

STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE MEETING
December 2, 2011

Proposed Regulations for the Department of Industrial Relations Costs for Prevailing
Wage Monitoring and Enforcement

PURPOSE OF REPORT

To present proposed regulations in order to implement Chapter 7, Statutes of 2010 (Senate Bill [SB] X2 9 - Padilla) as amended by Chapter 378, Statutes of 2011 (Assembly Bill [AB] 436).

BACKGROUND

Chapter 868, Statutes of 2002 (AB 1506 - Wesson) required a labor compliance program (LCP) for school construction projects funded from either the Kindergarten-University Public Education Facilities Bond Act of 2002 (Proposition 47) or Kindergarten-University Public Education Facilities Bond Act of 2004 (Proposition 55). This law took effect upon voter approval of Propositions 47 and 55. School districts subject to these requirements must either contract with a Department of Industrial Relations (DIR)-approved third party to perform the LCP or seek approval from the DIR to initiate and enforce the LCP internally. The purpose of the LCP was to ensure appropriate compliance with certain labor laws for school construction projects, such as the appropriate prevailing wage payments for construction work.

SB X2 9 – Padilla amended the Labor Code (LC) to, among other things, require the DIR to perform prevailing wage monitoring and enforcement for all school construction projects that receive State bond funds. Unlike AB 1506 that applied only to projects funded from Propositions 47 and 55, these new requirements apply to any State bond funded public works project, including the Kindergarten-University Public Education Facilities Bond Act of 2006 (Proposition 1D) and any future bond act that does not include language specifically excluding it from these provisions. SB X2 9 specifies the prevailing wage monitoring and enforcement must be directly administered by the DIR, excepting only projects for which the school district has an in-house LCP approved by DIR. Contracting with a third party administrator does not demonstrate compliance with the new requirements.

On August 1, 2010, Department of Industrial Relations (DIR) regulations were approved, creating a new unit within DIR, the Compliance Monitoring Unit (CMU), to provide prevailing wage monitoring and enforcement for all bond-funded public works projects. These regulations were in effect through November 4, 2010 when the Office of Administrative Law (OAL) accepted the DIR's request to repeal the SBX2 9 regulations.

On September 30, 2011, AB 436 was signed into law, amending many of the provisions in SBX2 9. On October 31, 2011, the DIR submitted regulations to the OAL to implement the bill. The regulations are currently being reviewed by OAL and, if approved in their current form, would be in effect on January 1, 2012.

Any public works projects for which the construction contract is awarded on or after the effective date of the regulations will be subject to its provisions, including the requirement that the DIR will “enforce compliance with applicable prevailing wage requirements” for these projects. For SFP projects, applicable school districts will pay the DIR for these costs. Similar to SBX2 9, the amount the DIR may charge is capped at one quarter of one percent of the State “bond proceeds”, pursuant to LC Section 1771.3(a). Districts are exempt from this fee if the district continues to operate its existing DIR approved labor compliance program for the project or if the district “has entered into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

AUTHORITY

See Attachment A.

DISCUSSION

Changes to OPSC regulations and forms.

In order to implement this law, SFP Regulation Sections 1859.2, 1859.71.4, 1859.78.1, 1859.79.2, 1859.82, 1859.83, 1859.106, 1859.125, 1859.125.1, 1859.145, 1859.163.1, 1859.163.5 and 1859.193 will be amended. These regulation sections are intended to calculate the maximum reimbursement for reasonable and directly related costs for labor compliance monitoring that may be charged by the DIR and will determine the State share for these costs.

In addition to the SFP regulations, the *Application for Funding* (Form SAB 50-04), the *Fund Release Authorization* (Form SAB 50-05), the *Application for Joint-Use Funding* (Form SAB 50-07), the *Application for Charter School Preliminary Apportionment* (Form SAB 50-09), and the *Application for Career Technical Education Facilities Funding* (Form SAB 50-10) will be amended.

What school construction projects will be impacted by the new law?

Any school construction projects that are funded in whole or in part by State bond funds, and for which the construction contract is awarded on or after January 1, 2012, or the date the new DIR regulations take effect, are subject to the new requirement for the prevailing wage monitoring and enforcement provisions, regardless of which bond funded the project.

In addition, all design build public works are subject to the new compliance monitoring requirements whether the project is funded from State bond funds or not, pursuant to Education Code Section 17250.30.

The CMU will directly provide the prevailing wage monitoring and enforcement for the project unless the district meets one of the following statutory exceptions:

- School districts has a DIR-approved internal LCP
- enter a collective bargaining agreement that meets certain criteria are not subject to the DIR monitoring requirement

What projects are not subject to the new labor compliance monitoring provisions?

The new provisions do not apply to projects that are constructed without State bond funds, if the projects are not design build. This would include projects funded from a State funding source other than bond funds (such as the Deferred Maintenance Program or Emergency Repair Program).

How will the CMU fees be calculated?

The CMU fees will be based on the reasonable and directly related costs of monitoring and enforcing labor compliance for the project, but will be capped at an amount equal to one quarter of one percent of the following amounts, *whichever is lower*:

- Total State bond funds apportioned for the project, pursuant to LC Section 1771.3(a).
- Total project costs, pursuant to DIR Regulations Section 16452.

Will an additional SFP grant be provided for the prevailing wage monitoring?

The proposed SFP regulations would provide an additional grant equal to the State's share of one quarter of one percent of the total state bond funds for SFP projects with a construction contract awarded after January 1, 2012. This grant will be provided regardless of whether the CMU will be performing the monitoring or if the district is exempt from the CMU fees because of a collective bargaining agreement or the district has a DIR approved labor compliance program.

The total State bond amount will be the total State apportionment for the project, regardless of whether the grant is for site development, site acquisition, Financial Hardship, or a loan provided to Charter School Facilities Program projects, pursuant to SFP Regulation Section 1859.168 or Career Technical Education Facilities Program, pursuant to SFP Regulation Section 1859.194.

If a project is rescinded or if there is an adjustment to the total State bond amount, such as a construction cost index or site acquisition adjustment, the grant would also be adjusted. Because the "total bond proceeds" will be adjusted, the CMU fees charged to the district may also need to be adjusted to not exceed the statutory cap. The DIR is looking into developing a process to adjust any payments to districts that receive an adjustment.

How will the DIR be paid for the CMU prevailing wage monitoring?

School districts are required to notify the DIR of any projects that are or may be subject to LC Code 1771.3 when the school board awards the contract, pursuant to the proposed DIR Regulation 16451. The CMU will begin prevailing wage monitoring for the project and will then submit invoices to the district, which will be paid directly by the district.

Although the SFP State grant will be provided to districts, for the CMU fees, the actual invoices will be sent and paid for directly by the school district. This process is similar to invoices sent to the school by State agencies for other services, such as Department of Toxic Substance Control invoices.

How will the process work?

The State grant will be increased to provide funding in an amount equal to the State's share of the DIR Costs for projects funded under the SFP that are subject to LC Section 1771.3.

A school district will receive an apportionment, award a construction contract after January 1, 2012, meet all requirements to receive funding, and submit the Form SAB 50-05. In order to verify compliance with the requirement, the OPSC will require districts to submit the documentation provided by the DIR that the project notification was submitted and accepted by the DIR. This will be provided to the OPSC by the district along with the Form 50-05.

The SFP Fund Release letter will be sent to the school district confirming that the Form SAB 50-05 has been processed by the OPSC and the fund release request has been sent to the State Controller's Office to transfer the funds to the County Treasurer for the school district. The school district will pay any fees to the DIR directly.

All public works projects receiving State bond funds with contracts awarded after January 1, 2012 or the effective date of the DIR Regulations, whichever is later, must be in compliance with LC Section 1771.3. Failure to comply with these requirements would make the project ineligible for State bond funds. Therefore, the district must return all State bond funds, plus interest, for any projects that are not in compliance with LC Section 1771.3.

Members raised several questions regarding the implementation of AB 436 at the November 17, 2011 SAB Implementation Committee meeting. The questions specific to the DIR's process are located in Attachment J of this item. The following questions (with answers) are regarding the OPSC's process:

OPSC Process

- Will OPSC provide the Attorney General/Bond Counsel with their proposed regulations? If so, when?
Yes, the OPSC staff is currently coordinating with the Attorney General/Bond Counsel for their review for potential bond covenant issues.
- Will funding be provided for a district's in-house LCP (or collective bargaining agreement) when the district has a DIR fee exemption?
Yes, funding will be provided even when the district has a DIR fee exemption.

Site acquisition funding can be adjusted after an apportionment. When it is adjusted, increases or decreases, should the amount provided for the DIR fee be adjusted, too?

The CMU fee cap set in statute is capped at a percentage of the “total bond proceeds”, which includes SFP site acquisition funding. Therefore, an adjustment to the CMU Fee grant would be made if the site acquisition or any other State funding amount is adjusted. In addition, the DIR will be notified of the new total bond proceeds amount.

- In cases of Financial Hardship, how will the DIR fee be calculated if the cash contribution is savings from a previous financial hardship project that *did not* receive an LCP grant?

The cash contribution will be considered district funds, not state bond funds, and will not be included in determining the DIR maximum fee.

- In cases of Financial Hardship, how will the DIR fee be calculated if the cash contribution is savings from a previous financial hardship project that *already* received an LCP grant?

The cash contribution will be considered district funds, not state bond funds, and will not be included in determining the DIR maximum fee.

- If the SFP project has project savings and is not a financial hardship funded project, does the district retain the project savings, even if the savings are realized because the CMU grant was larger than the actual costs?

Consistent with project savings from other SFP grants for the project, the district would retain any project savings for the CMU grant.

- In instances where site acquisition grants contribute to a high DIR maximum cap, will the potential large amount of savings by a district raise auditing red flags?

The project would be reviewed consistent with statutes and regulations applicable to the project.

- How will districts’ new responsibilities impact the OPSC’s fund release process (submitting the Form SAB 50-05)? OPSC currently requests that districts submit contracts and, when funded by Proposition 47 or 55, valid LCP-compliance documents. What proof of compliance with DIR will be necessary for OPSC to release funds?

