2013, the Mendocino County Board of Supervisors approved Resolution 13-039 declaring in a general “blanket” format the intention of use County Road Crews to do road reconstruction under the 30% limit set by AB 720. At that time, the Board directed the Director of Transportation to determine the validity of a “possible violation” suggested in an emailed comment by Construction Industry Force Account Council (CIFAC) addressing that Board Agenda Item. The Mendocino County Department of Transportation (MCDOT) Director did contact the California State Controller's Office (SCO) and the matter will be on the agenda at the next California Uniform Construction Cost Accounting Commission (CUCCAC) meeting June 20, 2013 in Sacramento. MCDOT Director will attend and is still quite confident that Mendocino's action was not a violation of the California Uniform Public Construction Cost Accounting Act (*CUPCAA*).

Nevertheless, the Director has been meeting with other counties (via phone conferences) to see if an acceptable method of “notification” can be agreed upon with the CIFAC to address public transparency in the use of County Road Crews to do road reconstruction under the 30% limit set by AB 720. Presently Resolution 13-039 declares in a general “blanket” format the intention of use:

Public Contract Code (PCC) Section 22031(b) (2) New road construction and road reconstruction as long as the total annual value of the new road construction and the road reconstruction performed under the procedures set forth in subdivision (c) of Section 20395 does not exceed 30% of total value of all work performed by force account other than maintenance as reported in the Controller's Streets and Roads Annual Report as of January 1 of each year.

Based on comments from CIFAC representatives concerning this resolution, the Mendocino County Road Commissioner determined that CIFAC believes AB 720 sets a 30% limit and directed California Uniform Public Construction Cost Accounting Act (*CUPCAA*) participating Counties of populations over 50,000 to follow ***procedures set forth in PCC Section(s) 20000 – 22045***. AB 720, however, clearly states that Road Commissioners should follow the old PCC 20390 -20397 up to 30%. Nevertheless, statements and concerns over transparent county use of staff might be accomplished without the added cost of following PCC 22038 – where a project over \$45,000 is put out to bid and then the Board rejects the bids and declares the project can be done more economically by employees of the public agency. Instead, the Mendocino County Road Commissioner proposes that information about intended “force account work” (work to be done with county employees) be stated in the budget. Some flexibility should be included to account for conditions changing over the year as well as smaller tasks classified by the State Controllers office in hindsight as *new road construction and the road reconstruction*.

If such a voluntary Board policy were in place, then a portion of the FY 2012-13 budget narratives for the present might have read:

GOALS/OBJECTIVES FOR FY 2012-13

- ◆ *Declaration of Road Commissioner's use of Public Contract Code (PCC) § 20395(c) (Amended by AB 720 per PCC Section 22031(b)(2)) - 30% limit for new road construction and road reconstruction as calculated and adjusted from the State Controllars Office (SCO) Annual Road Report. This code limits thick asphalt overlays to approximately 5 miles; it also limits sealing or reencountering of dirt roads (changing alignment significantly) or adding new bridges to approximately \$1 million. While the limit may be \$1 million, the funds available could be less. Furthermore, because the SCO calculation determining the 30% is done post-work, the Road Commissioner will monitor Road Crew activities and likely leave a buffer to insure staying under 30%.*

The Road Commissioner's planned efforts for FY 2012-13 include, but are not limited to, the following short pavement overlays totaling about 2,500 Tons Hot Mix Asphalt (HMA):

- 1) Philo-Greenwood Road (HS mix) apron with State Route 128*
- 2) Fish Rock Road 1320 feet various rough spots*
- 3) Muir Mill Road 300 feet various rough spots*
- 4) Valley Road 500 feet various rough spots*
- 5) Hearst Willits Road 500 feet various rough spots*
- 6) Bran comb Road (HS mix) apron with US 101*
- 7) Eastside Calpella Road 1000 feet various rough spots*
- 8) Eel River Road @ south grade 800 feet*
- 9) Comptche Ukiah Road 300 feet various rough spots*
- 10) Unnamed Road 410D Caspar 640 feet*
- 11) Mendocino Pass Road 300 feet various rough spots*
- 12) Fairbanks Road 300 feet various rough spots*

The Road Commissioner's planned efforts for FY 2012-13 also include: possible road improvements for sight distance on County Maintained Roads, seal coating small segments of critical gravel roads, and improvements for sediment reductions on critical segments of dirt roads - done in conjunction with normal maintenance activities but classified as reconstruction by the SCO. Some of these activities are not readably definable, but the activities are coded at time work is preformed and later the data is subject to SCO analysis.

Funds available and priority repair locations are subject to the severity of the winter each year; therefore, the planned locations are subject to change by the Road Commissioner based on actual conditions.

In the spirit of communication, MCDOT would propose this sort of statement be prepared for the FY 2013-14 budget and ask the Board's input on such a policy. Or, such information could be placed in a regular Director's Report without the 15 to 20 day delay of agendized Board item.

CIFAC Response to Mendocino Director Report, Re Agenda Item

I wanted to take a moment and express my on-going concerns about the implementation of AB720 and Mendocino County Department of Transportation. It is CIFAC's position that projects must be declared before they start. It was our intent that they would be brought to the Board of Supervisors prior to each project. We recognize that some counties are doing this in groups of projects, and we accept that type of declaration. What we do not believe meets the intent or the letter of the law, is to have a blanket declaration without a list of projects and their location, or a list without an approximate value attached. One of the reasons behind this is to allow the industry and the tax-paying public to know how and where money is being spent on our roadways. The law allows counties to still do all maintenance projects and projects below their force account limit of \$45,000. It is only those projects over \$45,000 that we are concerned with.

The dollar value of what each County is allowed to do is calculated on what each County self reports to the Controllers Office each year. There is a book of guidelines in determining how the work is classified, and how it is reported. There should not be any surprise at the end of the year for the Department. We ask for approximate value and feel that this should not be a burden for any Department. This is the only way that they can know if it is under the \$45,000 limit allowed by the California Uniform Cost Accounting Act or over that amount. If it is over the \$45,000 it needs to be on the declared list. Small maintenance projects or small road projects do not count in the total allowed by AB720. If an approximate value is not known, how does a department know what they are spending out of the allowable funds. In speaking to other departments in the State, they tell me that this information is easily available.

The County is signatory to the Act. The Act states that estimates are to be made prior to work commencing. McDot has stated that they do not like the Act and thus don't use it. I see that this could cause problems in the future. As McDot does manage other things besides traveled roadway, they should be aware of the Acts requirements and be able to follow them.

I recognize that change is difficult for many people. We are not asking for full plans and specifications. We do not want work put out to bid and then having bids rejected. We do feel that the costs of material, equipment and labor can be closely estimated. If it is not, how does the department know that they can perform the projects for less? I have reviewed the possible list for fiscal year 2012-2013. I note that many of the projects listed would be maintenance projects and not subject to the limit. I have also asked other counties about the road reports that are submitted to the controllers office. Those reports are done by the county department, their fiscal person and the county auditor. The review from the SCO is only if there are questions or an audit is done. The assertion that it is all determined after the work is done, does not appear to agree with other counties, the law or common sense.

Respectfully Lee Howard