Districts will receive a registration confirmation from the DIR when the project is registered using the online service. Districts would submit this confirmation along with the Fund Release form.

DIR/OPSC Process

- DIR proposed regulations refer to calculating the DIR fee based on “total project costs.” OPSC proposed regulations refer to calculating the grant based on “total bond proceeds.” Do the two terms refer to the same amount of money? If not, should they?

The two terms refer to separate amounts for separate calculations. The SAB grant amount will be based on the total State bond proceeds. The maximum amount of CMU costs that will be billed to the district will be either the total project costs OR the total State bond proceeds, whichever is less.

- Can a matrix with construction contracting scenarios addressing multi-phase and multi-prime contracting be provided at the next IMP meeting to address which contracts do and do not require CMU monitoring?
A matrix has been developed (Attachment K) indicating several scenarios. It will be updated with additional scenarios, as applicable.
- If a district begins a project without providing DIR with notice that the project will be subject to the CMU fees because it does not believe at the time it will be requesting state funding, but later wishes to request state funding, will it then be able to provide notice to DIR and be 1) in full compliance with DIR and 2) eligible for state funding?
Similar to the current LCP requirement for Propositions 47 and 55, the project must have the appropriate prevailing wage enforcement (CMU monitoring, in-house program or PLA), specified in statute, to be eligible for State bond funds. The DIR has indicated the CMU enforcement must be performed while project is still underway, not after the project is complete. The DIR has also indicated that the form used by districts to alert DIR that a public works projects has been awarded (DIR-PWC 100) may be revised to accommodate this.

PURPOSE OF THE REGULATORY CHANGES

Establish an additional grant in support of the requirement that districts pay the DIR for prevailing wage monitoring and enforcement.

LC 1771.3 (a)(4) provides that the SAB “shall consider and provide for amounts in support of the costs (that the districts pay to DIR) when allocating or approving expenditures of bond proceeds...”

The proposed regulations would provide an SFP grant amount for the DIR fee, for applicable projects, based on the maximum amount the DIR can charge for prevailing wage monitoring and enforcement, less the district’s matching share.

The OPSC currently verifies that school districts have an LCP for projects funded through Propositions 47 and 55 at the time of fund release and during an audit. The OPSC proposes amendments to the Fund Release Authorization (Form SAB 50-05).

Additionally, school districts would continue to provide the contract award date(s) on the proposed Form SAB 50-05 to allow the OPSC to determine if the award date falls after the effective date of the new regulations.

PROPOSED AMMENDMENTS

SFP Regulations Amendments

Attachment B includes proposed amendments to the SFP Regulations. The statute requires a cap to DIR costs to be calculated based on a percentage of the State bond proceeds. Because no other SFP grant is calculated in this manner, the proposed regulations would create a new definition in SFP Regulation Section 1859.2, the “Total Projected Bond Apportionment”. The purpose of this term is to represent the amount of the entire State bond funds to be provided for a given project, including grants such as the New Construction or Modernization Pupil Base

Grant, the Financial Hardship apportionment, site acquisition apportionment, etc. but exclusive of any additional grant for DIR costs.

SFP Regulation Section 1859.71.4 would be amended to provide the CMU grant calculation for projects with a 50 percent State and a 50 percent local matching share requirement. For applicable projects, the grant would be equal to one-fourth of one percent of the Total Projected Bond Apportionment, less the 50 percent matching share.

SFP Regulation Section 1859.71.4 would also be amended to specify that if the CMU requirements, as prescribed in statute, are not followed, the State bond funds must be returned to the State.

The proposed amendments to SFP Regulation Section 1859.78.1 are identical to the proposed 1859.71.4 amendment except that the 1859.78.1 would be applied to Modernization projects that require a 60 percent State share for the project.

The proposed amendments to SFP Regulation Sections 1859.82 and 1859.125 would provide the SFP grant for the DIR Costs to projects funded as a Facility Hardship, if subject to the DIR monitoring services. The proposed amendment to Sections 1859.125 and 1859.125.1 would provide the grant to Joint Use projects, if applicable.

The proposed changes to Section 1859.106 would allow the CMU grant to be adjusted if the total State bond proceeds amount is adjusted, such as a site acquisition grant amount adjustment.

The proposed changes to Sections 1859.145 and 1859.163.1 would provide the CMU grant for applicable Charter School projects. The proposed amendments also specify that the Career Technical Education (CTE) projects would be provided the grant, if applicable. Additionally, the proposed amendments for these programs specify that the calculation to determine the grant amount is to be based on the total State bond proceeds, including any State loans from bond funds provided for the local matching share.

SAB Forms

The OPSC proposes changes to the *Application for Funding*, Form SAB 50-04 (Attachment C), the *Application for Joint-Use Funding*, Form SAB 50-07 (Attachment D), the *Application for Charter School Preliminary Apportionment*, Form SAB 50-09, (Attachment F) and the *Application for Career Technical Education Facilities Funding* (Form SAB 50-10 (Attachment G) as follows:

- In order to determine whether the project will be subject to the AB 436 provisions, the proposed changes collect the following information:
 - Contract Award Date
 - Whether the DIR will be performing the prevailing wage enforcement OR
 - Whether the project is exempt from the DIR enforcement because of a DIR approved internal enforcement program or because the project is subject to a collective bargaining agreement

- Because Projects funded from Propositions 47 or 55 with a contract award date prior to January 1, 2012 would still be subject to the AB 1506 LCP requirements, districts will be asked whether a project with a construction contract awarded prior to January 1, 2012 had either a DIR approved third party LCP or an in-house LCP, pursuant to AB 1506I. This would allow the OPSC to determine whether a project would be eligible to be funded from Proposition 47 or 55.
- A certification will be added that the district will contract with the Department of Industrial Relations for prevailing wage monitoring and enforcement if the construction contract is awarded on or after January 1, 2012 and the district has project is not exempt from the requirement pursuant to Labor Code Section 1771.3(b)

The proposed changes to the *Application for Preliminary Apportionment*, Form SAB 50-08 (Attachment E), adds the same certification. Because this form is not currently in use, and any future use would only be for projects that would not be subject to the AB 1506 LCP requirements, there is no need to collect information regarding the contract award date, but the changes do add a section to capture whether the DIR will be performing the prevailing wage enforcement, or whether the project is exempt from the DIR enforcement due to DIR approved internal LCP or a collective bargaining agreement.

The proposed changes also include amendments to the *Fund Release Authorization*, Form SAB 50-05 (Attachment H). The school district may submit this form when the project is at least fifty percent under contract and the school district is ready to request the SAB apportioned funds. Currently, the OPSC requests verification that an LCP, pursuant to AB 1506, has been initiated for all projects funded from Propositions 47 and 55.

The proposed changes to the SAB Form 50-05 would require districts to submit verification that the DIR prevailing wage enforcement has begun for the project, or that the project is exempt from the DIR enforcement. If the construction contract was awarded 60 days or less than the Form SAB 50-05 is submitted, the appropriate DIR documentation may not be available. For those projects, the proposed changes would allow districts to either submit a copy of the district's notification to DIR that a contract for a public works project that will be subject to the DIR monitoring has been awarded or copies of the DIR letters approving the district's internal LCP as verification of compliance.

The proposed amendments to the SAB Form 50-05 also include a certification that the district will contract with the Department of Industrial Relations for the required prevailing wage monitoring and enforcement, or the requirement is waived pursuant to Labor Code Section 1771.3(b).

ATTACHMENT A

AUTHORITY

LC Section 1720 states:

“(a) As used in this chapter, "public works" means: (1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.....

(b) For purposes of this section, "paid for in whole or in part out of public funds" means all of the following:

- (1) The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.
- (2) Performance of construction work by the state or political subdivision in execution of the project.
- (3) Transfer by the state or political subdivision of an asset of value for less than fair market price.
- (4) Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision.
- (5) Money loaned by the state or political subdivision that is to be repaid on a contingent basis.
- (6) Credits that are applied by the state or political subdivision against repayment obligations to the state or political subdivision.”

LC Section 1771.3 (a)(1) states, “The Department of Industrial Relations shall monitor and enforce compliance with applicable prevailing wage requirements for any public works project paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state, and shall charge each awarding body for the reasonable and directly related costs of monitoring and enforcing compliance with the prevailing wage requirements on each project.”

LC Section 1771.3 (a)(3) states, “The department, with the approval of the Director of Finance, shall determine the rate or rates, which the department may from time to time amend, that the department will charge to recover the reasonable and directly related costs of performing the monitoring and enforcement services for public works projects; provided, however, that the amount charged by the department shall not exceed one-fourth of 1 percent of the state bond proceeds used for the public works projects.”

LC Section 1771.3 (a)(4) states, “Notwithstanding any other provision of law, but subject to any limitations or restrictions of the bond act, the board, commission, department, agency, or official responsible for the allocation of bond proceeds from the bond funds shall consider and provide for amounts in support of the costs when allocating or approving expenditures of bond proceeds for the construction of the authorized project.”

LC Section 1771.3 (b)(4) states:

“Paragraph (1) of subdivision (a) shall not apply to any contract for a public works project paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state if the contract was awarded under any of the following conditions:

(1) The contract was awarded prior to the effective date of implementing regulations adopted by the department pursuant to paragraph (3) of subdivision (a).

(2) The contract was awarded on or after the effective date of the regulations described in paragraph (1), if the awarding body had previously initiated a labor compliance program approved by the department for some or all of its public works projects and had not contracted with a third party to conduct such program, and requests and receives approval from the department to continue to operate its existing labor compliance program for its public works projects paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state, in place of the department monitoring and enforcing compliance on projects pursuant to subdivision (a).

(3) The contract is awarded on or after the effective date of the regulations described in paragraph (1), if the awarding body has entered into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.”

LC Section 1771.7(a) states, “For contracts specified in subdivision (f), an awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project, shall initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in subdivision (b) of Section 1771.5, with respect to that public works project.”

LC Section 1771.7(d)(2)(C) states, “If the State Allocation Board conducts a postaward audit procedure with respect to an award of the funds described in subdivision (a) to an awarding body that is a school district, the State Allocation Board shall verify, in the manner determined by that board, that the school district has complied with the requirements of this subdivision.”

LC Section 1771.7(f) states, “This section shall only apply to contracts awarded prior to the effective date of regulations adopted by the Department of Industrial Relations pursuant to paragraph (3) of subdivision (a) of Section 1771.3.”

ATTACHMENT B

Section 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

...

"Labor Compliance Program (LCP)" shall be as described in subdivision (b) of Labor Code Section 1771.5 and approved by the Department of Industrial Relations (DIR).

"Total Projected Bond Apportionment" means the total State bond funds to be apportioned for the project, including any Financial Hardship apportionment, pursuant to Section 1859.81, any funds authorized by the Authority pursuant to Section 1859.168, and any funds provided pursuant to Section 1859.194, but excluding the Department of Industrial Relations (DIR) cost grant amount provided pursuant to Section 1859.71.4(c) or 1859.78.1(c).

...

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.75, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17073.25, 17074.10, 17074.30, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17078.72(k), 17079, 17079.10, 17280, 56026, and 101012(a)(8), Education Code; Section 53311, Government Code; and Sections 1771.3 and 1771.5, Labor Code.

Section 1859.71.4. New Construction Pupil Additional Grant Increase for Labor Compliance Program or Department of Industrial Relations Costs.

(a) After determining all other funding authorized by these Regulations, ~~the Board shall increase the per-unhoused pupil grant amount by 50 percent of the following calculation for any project for which the district is required under Labor Code Section 1771.7(a) and (b) to initiate and enforce a LCP. for any project funded in whole or in part by Proposition 47 or Proposition 55 for which the construction contract is awarded prior to January 1, 2012, and for which the district is required under Labor Code Section 1771.7 (a) and (b) to initiate and enforce a labor compliance program, the Board shall increase the per-unhoused pupil grant by 50 percent of the following calculation:~~

(1) Using the chart in (b) of this Section, determine the total amount of funding to be provided for the increased costs of a new construction project due to the initiation and enforcement of a LCP.

(2) Divide the amount determined in subsection (a)(1) by the total number of pupils, or by one if no pupils are assigned, in the approved application.

(b) The funding provided for a new construction project to initiate and enforce a LCP shall be calculated on the total project cost, exclusive of site acquisition costs, as follows:

\$16,000 For the first \$1 million or any part thereof, plus
1.6 percent Of the next \$1 million or any part thereof, plus
0.25 percent Of the next \$1 million or any part thereof, plus
0.15 percent Of the next \$1 million or any part thereof, plus
0.32 percent Of the next \$2 million or any part thereof, plus
0.31 percent Of the next \$2 million or any part thereof, plus
0.46 percent Of the next \$5 million or any part thereof, plus
0.44 percent Of the next \$5 million or any part thereof, plus
0.42 percent Of the next \$30 million or any part thereof, plus
0.4 percent Of any remaining portion

(c) After determining all other funding authorized by these Regulations, the Board shall increase the grant by 50 percent of one-fourth of one percent of the Total Projected Bond Apportionment for any project for which the construction contract is awarded after January 1, 2012.

(d) (1) Pursuant to Labor Code Section 1771.3, any public works project paid for in whole or part out of public funds that are derived from bonds issued by the state and for which the construction contract is awarded after January 1, 2012, is subject to the DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless the project is exempt from this requirement pursuant to Labor Code Section 1771.3 (b).

(2) Any school district failing to meet the requirements of (d)(1) shall return to the State any State funding for the project, including interest, at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater. Interest to be returned shall be calculated from the date at which funds were received by the school district until the date of the board's finding.

(3) If the DIR revokes the district's internal labor compliance program's approval and the district fails to provide appropriate prevailing wage monitoring through the DIR or other exemptions as specified in LC Section 1771.3, the school district shall return to the State any State funding received for the project, including interest, as calculated in (d)(2), for any construction projects for which the violations occurred.

Note: Authority cited: Section 17070.35, Education Code and Section 1771.3, Labor Code.

Reference: Sections 17072.10, 17072.30, Education Code, and Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code.

Section 1859.78.1. Modernization Pupil Grant Additional Increase for Labor Compliance Program or Department of Industrial Relations Costs.

(a) After determining all other funding authorized by these Regulations, the Board shall increase the per-pupil grant amount by the following calculation, less the district matching share required in Section 1859.79, for any project for which the district is required under Labor Code Section 1771.7(a) and (b) to initiate and enforce a LCP: -for any project funded in whole or in part by Proposition 47 or Proposition 55 for which the construction contract is awarded prior to January 1, 2012, and for which the district is required under Labor Code Section 1771.7 (a) and (b) to initiate and enforce a labor compliance program, the Board shall increase the per-pupil grant by the following calculation, less the district matching share required in Section 1859.79:

- (1) Using the chart in Section 1859.71.4(b), determine the total amount of funding to be provided for the increased costs of a modernization project due to the initiation and enforcement of a LCP.
- (2) Divide the amount determined in subsection (a)(1) by the total number of pupils, or by one if no pupils are assigned, in the approved application.

(c) After determining all other funding authorized by these Regulations, the Board shall increase the grant by 60 percent of one-fourth of one percent of the Total Projected Bond Apportionment for any project for which the construction contract is awarded after January 1, 2012.

(d) (1) Pursuant to Labor Code Section 1771.3, any public works project paid for in whole or part out of public funds that are derived from bonds issued by the state and for which the construction contract is awarded after January 1, 2012, is subject to the DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless the project is exempt from this requirement pursuant to Labor Code Section 1771.3 (b).

(2) Any school district failing to meet the requirements of (d)(1) shall return to the State any State funding for the project, including interest, at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code,

whichever is greater. Interest to be returned shall be calculated from the date at which funds were received by the school district until the date of the board's finding.

(3) If the DIR revokes the district's internal labor compliance program's approval and the district fails to provide appropriate prevailing wage monitoring through the DIR or other exemptions as specified in LC Section 1771.3, the school district shall return to the State any State funding received for the project, including interest, as calculated in (d)(2), for any construction projects for which the violations occurred.

Note: Authority cited: Section 17070.35, Education Code and Section 1771.3, Labor Code.

Reference: Sections 17072.10 and 17072.30, Education Code, and Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code.

Section 1859.79.2. Use of Modernization Grant Funds.

The Modernization Grant plus any other funds provided by these Regulations shall be expended as set forth in Education Code Sections 17074.25, 17074.10(f) and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c), and Labor Code Section 1771.3 (a).

Modernization funding may also be used for the costs incurred by the district directly or through a contract with a third party provider for the initiation and enforcement of a LCP. Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

- (a) New building area with the exception of the following:
 - (1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.
 - (2) Building area required by the federal Americans with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.
- (b) New site development items with the exception of:
 - (1) Replacement, repair or additions to existing site development.
 - (2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.
- (c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.
- (d) Leased facilities not owned by another district or a county superintendent.
- (e) Costs associated with Reconfiguration pursuant to Section 1859.78.9.

Modernization Grant funds may be used on any school facilities on the site, with the exception of portable classroom facilities eligible for an additional apportionment pursuant to Education Code Sections 17073.15 and 17074.10(f) and as defined in Section 1859.78.8. If the classroom facilities on the site include areas that are currently ineligible for modernization, it will not disqualify those facilities from future modernization funding.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.15, 17074.25, 17074.32 and 100420(c), Education Code, and Section 1771.3, Labor Code.

Section 1859.82. Facility Hardship.

A district is eligible for facility hardship funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

- (a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, seismic mitigation of the Most Vulnerable Category 2 Buildings as verified by the DSA, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk. The total available funding for seismic mitigation related and ancillary costs for the Most Vulnerable Category 2 Buildings is \$199.5 million.

...

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for a New Construction Grant as a new construction project for the lesser of the pupils housed in the replaced facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$173.30 per square foot for Toilet Facilities and \$96.30 per square foot for all other facilities. Additional funding may be provided for applicable site development costs pursuant to Section 1859.76, New Construction Excessive Cost Hardship Grant(s) pursuant to Section 1859.83(a), (b) or (d), therapy room pursuant to Section 1859.72, multilevel construction pursuant to Section 1859.73 and project assistance pursuant to Section 1859.73.1. The amounts shown will be adjusted in the manner prescribed in Section 1859.71. For any project funded in whole or in part by any state bond funds for which the construction contract is awarded prior to January 1, 2012, the district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4(a). For any project for which the construction contract is awarded after January 1, 2012, the grant may be adjusted in the manner prescribed in Section 1859.71.4(c) and subject to the limitations established in Section 1859.71.4(d).

...

(b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

- (1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.
- (2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.
- (3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The funding amount provided shall be \$96.30 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$173.30 per square foot for Toilet Facilities. A New Construction Additional Grant may be provided for applicable site development costs pursuant to Section 1859.76, New Construction Excessive Cost Hardship Grant(s) pursuant to Section 1859.83(a) and (d), therapy room pursuant to Section 1859.72, multilevel construction pursuant to Section 1859.73 and project assistance

pursuant to Section 1859.73.1. The amounts shown will be adjusted in the manner prescribed in Section 1859.71. For any project funded in whole or in part by any state bond funds for which the construction contract is awarded prior to January 1, 2012, The the district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4(a). For any project for which the construction contract is awarded after January 1, 2012, the grant may be adjusted in the manner prescribed in Section 1859.71.4(c) and subject to the limitations established in Section 1859.71.4(d).

...

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17074.56, 17075.10, 17075.15, 17250.30 and 101012(a)(1), Education Code, and Section 1771.3, Labor Code.

Section 1859.83. Excessive Cost Hardship Grant.

In addition to any other funding authorized by these Regulations, a district is eligible for funding as a result of unusual circumstances that created excessive project costs beyond the control of the district. The Excessive Cost Hardship Grant shall be based on any of the following:

(a) Excessive Cost due to Geographic Location.

...

(e) Excessive Cost for rehabilitation of facilities the Board has determined are a health and safety risk to the pupils pursuant to Section 1859.82(a)(1) and the cost/benefit analysis to mitigate the problem and remain in the facility is less than 50 percent of the Current Replacement Cost of the facility. If the district qualifies, the district is eligible for funding of rehabilitation costs as a modernization project. If the Approved Application is received on or before April 29, 2002, the grant amount provided is 80 percent of the amount of the cost estimate required in Section 1859.82(a)(1) that has been reviewed by the OPSC and approved by the Board. If the Approved Application is received after April 29, 2002, the grant amount provided is 60 percent of the amount of the cost estimate required in Section 1859.82(a) (1) that has been reviewed by the OPSC and approved by the Board. For any project funded in whole or in part by Proposition 47 or Proposition 55 for which the construction contract is awarded prior to January 1, 2012, The the district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4 1859.78.1(a). For any project for which the construction contract is awarded after January 1, 2012, the grant may be adjusted in the manner prescribed in Section 1859.78.1(c) and subject to the limitations established in Section 1859.78.1(d).

...

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17072.32, 17074.15, 17074.16, 17075.10, 17075.15, 17077.40, 17077.42, ~~and~~ 17077.45 and 17250.30, Education Code, and Section 1771.3, Labor Code.

Section 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.120 for Joint-Use Projects, Section 1859.140 for Critically Overcrowded School projects, Section 1859.160 for Charter School projects, and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Education Code Sections 17072.13 and 17072.14 and Sections 1859.74, 1859.74.1, 1859.74.2, 1859.74.3, 1859.74.4, 1859.75 and 1859.75.1.

An adjustment in the SFP grant will be made for the following:

(a) The difference in the value of the site, relocation costs, DTSC fees, and hazardous waste/materials removal costs that were used to determine the New Construction Additional Grant and the actual amount paid by the district for the site, relocation costs, DTSC fees, and hazardous waste/materials removal costs. For applications received on or after January 1, 2004, the adjustment may be made regardless of whether the hazardous waste/materials removal costs were requested on the application for funding.

(b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).

(c) For any project that received funding pursuant to 1859.71.4(c) or 1859.78.1(c), 50 percent of one-fourth of one percent of the difference between the original Total Projected Bond Apportionment and the revised amount.

(d) Any adjustments made pursuant to this section will be made only if sufficient bond authority is available for the adjustment to be made.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35, 17070.50, 17071.75, 17072.13, 17072.14, 17072.18, 17072.35, 17074.25, 17076.10, 17077.40, 17078.52 and 17251, Education Code, Section 1771.3, Labor Code.

Section 1859.125. Joint-Use Project Grant Determination Based on Square Footage.

If the funding request is to construct square footage, the Joint-Use Grant is the lesser of the amount determined in (a) or (b):

...

The dollar amounts shown in (a) are adjusted in a manner prescribed in Section 1859.71 and are eligible for Excessive Cost Hardship Grant(s) pursuant to Section 1859.83(a), (b) and (d). For any project funded in whole or in part by Proposition 47 or Proposition 55 for which the construction contract is awarded prior to January 1, 2012, The the district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4(a). For any project for which the construction contract is awarded after January 1, 2012, the grant may be adjusted in the manner prescribed in Section 1859.71.4(c) and subject to the limitations established in Section 1859.71.4(d). The Joint-Use Grant amounts provided in this Section and Section 1859.125.1, if applicable, shall be deemed the full and final apportionment for the application. Any costs incurred by the district beyond the Joint-Use Grant amount and the Joint-Use Partner(s) and district financial contribution pursuant to Section 1859.127, shall be the responsibility of the district and/or the Joint-Use Partner(s).

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17077.40, 17077.42, ~~and~~ 17077.45 and 17250.30, Education Code, and Section 1771.3, Labor Code.

Section 1859.125.1. Additional Type I Joint-Use Project Extra Cost Grant.

In addition to the square footage Joint-Use Grant provided in Section 1859.125, a Type I Joint-Use Project may receive funding for Extra Cost equal to the lesser of (a) or (b):

(a) An amount determined by subtracting (a)(2) from (a)(1):

...

(b) An amount determined by subtracting (b)(2) from (b)(1):

...

The amounts shown in (a) are adjusted in a manner prescribed in Section 1859.71.). For any project funded in whole or in part by Proposition 47 or Proposition 55 for which the construction contract is awarded prior to January 1, 2012, The the district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4(a). For any project for which the construction contract is awarded after January 1, 2012, the grant may be adjusted in the manner prescribed in Section 1859.71.4(c) and subject to the limitations established in Section 1859.71.4(d). The Joint-Use Grant amount provided in this Section and Section 1859.125, if applicable, shall be deemed the full and final apportionment for the application. Any costs incurred by the district beyond the Joint-Use Grant amount and the Joint-Use Partner(s) and district financial contribution pursuant to Section 1859.127, shall be the responsibility of the district and/or the Joint-Use Partner(s).

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17077.40, 17077.42, ~~and~~ 17077.45 and 17250.30, Education Code, and Section 1771.3, Labor Code.

Section 1859.145. Preliminary Apportionment Determination.

The Preliminary Apportionment shall be equal to the sum of the following:

(a) The amounts shown below for each pupil included in a Preliminary Application:

- (1) \$5,226.82 for each elementary school pupil.
- (2) \$5,533.65 for each middle school pupil.
- (3) \$7,225.94 for each high school pupil.
- (4) \$16,653.06 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
- (5) \$11,137.37 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

...

(j) If the district received an apportionment prior to November 5, 2002 pursuant to Section 1859.81.1(e), an amount equal to the sum of the amounts determined in (a) through (i) less the previously authorized apportionment amount.

The amounts shown in (a) shall be adjusted in a manner prescribed in Section 1859.71. For any project funded in whole or in part by Proposition 47 or Proposition 55 for which the construction contract is awarded prior to January 1, 2012, The the district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4(a). For any project for which the construction contract is awarded after January 1, 2012, the grant may be adjusted in the manner prescribed in Section 1859.71.4(c) and subject to the limitations established in Section 1859.71.4(d).

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17075.10, 17078.102, ~~and~~ 17078.45 and 17250.30, Education Code, and Section 1771.3, Labor Code.

Section 1859.163.1. Preliminary Charter School New Construction Apportionment Determination.

The Preliminary Charter School New Construction Apportionment shall be ~~separated into two categories, items that may be identified as construction costs versus site acquisition costs.~~ determined as follows:

(a) The Preliminary Charter School Apportionment for construction costs shall be equal to the sum of (1) through ~~(9)~~(8) below:

- (1) The amounts shown below for each pupil, based on the project capacity, included in a Preliminary Charter School Application:
 - (A) \$5,227 for each elementary school pupil.
 - (B) \$5,534 for each middle school pupil.

(C) \$7,226 for each high school pupil.

...

(8) For all Preliminary Apportionments received after February 23, 2005, an amount equal to the sum of the mounts determined in (1) through (6) multiplied by a factor determined as follows:

(A) Divide the January Class B Construction Cost Index in effect at the time of the Preliminary Apportionment by the January Class B Construction Cost Index in effect four years prior to the Preliminary Apportionment. Round to four decimal places.

(B) Subtract 1 from the quotient in (A). Round to two decimal places.

~~(9) Fifty percent of the amount to initiate and enforce a LCP as prescribed in Section 1859.71.4, if required by the Labor Code.~~

~~(10)~~(9) If the Charter School is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority attributable to the items in (1) through ~~(9)~~(8) above.

(b) The Preliminary Charter School Apportionment for site acquisition costs shall be:

(1) Equal to one-half of the site acquisition value determined in Section 1859.163.2(a) and (c).

(2) If the Charter School is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority attributable to (1) above.

(c) The Preliminary Charter School Apportionment to initiate and enforce a LCP or to provide for the DIR prevailing wage enforcement costs shall be:

(1) Fifty percent of the amount to initiate and enforce a LCP as prescribed in Section 1859.71.4(a), if required by the Labor Code, or

(2) Fifty percent of the amount of the DIR costs as prescribed in Section 1859.71.4(c), if required by the Labor Code, and

(3) If the Charter School is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority attributable to either (1) or (2) above, as applicable.

~~(e)~~(d) The total amount calculated in (a) above will be added to any amount calculated in (b) and (c) above, which will provide the Preliminary Charter School Apportionment amount.

...

Pursuant to Labor Code Section 1771.3, any public works project paid for in whole or part out of public funds that are derived from bonds issued by the state and for which the construction contract is awarded after January 1, 2012, is subject to DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless the project is exempt from this requirement pursuant to Labor Code Section 1771.3 (b).

Any school district failing to meet these requirements shall return to the State any State funding for the project, including interest, at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater. Interest to be returned shall be calculated from the date at which funds were received by the school district until the date of the board's finding.

If the DIR revokes the district's internal labor compliance program's approval and the district fails to provide appropriate prevailing wage monitoring through the DIR or other exemptions as specified in LC Section 1771.3, the school district shall return to the State any State funding received for the project, including interest, at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of

interest for the most recent issue of state general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater, for any construction projects for which the violations occurred. Interest to be returned shall be calculated from the date at which funds were received by the school district until the date of the board's finding.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52, ~~and~~ 17078.56, ~~and~~ 17250.30, Education Code, Section 1771.3, Labor Code, and Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code.

Section 1859.163.5. Preliminary Charter School Rehabilitation Apportionment Determination.

The Preliminary Charter School Rehabilitation Apportionment will be determined based on the eligible square footage included in the project. For purposes of the Preliminary Charter School Rehabilitation Apportionment, eligible square footage is defined as the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

The amount of funding for each Preliminary Charter School Rehabilitation Apportionment will be equal to the sum of the amounts determined in (a) ~~through (g)~~ and (b) below:

(a) (1) The lesser of the amount determined in ~~(1)(A)~~ or ~~(2)(B)~~ below:

~~(1)(A)~~ The dollar value calculated using a per square foot amount and the total eligible square footage for the site as follows:

~~(A)1.~~ Determine the total square footage for each classroom included in the project (limited by the Charter School's projected enrollment).

~~(B)2.~~ Determine the total square footage for any multi-purpose room included in the project.

~~(C)3.~~ Determine the total square footage for any gymnasium included in the project.

~~(D)4.~~ Determine the total square footage for any library included in the project.

~~(E)5.~~ Determine the total square footage for any administration building included in the project.

~~(F)6.~~ Add the total square footage in ~~(A)1.~~ through ~~(E)5.~~ above to obtain the total square footage for the project.

~~(G)7.~~ From the total determined in ~~(F)6.~~, determine the total square footage for toilet facilities and the total square footage for other facilities. Multiply the toilet facilities square footage by \$173.30 and the other facilities square footage by \$96.30. The sum of these figures is the square footage dollar value for the project.

~~(2)(B)~~ The dollar value calculated using the new construction grant amount and the project capacity based on the State loading standards as follows:

~~(A)1.~~ Determine the proposed grade level usage of each classroom in the project (limited by the Charter School's projected enrollment).

~~(B)2.~~ Multiply the number of classrooms at the K-6 grade level by 25, the number of classrooms at the 7-12 level by 27, the number of non-severe classrooms by 13, and the number of severe classrooms by 9.

~~(C)3.~~ Multiply the number of pupils calculated pursuant to ~~(B)2.~~ by the appropriate dollar value determined in Section 1859.163.1(a)(1).

~~(b)(2)~~ If the Preliminary Application request is for a small project that will house no more than 200 pupils, an amount pursuant to the following:

~~(1)(A)~~ If the project will house less than 101 pupils, the district is eligible for an amount equal to 12 percent of the funding provided by (a)(1).

~~(2)(B)~~ If the project will house between 101 and 200 pupils, the district is eligible for an amount equal to four percent of the funding provided by (a)(1).

~~(c)~~(3) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a)(1) and ~~(b)~~(a)(2), plus for a project with a site that is 60 percent or less of the CDE recommended site size plus 0.333 percent for each percentage decrease in the CDE recommended site size below 60 percent.

~~(d)~~(4) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a)(1), ~~(b)~~(a)(2), ~~(c)~~(a)(3), and ~~(e)~~(a)(5) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).

~~(e)~~(5) \$60,000 for each new two-stop elevator required to be included in the project by the DSA, and \$10,800 for each additional stop.

~~(f)~~(6) For all Preliminary Apportionments received after February 23, 2005, an amount equal to the sum of the amounts determined in (a)(1) through ~~(e)~~(a)(5) multiplied by a factor determined as follows:

~~(1)~~(A) Divide the January Class B Construction Cost Index in effect at the time of the Preliminary Apportionment by the January Class B Construction Cost Index in effect four years prior to the Preliminary Apportionment. Round to four decimal places.

~~(2)~~(B) Subtract 1 from the quotient in ~~(1)~~(A). Round to two decimal places.

~~(g)~~(7) An amount to initiate and enforce a LCP as prescribed in Section 1859.71.4, if required by the Labor Code.

~~(h)~~(8) If the Charter School is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority attributable to the items in (a)(1) through ~~(g)~~(a)(7) above.

(b) The Preliminary Charter School Rehabilitation Apportionment to initiate and enforce a LCP or to provide for the DIR prevailing wage enforcement costs shall be:

(1) Fifty percent of the amount to initiate and enforce a LCP as prescribed in Section 1859.71.4(a), if required by the Labor Code, or

(2) Fifty percent of the amount of the DIR costs as prescribed in Section 1859.71.4(c), if required by the Labor Code, and

(3) If the Charter School is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority attributable to either (1) or (2) above, as applicable.

The amounts determined in (a)(1) and ~~(e)~~ (a)(5) shall be adjusted annually in the manner prescribed in Section 1859.71.

Pursuant to Labor Code Section 1771.3, any public works project paid for in whole or part out of public funds that are derived from bonds issued by the state and for which the construction contract is awarded after January 1, 2012, is subject to DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless the project is exempt from this requirement pursuant to Labor Code Section 1771.3 (b).

Any school district failing to meet these requirements shall return to the State any State funding for the project, including interest, at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater. Interest to be returned shall be calculated from the date at which funds were received by the school district until the date of the board's finding.

If the DIR revokes the district's internal labor compliance program's approval and the district fails to provide appropriate prevailing wage monitoring through the DIR or other exemptions as specified in LC Section 1771.3, the school district shall return to the State any State funding received for the project, including interest, at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater, for any construction projects for which the violations occurred. Interest to be returned shall be

calculated from the date at which funds were received by the school district until the date of the board's finding.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17071.25, 17078.52, 17078.54, ~~and 17078.58, and 17078.56, and 17250.30~~, Education Code, Section 1771.3, Labor Code, and Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code.

Section 1859.193. Career Technical Education Facilities Grant Determination.

A Career Technical Education Facilities Project may construct a new facility or modernize or Reconfigure an existing school building. The application for Career Technical Education Facility funding may accompany an application for new construction funding pursuant to Section 1859.70 or may be submitted independently.

The applicant must identify square footage of the Career Technical Education Facility being constructed, modernized, reconfigured or equipped, on the funding application. Equipment purchased under the Career Technical Education Facilities Program must have an average useful life expectancy of at least ten years pursuant to Education Code 17078.72(a). An application for a Career Technical Education Facilities Project may consist entirely of equipment. All equipment must be purchased on or after May 20, 2006, unless the Career Technical Education Facilities Project is combined with a qualifying SFP new construction project pursuant to Section 1859.193.1.

(a) For new construction of a Career Technical Education Facilities Project included in a qualifying New Construction Grant, the Career Technical Education Facilities grant amount shall be the lesser of either (1) or (2):

(1) The sum of the costs uniquely related to facilities required to provide Career Technical Education as determined below:

(A) 50 percent of the cost of construction of the Career Technical Education Facilities Project, as determined by the project architect, subject to OPSC review and approval.

(B) 50 percent of the cost to equip the Career Technical Education Facilities Project with necessary equipment.

(C) For public works projects awarded after January 1, 2012, the DIR costs as prescribed in Section 1859.71.4(c), if required by the Labor Code.

(C) (D) Minus an allowance for New Construction Grants provided for Career Technical Education classrooms, determined by:

1. Multiplying 960 square feet by the number of classrooms in the Career Technical Education Facilities Project that were included in the New Construction project.

2. Multiplying the amount determined in (a)(1)(C)1 by 50 percent of the Current Replacement Cost for non-Toilet Facilities.

(2) \$3 million per Career Technical Education Facilities Project.

(3) Site development work is not allowed as part of a Career Technical Education Facilities Project included in a New Construction Grant. Site development work necessary pursuant to Section 1859.76, may be requested by the district under the qualifying SFP New Construction.

(4) Pursuant to Labor Code Section 1771.3, any public works project paid for in whole or part out of public funds that are derived from bonds issued by the state and for which the construction contract is awarded after January 1, 2012, is subject to DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless the project is exempt from this requirement pursuant to Labor Code Section 1771.3 (b).

(5) Any school district failing to meet the requirements of (a)(4) shall return to the State any State funding for the project, including interest, at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater. Interest to be returned

shall be calculated from the date at which funds were received by the school district until the date of the board's finding.

(6) If the DIR revokes the district's internal labor compliance program's approval and the district fails to provide appropriate prevailing wage monitoring through the DIR or other exemptions as specified in LC Section 1771.3, the school district shall return to the State any State funding received for the project, including interest, as calculated in (a)(5), for any construction projects for which the violations occurred.

(b) For stand-alone new construction of a Career Technical Education Facilities Project, the grant amount shall be the lesser of either (1) or (2):

(1) The sum of the costs uniquely related to facilities required to provide Career Technical Education as determined below:

(A) 50 percent of the cost of construction of the Career Technical Education Facilities Project, as determined by the project architect, subject to OPSC review and approval.

(B) 50 percent of the cost to equip the Career Technical Education Facilities Project with necessary equipment.

(C) 50 percent of site development work that meets the following criteria:

1. It is necessary and applicable to the Career Technical Education Facilities Project.

2. It meets the requirements for site development costs as outlined in Section 1859.76.

(D) For public works projects awarded after January 1, 2012, the DIR costs as prescribed in Section 1859.71.4(c), if required by the Labor Code.

(2) \$3 million per Career Technical Education Facilities Project.

(3) If the district is requesting funding for site development work applicable to the Career Technical Education Facilities Project, the district must submit a detailed cost estimate and appropriate DSA approved plans with the Form SAB 50-10. The cost estimate must include appropriate justification documents that indicate the work is necessary to complete the Career Technical Education Facilities Project and conform to the requirements in Section 1859.76.

(4) Utility service(s) cost shall be prorated, if necessary, for any excess capacity not needed to service the Career Technical Education Facilities Project.

(5) Pursuant to Labor Code Section 1771.3, any public works project paid for in whole or part out of public funds that are derived from bonds issued by the state and for which the construction contract is awarded after January 1, 2012, is subject to DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless the project is exempt from this requirement pursuant to Labor Code Section 1771.3 (b).

(6) Any school district failing to meet the requirements of (b)(5) shall return to the State any State funding for the project, including interest, at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater. Interest to be returned shall be calculated from the date at which funds were received by the school district until the date of the board's finding.

(c) For Modernization of a Career Technical Education Facilities Project, the grant amount shall be the lesser of either (1) or (2):

(1) The sum of the costs uniquely related to facilities required to provide Career Technical Education Facilities Project as determined below:

(A) 50 percent of the cost to modernize or Reconfigure the Career Technical Education Facilities, as determined by the project architect, subject to OPSC review and approval.

(B) 50 percent of the cost to equip the Career Technical Education Facilities with necessary equipment.

(C) For public works projects awarded after January 1, 2012, the DIR costs as prescribed in Section 1859.71.4(c), if required by the Labor Code.

(2) \$1.5 million per Career Technical Education Facilities Project.

(3) Reconfiguring an existing school building must not displace a minimum essential facility. In any case involving the replacement of a minimum essential facility due to the reconfiguration of an existing building, the replacement must be part of the plans submitted in support of the Career Technical Education Facilities

Application, must occur concurrently, and cannot be part of a SFP Application for new construction.

(4) Utility service(s) cost shall be prorated, if necessary, for any excess capacity not needed to service the Career Technical Education Facilities Project.

(5) Pursuant to Labor Code Section 1771.3, any public works project paid for in whole or part out of public funds that are derived from bonds issued by the state and for which the construction contract is awarded after January 1, 2012, is subject to DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless the project is exempt from this requirement pursuant to Labor Code Section 1771.3 (b).

(6) Any school district failing to meet the requirements of (c)(5) shall return to the State any State funding for the project, including interest, at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater. Interest to be returned shall be calculated from the date at which funds were received by the school district until the date of the board's finding.

(7) If the DIR revokes the district's internal labor compliance program's approval and the district fails to provide appropriate prevailing wage monitoring through the DIR or other exemptions as specified in LC Section 1771.3, the school district shall return to the State any State funding received for the project, including interest, as calculated in (c)(6), for any construction projects for which the violations occurred.

(d) If an applicant meets the eligibility criteria in Section 1859.192, but does not have the necessary approvals from the DSA and/or the CDE at the time of apportionment, the Board may apportion funds for the Career Technical Education Facilities Project and reserve them for a period of up to 12 months. The grant amount to be reserved for the project will be the maximum funding as determined above in (a), (b), or (c).

Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Section 17078.72 and 17250.30, Education Code, Section 1771.3, Labor Code, and Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code.

ATTACHMENT C

The following summary details the needed changes to the *Application for Funding*, Form SAB 50-04, to implement AB 436 regarding the requirement for DIR Prevailing Wage Monitoring and Enforcement.

Application for Funding, SAB 50-04:

INSTRUCTIONS FOR PARTS 16 AND 17 (Pages 4 and 5)

16. Project Progress Dates

Complete this section for new construction/modernization projects: a. Enter the date the initial construction contract(s) was ~~signed~~ awarded for this project(s). If a construction contract has not been executed, enter N/A. (If the space provided is not sufficient for all applicable contract dates, please list all dates on a separate attachment to this form.)

b. Enter the issue date for the Notice to Proceed for the construction phase of the project, or enter N/A if a Notice to Proceed has not been issued.

c. If a construction contract was awarded prior to January 1, 2012, check the appropriate box to indicate whether or not the district has initiated and enforced a Labor Compliance Program approved by the Department of Industrial Relations pursuant to Labor Code Section 1771.7 for this project.

17. ~~Labor Compliance Program~~ Department of Industrial Relations (DIR) Costs

~~Indicate whether the district is subject to a Labor Compliance Program that has been approved by the Department of Industrial Relations pursuant to Labor Code Section 1771.7 by checking the appropriate box.~~

If the construction contract for this project was or will be awarded on or after January 1, 2012, check the appropriate box to indicate which of the following methods will be used to meet the requirement for prevailing wage monitoring and enforcement pursuant to Labor Code Section 1771.3:

- The Department of Industrial Relations (DIR) Compliance Monitoring Unit (CMU)
- A DIR-approved in-house Labor Compliance Program (LCP)
- A collective bargaining agreement that meets the criteria set forth in Labor Code Section 1771.3(b)(3).

PAGE 7

16. Project Progress Dates

a. Construction Contract(s) signed awarded on:

(If the space provided is not sufficient for all applicable contract dates, please list all dates on a separate attachment to this form.)

b. Notice(s) to Proceed issued on: _____

c. If the Construction Contract(s) was awarded prior to January 1, 2012, have you initiated and enforced a Labor Compliance Program approved by the Department of Industrial Relations pursuant to Labor Code Section 1771.7 for this project? Yes No

17. Labor Compliance Program Department of Industrial Relations (DIR) Costs:

~~Will you be required to initiate and enforce a Labor Compliance Program pursuant to Labor Code Section 1771.7 for this project?~~

If the Construction Contract(s) was or will be awarded on or after January 1, 2012, please indicate which method will be used to meet the prevailing wage monitoring requirements, pursuant to LC Section 1771.3:

DIR/CMU Administered: _____ DIR Approved District LCP: _____

Collective Bargaining Agreement, pursuant to LC Section 1771.3(b): _____

PAGE 9

23. Certification

...

The district has ~~or will~~ initiated and enforced a Labor Compliance Program that has been approved by the Department of Industrial Relations, pursuant to Labor Code Section 1771.7, if the project is funded from Propositions 47 or 55 and the Notice to Proceed for the construction phase of the project is issued on or after April 1, 2003 and before January 1, 2012; and,

The district will contract or has contracted with the Department of Industrial Relations for prevailing wage monitoring and enforcement, pursuant to Labor Code Section 1771.3(a), if the construction contract is awarded after January 1, 2012 and the district has not obtained a waiver for the requirement, pursuant to Labor Code Section 1771.3(b). The district understands that if it fails to meet this requirement, it will be required to repay all state bond funds received including interest, and,

...

ATTACHMENT D

The following summary details the needed changes to the *Application for Joint Use Funding SAB 50-07*, to implement AB 436 regarding the requirement for DIR Prevailing Wage Monitoring and Enforcement.

Application for Joint Use Funding SAB 50-07 – Attachment D

INSTRUCTIONS FOR PARTS 12 and 13 (Page 2)

12. Project Progress Dates

Complete this section for new construction/modernization projects: a. Enter the date the initial construction contract was signed awarded for this project. If a construction contract has not been executed, enter N/A.

b. Enter the issue date for the Notice to Proceed for the construction phase of the project, or enter N/A if a Notice to Proceed has not been issued.

c. If a construction contract was awarded prior to January 1, 2012, check the appropriate box to indicate whether or not the district has initiated and enforced a Labor Compliance Program approved by the Department of Industrial Relations pursuant to Labor Code Section 1771.7 for this project.

13. ~~Labor Compliance Program~~ Department of Industrial Relations (DIR) Costs

~~Indicate whether the district is subject to a Labor Compliance Program that has been approved by the Department of Industrial Relations pursuant to Labor Code Section 1771.7 by checking the appropriate box.~~

If the construction contract for this project was or will be awarded after January 1, 2012, check the appropriate box to indicate which of the following methods will be used to meet the requirement for prevailing wage monitoring and enforcement pursuant to Labor Code Section 1771.3:

- The Department of Industrial Relations (DIR) Compliance Monitoring Unit (CMU)
- A DIR-approved in-house Labor Compliance Program (LCP)
- A collective bargaining agreement that meets the criteria set forth in Labor Code Section 1771.3(b)(3).

PAGE 3

12. Project Progress Dates

- a. Construction Contract signed awarded on: _____
- b. Notice to Proceed issued on: _____
- c. If the Construction Contract was awarded prior to January 1, 2012, have you initiated and enforced a Labor Compliance Program approved by the Department of Industrial Relations pursuant to Labor Code Section 1771.7 for this project? Yes No

13. ~~Labor Compliance Program~~ Department of Industrial Relations (DIR) Costs:

~~Indicate whether the district is subject to a labor compliance program that has been approved by the Department of Industrial Relations~~

If the Construction Contract was or will be awarded after January 1, 2012, please indicate which method will be used to meet the prevailing wage monitoring requirements, pursuant to LC Section 1771.3:

DIR/CMU Administered: _____ DIR Approved District LCP: _____

Collective Bargaining Agreement, pursuant to LC Section 1771.3(b): _____

PAGE 4

16. Certification

...

The district has ~~or will~~ initiated and enforced a Labor Compliance Program that has been approved by the Department of Industrial Relations, pursuant to Labor Code Section 1771.7, if the project is funded from Propositions 47 or 55 and the Notice to Proceed for the construction phase of the project is issued on or after April 1, 2003 and before January 1, 2012; and,

The district will contract or has contracted with the Department of Industrial Relations for prevailing wage monitoring and enforcement, pursuant to Labor Code Section 1771.3(a), if the construction contract is awarded after January 1, 2012 and the district has not obtained a waiver for the requirement, pursuant to Labor Code Section 1771.3(b). The District understands that if it fails to meet this requirement, it will be required to repay all state bond funds received including interest, and,

...

ATTACHMENT E

The following summary details the needed changes to the *Application for Preliminary Apportionment*, Form SAB 50-08, to implement AB 436 regarding the requirement for DIR Prevailing Wage Monitoring and Enforcement.

Application for Preliminary Apportionment SAB 50-08 – Attachment E

ADD INSTRUCTIONS FOR NEW PART 9 (Page 2)

9. Department of Industrial Relations (DIR) Costs

~~Indicate whether the district is subject to a Labor Compliance Program that has been approved by the Department of Industrial Relations pursuant to Labor Code Section 1771.7 by checking the appropriate box.~~

Check the appropriate box to indicate which of the following methods will be used to meet the requirement for prevailing wage monitoring and enforcement pursuant to Labor Code Section 1771.3:

- The Department of Industrial Relations (DIR) Compliance Monitoring Unit (CMU)
- A DIR-approved in-house Labor Compliance Program (LCP)
- A collective bargaining agreement that meets the criteria set forth in Labor Code Section 1771.3(b)(3).

RENUMBER INSTRUCTIONS FOR THESE PARTS (Page 2)

- 9. ~~10.~~ Pending Reorganization Election
- 10. ~~11.~~ Priority Order
- 11. ~~12.~~ Prior Apportionment Under SFP Design
- 12. ~~13.~~ Certification

ADD NEW PART 9 TO PAGE 4

9. Department of Industrial Relations (DIR) Costs:

Please indicate which method will be used to meet the prevailing wage monitoring requirements, pursuant to LC Section 1771.3:

DIR/CMU Administered: _____ DIR Approved District LCP: _____

Collective Bargaining Agreement, pursuant to LC Section 1771.3(b): _____

RENUMBER THESE PARTS (Page 3)

9. 10. Pending Reorganization Election

40. 11. Priority Order

44. 12. Prior Apportionment Under SFP Design

PAGE 4

42. 13. **Certification**

...

~~The district has or will initiated and enforced a Labor Compliance Program that has been approved by the Department of Industrial Relations, pursuant to Labor Code Section 1771.7, if the project is funded from Propositions 47 or 55 and the Notice to Proceed for the construction phase of the project is issued on or after April 1, 2003, and;~~

The district will contract with the Department of Industrial Relations for prevailing wage monitoring and enforcement, pursuant to Labor Code Section 1771.3(a), if the construction contract is awarded after January 1, 2012 and the district has not obtained a waiver for the requirement, pursuant to Labor Code Section 1771.3(b). The District understands that if it fails to meet this requirement, it will be required to repay all state bond funds received including interest, and.

...

DRAFT

ATTACHMENT F

The following summary details the needed changes to the *Application for Charter School Preliminary Apportionment*, Form SAB 50-09, to implement AB 436 regarding the requirement for DIR Prevailing Wage Monitoring and Enforcement.

Application for Charter School Preliminary Apportionment SAB 50-09 –
Attachment F

INSTRUCTIONS FOR PART 8 (Page 2)

8. Labor Compliance Program

Indicate whether the district is subject to a Labor Compliance Program that has been approved by the Department of Industrial Relations pursuant to Labor Code Section 1771.7 by checking the appropriate box.

8. Project Progress Dates

Complete this section:

- a. Enter the date the initial construction contract was awarded for this project. If a construction contract has not been executed, enter N/A.
- b. Enter the issue date for the Notice to Proceed for the construction phase of the project, or enter N/A if a Notice to Proceed has not been issued.
- c. If the Construction Contract was awarded prior to January 1, 2012, check the appropriate box to indicate if you have initiated and enforced a Labor Compliance Program approved by the Department of Industrial Relations pursuant to Labor Code Section 1771.7 for this project: Yes No

9. Department of Industrial Relations (DIR) Costs

Check the appropriate box to indicate which of the following methods will be used to meet the requirement for prevailing wage monitoring and enforcement pursuant to Labor Code Section 1771.3:

- The Department of Industrial Relations (DIR) Compliance Monitoring Unit (CMU)
- A DIR-approved in-house Labor Compliance Program (LCP)
- A collective bargaining agreement that meets the criteria set forth in Labor Code Section 1771.3(b)(3).

RENUNBER INSTRUCTIONS FOR THESE PARTS (Page 4)

9. 10. Priority Order

40. 11. Charter School Information

8. Labor Compliance Program

~~Indicate whether the district is subject to a labor compliance program that has been approved by the Department of Industrial Relations~~

8. Project Progress Dates

- a. Construction Contract awarded on: _____
- b. Notice to Proceed issued on: _____
- c. If the Construction Contract was awarded prior to January 1, 2012, have you initiated and enforced a Labor Compliance Program approved by the Department of Industrial Relations pursuant to Labor Code Section 1771.7 for this project? Yes No

9. Department of Industrial Relations (DIR) Costs:

Please indicate which method will be used to meet the prevailing wage monitoring requirements, pursuant to LC Section 1771.3:

DIR/CMU Administered: _____ DIR Approved District LCP: _____

Collective Bargaining Agreement, pursuant to LC Section 1771.3(b): _____

RENUMBER THESE PARTS (Page 4)

~~9.~~ **10. Priority Order**

~~10.~~ **11. Charter School Information**

~~11.~~ **12. Certification**

...
The charter school has ~~or will~~ initiated and enforced a Labor Compliance Program that has been approved by the Department of Industrial Relations, pursuant to Labor Code Section 1771.7, if the project is funded from Propositions 47 or 55 and the Notice to Proceed for the construction phase of the project is issued on or after April 1, 2003, and before January 1, 2012; and,

The district will contract with the Department of Industrial Relations for prevailing wage monitoring and enforcement, pursuant to Labor Code

Section 1771.3(a), if the construction contract is awarded after January 1, 2012 and the district has not obtained a waiver for the requirement, pursuant to Labor Code Section 1771.3(b). The district understands that if it fails to meet this requirement, it will be required to repay all state bond funds received including interest, and,

...

DRAFT

ATTACHMENT G

The following summary details the needed changes to the *Application for Career Technical Education Facilities Funding*, Form SAB 50-10 to implement AB 436 regarding the requirement for DIR Prevailing Wage Monitoring and Enforcement.

Application for Career Technical Education Facilities Funding, Form SAB 50-10 – Attachment G

INSTRUCTIONS FOR PART 12 (Page 1)

12. **Project Progress Dates**

Complete this section for new construction/modernization projects: a. Enter the date the initial construction contract was ~~signed~~ awarded for this project. If a construction contract has not been executed, enter N/A.

b. Enter the issue date for the Notice to Proceed for the construction phase of the project, or enter N/A if a Notice to Proceed has not been issued.

c. If a construction contract was awarded prior to January 1, 2012, check the appropriate box to indicate whether or not the district has initiated and enforced a Labor Compliance Program approved by the Department of Industrial Relations pursuant to Labor Code Section 1771.7 for this project.

ADD INSTRUCTIONS FOR PART 13 (Page 1)

13. Department of Industrial Relations (DIR) Costs

Check the appropriate box to indicate which of the following methods will be used to meet the requirement for prevailing wage monitoring and enforcement pursuant to Labor Code Section 1771.3:

- The Department of Industrial Relations (DIR) Compliance Monitoring Unit (CMU)
- A DIR-approved in-house Labor Compliance Program (LCP)
- A collective bargaining agreement that meets the criteria set forth in Labor Code Section 1771.3(b)(3).

RENUMBER INSTRUCTIONS FOR THIS PART (Page 1)

43. **14. Certification**

PAGE 2 OF FORM

13. Prevailing Wage Monitoring and Enforcement

Please indicate which method will be used to meet the prevailing wage monitoring requirements, pursuant to LC Section 1771.3:

DIR/CMU Administered: _____ DIR Approved District LCP: _____

Collective Bargaining Agreement, pursuant to LC Section 1771.3(b): _____

PAGE 3 OF FORM

~~13.~~ 14. Certification

...

If the applicant is requesting a loan for the matching share, a CTEFP Loan Agreement will be executed pursuant to the requirements in Section 1859.194; and,

The district will contract with the Department of Industrial Relations for Prevailing Wage Monitoring and Enforcement, pursuant to Labor Code Section 1771.3(a), if the construction contract is awarded after January 1, 2012 and the district has not obtained a waiver for the requirement, pursuant to Labor Code Section 1771.3(b). The district understands that if it fails to meet this requirement, it will be required to repay all state bond funds received including interest, and,

The applicant has or will comply with Education Code Section 17076.11 regarding at least a 3 percent expenditure goal for disabled veteran business enterprises; and,

...

ATTACHMENT H

The following summary details the needed changes to the *Fund Release Authorization* Form SAB 50-05 to implement AB 436 regarding the requirement for DIR Prevailing Wage Monitoring and Enforcement.

Fund Release Authorization Form SAB 50-05 – Attachment H

GENERAL INFORMATION (PAGE 1)

The following documents must be submitted with this form (as appropriate):

1. Signature page of the contract(s) that meets the requirement for a fund release (Part IV and/or VI).
2. Notice(s) to Proceed.
3. For projects for which construction contracts were awarded prior to January 1, 2012, and that require a Labor Compliance Program pursuant to Labor Code Section 1771.7:
 - All school district and/or third party provider Department of Industrial Relations approval letters (initial, extension(s) and/or final).
 - Third party contract(s).

For all projects for which construction contracts are awarded after January 1, 2012:

- Acknowledgement from the Department of Industrial Relations (DIR) of receipt of the district's notice. However if the construction contract was awarded less than 60 days prior to submittal of this form, a copy of the Notice to DIR from the district with proof of mailing will be accepted in lieu of the DIR acknowledgement. OR
 - All school district Department of Industrial Relations approval letters for the district's in-house Labor Compliance Program (initial, extension(s) and/or final).
4. 5. For new construction projects that complete Part IV attach: Accepted bid documents including additive/deductive alternates.

SPECIFIC INSTRUCTIONS (PAGE 1)

Part V. New Construction/Modernization/Charter School Rehabilitation

Check the box(es) for release of new construction, modernization or rehabilitation funds and enter the following:

- a. Date of written approval by the Division of the State Architect (DSA).
- b. Enter the percent of the construction the district has under binding contract(s).
- c. Issue date of the Notice(s) to Proceed for the construction phase of the project(s); and,

d. Signature Award date of the initial construction contract entered into by the district for this project. (If the space provided is not sufficient for all applicable contract dates, please list all dates on a separate attachment to this form.)

For Final Charter School Apportionment attach to this form the Charter School Agreements if not previously submitted or if since revised.

PAGE 2

Part V. New Construction/Modernization/Charter School Rehabilitation

District/Charter School must be able to check all boxes:

- The district certifies that its applicable matching share has either:
 - been deposited in the County School Facility Fund
 - has already been expended by the district for the project
 - will be expended by the district prior to the Notice of Completion for the project
- The district certifies it has entered into a binding contract(s) for _____ percent of the construction (must be at least 50 percent of the construction included in the plans and specifications applicable to the state funded project), which received written DSA approval on _____, and has issued the Notice(s) to Proceed on _____ for that contract(s) signed awarded on _____.
(If the space provided is not sufficient for all applicable contract dates, please list all dates on a separate attachment to this form.)

...

CERTIFICATIONS (Page 3)

If required by Labor Code Section 1771.7, the district has initiated and will enforce a Labor Compliance Program that has been approved by the Department of Industrial Relations.

If required by Labor Code Section 1771.3(a), the district will contract with the Department of Industrial Relations for the required Prevailing Wage Monitoring and Enforcement, or the requirement is waived pursuant to Labor Code Section 1771.3(b). The district understands that if it fails to meet this requirement, it will be required to repay all state bond funds received including interest.

SIGNATURE OF DISTRICT REPRESENTATIVE (Page 3)

(First Line)

SIGNATURE OF DISTRICT OR JPA REPRESENTATIVE

DATE

(Second Line)

NAME OF DISTRICT OR JPA REPRESENTATIVE (PRINT)

TITLE

TELEPHONE

(Third Line)

E-MAIL ADDRESS

DRAFT

ATTACHMENT I New Construction

SAB Meeting: February 23, 2011

New Construction - Adjusted Grant Approval

SCHOOL DISTRICT DATA

Application No: 50/12345-00-001
School District: Somewhere City Unified

County: Anywhere
School Name: High School High

PROJECT DATA

Type of Project: High School
 K-6:
 7-8:
 9-12: 162
 Non-Severe:
 Severe:
Application Filing Basis: District Wide
Number of Classrooms: 6
Master Acres: 25.2
Existing Acres: 8
Proposed Acres:
Recommended Acres: 29.1
Facility Hardship (a): No
Financial Hardship Requested: No
Alternative Education School: No
Addition to Existing Site: Yes

ADJUSTED GRANT DATA

New Construction Grant	\$	1,986,120.00
Project Assistance		5,498.00
Fire Detection Alarm		3,888.00
Multi-Level Constr.	6Cr.	238,334.00
Site Acquisition		451,058.00
Service Site		177,327.00
Utilities		9,648.00
Small Size Project		79,445.00
Urban/Security/Impacted Site		1,092,581.00
Subtotal State Share (50%)		4,043,899.00

Subtotal State Share	\$	4,043,899.00
Financial Hardship		0.00
Total Projected Apportionment (TPA)		4,043,899.00

DIR Cost Cap (1/4 of 1% of TPA)	\$	10,109.75
--	-----------	------------------

PROJECT FINANCING

State Share
This Project **\$** 4,048,954.00
District Share
Cash Contribution 4,048,954.00
Financial Hardship
Total Project Cost **\$** 8,097,908.00

State Share of DIR Cost (50%)	\$	5,055.00
District Share of DIR Cost (50%)		5,055.00
Total State Share with DIR Cost	\$	4,048,954.00
Total District Share with DIR Cost		4,048,954.00
Total Project Cost with DIR Cost	\$	8,097,908.00

HISTORY OF PROJECT COST AND APPORTIONMENT

	Fund Code	Proposition	Previously Authorized	Authorized This Action	Unfunded Approval This Action
State Share					
New Construction/Add. Grant	955-500	55	\$	\$ 4,048,954.00	\$ 4,048,954.00
District Share					
Cash Contribution				4,048,954.00	
Total			\$	\$ 8,097,908.00	\$ 4,048,954.00

Funding Source: Proposition 55 Bonds/2004-Mar.

Pursuant to the Board's action on March 11, 2009, this application has been approved and placed on the Unfunded List. This approval does not constitute a guarantee or commitment of future State funding.

The District shall ensure that it is in compliance with all applicable laws, regulations and certifications it made on the program forms.

The District has certified it has met the requirements of Labor Code Section 1771.3. Please be advised this project has been apportioned with funds that require compliance with DIR regulations pursuant to Labor Code Section 1771.3.

ATTACHMENT J

QUESTIONS REGARDING THE DEPARTMENT OF INDUSTRIAL RELATIONS REGARDING THE IMPLEMENTATION OF AB 436

Department of Industrial Relations (DIR) Interpretation

- What constitutes the “initial prime contract”? (DIR’s proposed regulation Section 16451)
- How is “every public works project” being defined? (DIR Section 16455)
 - Will a district be able to choose which public works projects it submits to DIR or which it does not submit, or will failing to submit to DIR on one project (that will not be state-funded, for example) jeopardize the funding of other projects (that *will* be state-funded)?
 - If the DIR fee is waived for one project because a district qualifies for an exemption (because the district has an approved in-house LCP, for example), must the district qualify for that same exemption for all its public works projects? Or can some projects qualify for the fee waiver and others not qualify?
- The DIR fee shall be waived if a district has a previously initiated LCP. Must the LCP be initiated previous to the statute, previous to the public works contract being signed, or previous to some other event?

DIR Process

- DIR’s Form DIR-PWC 100 reads like DIR will continue to approve LCPs and PLAs after 1/1/12. Is that true?
- When DIR bills a district, how is “overhead” being defined?
- How will DIR know the maximum fee it can charge a district when the district is receiving state funding for the project? Must OPSC provide DIR any information or will DIR already have the necessary information?
- How will DIR calculate the costs for the electronic payroll system to be charged to districts when a project is submitted to DIR to monitor?

ATTACHMENT K

**Matrix of Six Possible Scenarios For
School Facilities Program Projects Funding Application Submittal
and Construction Contracts Awarded**

Scenario 1:

Contract is awarded after funding application and after bond apportionment.

District submits funding application to OPSC January 2010

The project is placed on the Unfunded Approval List March 2010

Bond funds become available and the SAB apportions bond funds for the project December 2011

District enters construction contract for at least 50% of the project costs in the funding application January 2012

District submits fund release request to OPSC in January (OPSC verifies contract is signed). OPSC requires copy of District Notice to DIR — per AB 436.

DIR Comment: Project is subject to CMU fees and monitoring. District should notify DIR of project (using PWC-100) upon bond apportionment and it must send the form (if it has not done so previously) upon entering construction contract.

OPSC Comment: Application will be eligible for the additional grant provided in consideration of Labor Code Section 1771.3.

Scenario 2:

Contract is awarded after funding application is submitted but prior to bond apportionment.

District submits funding application to OPSC January 2010. (OPSC would not yet have the construction contract date).

The project is placed on the Unfunded Approval List in March 2010

District enters construction contract for at least 50% of the project costs in the funding application November 2011

Bond funds become available and the SAB apportions bond funds for the project December 2011

District submits fund release request to OPSC in January 2012 (OPSC verifies contract is signed). OPSC requires copy of District Notice to DIR — per AB 436.

DIR Comment: Project is *not* subject to CMU fees or monitoring. It may be subject to an LCP requirement if Prop 47 or 55 funds provided. PWC-100 must be sent upon entering into contract for construction (to comply with Labor Code §1773.3). Contract date on form will indicate which rules apply.

OPSC Comment: Application will *not* be eligible for the additional grant provided in consideration of Labor Code Section 1771.3. Project will only be eligible for funding from Proposition 47 or 55 funding and for additional LCP grant if it has met the requirements of Labor Code Section 1771.7 (a) and (b).

Scenario 3:

Project is awarded or partially complete before submitting funding application for a Single Prime Contract.

District enters construction contract for a project with a single prime construction contract May 2010

District submits funding application to OPSC January 2011, after project has been completed (OPSC would have the construction contract date)

The project is placed on the Unfunded Approval List March 2010

Bond funds become available and the SAB apportions bond funds for the project December 2011

District submits fund release request January 2012 —DIR Monitoring is not required.

DIR comment: Project is *not* subject to CMU fees or monitoring. It may be subject to an LCP requirement if Prop 47 or 55 funds provided. DAS-13 should have been sent upon entering into contract for construction (to comply with Labor Code §1773.3).

OPSC Comment: Application will *not* be eligible for the additional grant provided in consideration of Labor Code Section 1771.3. Project will only be eligible for funding from Proposition 47 or 55 funding and for additional LCP grant if it has met the requirements of Labor Code Section 1771.7 (a) and (b).

Scenario 4:

2 prime contracts are completed prior to submitting funding application but a third prime contract is signed after bond apportionment.

District replaces roof in 2007; HVAC in 2008, and replaces windows in 2012— three small prime contracts.

District combines all three projects for a single funding application to OPSC January 2010.

The project is placed on the Unfunded Approval List March 2010

Bond funds become available and the SAB apportions bond funds for the project December 2011.

District submits fund release request January 2012.
District signs contract for the third prime construction (window replacement) February 2012. —DIR Monitoring is not required.

DIR Comment: As described, these would be three discrete projects; and the window replacement project would be subject to CMU fees and monitoring based on the date of the award of the construction contract. Bundling into a retroactive funding application would not make them one project.

OPSC Comment: Application will be eligible for the additional grant provided in consideration of Labor Code Section 1771.3. The additional grant will be calculated based on the entire Total Projected Apportionment and will not be prorated.

Scenario 5:

Project is awarded after January 1, 2012 and completed prior to bond apportionment.

District awards a construction contract February 2012

District submits funding application to OPSC March 2012, after project has been completed (OPSC would have the construction contract date).

The project is placed on the Unfunded Approval List May 2012

The project is completed August 2012.

Bond funds become available and the SAB apportions and releases bond funds for the project December 2012.

DIR comment: The project would be subject to CMU fees and monitoring based on the date of the award of the construction contract, although the statutory obligation would only arise later through the award of funds. However, consistent with the spirit and intent of Labor Code §1771.3, SAB (and other bond-funding agencies) should require the district to comply with CMU requirements (or a prescribed alternative) during construction as a condition for obtaining reimbursement.

OPSC Comment: Application will be eligible for State Bond funding *only* if the District can demonstrate that the requirements of Labor Code Section 1771.3 have been met, and will be eligible for the additional grant provided in consideration of Labor Code Section 1771.3.

Scenario 6:

3 Prime contracts for a single Mod funding application awarded prior to bond apportionment but a 4th contract is awarded after bond funds are released.

District replaces roof in 2007; HVAC in 2008, and the parking lot in 2011 and DSA approval for window replacement in February 2012 — four small prime contracts.

District submits funding application to OPSC March 2012, after 3 of the projects are complete

The project is placed on the Unfunded Approval List June 2012

Bond funds become available and the SAB apportions and releases bond funds for the project December 2012

District awards contract for windows after receiving State funds January 2013

DIR Comment: (see Scenario 4)

OPSC Comment: Application will be eligible for the additional grant provided in consideration of Labor Code Section 1771.3. The additional grant will be calculated based on the entire Total Projected Apportionment and will not be prorated.
