

STATE ALLOCATION BOARD  
IMPLEMENTATION COMMITTEE MEETING  
September 9, 2010

Labor Compliance Program

PURPOSE OF REPORT

To discuss proposed regulations for the implementation of Senate Bill (SB) X2 9 that requires school districts to pay a fee to the Department of Industrial Relations (DIR) for the enforcement a labor compliance program (LCP) for projects funded from State bond funds

BACKGROUND

SB X2 9 (Padilla, Chapter 7, Statutes of 2009) requires school districts that receive State bond funds for public works projects with construction contracts awarded on or after August 1, 2010 to pay a fee to the DIR to ensure compliance with and enforcement of prevailing wage laws on the project. Statute requires that the DIR develop regulations administering the fee in order for the compliance and prevailing wage laws to be in effect. These regulations went into effect on August 1, 2010.

Any state bond funds granted to districts to accommodate the increased costs of a project due to the enforcement of this statute are exempt full and final apportionment; thereby allowing the State Allocation Board (SAB) time to adopt and implement School Facility Program (SFP) regulations.

AUTHORITY

Labor Code (LC) 1771.3 (a) (2)

“The Director of Industrial Relations, with the approval of the Director of Finance, shall determine and assess a fee on any awarding body using funds derived from any bond issued by the state to fund public works projects, in an amount not to exceed one-fourth of 1 percent of the bond proceeds. The fee shall be set to cover the expenses of the Department of Industrial Relations for administering the prevailing wage requirements on public works projects using those bond funds. All fees collected pursuant to this subdivision section shall be deposited in the State Public Works Enforcement Fund, and shall be used only for enforcement of prevailing wage requirements on projects using bond funds and other projects for which awarding bodies pay into the fund. The administration and enforcement of prevailing wage requirements is an administrative expense associated with public works construction.”

LC 1771.75

“(a) 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 pay a fee to the Department of Industrial Relations, in an amount that the department shall establish, and as it may from time to time amend, in an amount not to exceed one-fourth of 1 percent of the bond proceeds, sufficient to support the department’s costs in ensuring compliance with and enforcing prevailing wage requirements on the project, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55. All fees collected pursuant to this subdivision shall be deposited in the State

Public Works Enforcement Fund created by Section 1771.3, and shall be used only for enforcement of prevailing wage requirements on those projects. The department may waive the fee set forth in this section for an awarding body that has previously been granted approval by the director to initiate and operate a labor compliance program on the awarding body's projects, and requests to continue to operate that labor compliance program on its projects in lieu of labor compliance by the department pursuant to subdivision (b) of Section 1771.55. This fee shall not be waived for an awarding body that contracts with a third party to initiate and enforce labor compliance programs on the awarding body's projects."

"(e) Notwithstanding Section 17070.63 of the Education Code, for purposes of this section, the State Allocation Board shall increase the grant amounts as described in Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 of the Education Code to accommodate the state's share of the increased costs of a new construction or modernization project due to the fee required to be paid to the Department of Industrial Relations to ensure compliance with and enforcement of prevailing wage laws on the project. All fees collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3."

## DISCUSSION

At the July 8, 2010 Implementation Committee meeting, staff presented background information on SB X2 9 and a draft of revised SFP regulations. Committee members and stakeholders raised the following questions:

*Is a local match required for the DIR Fee?*

SB X2 9 requires a local match. Pursuant to LC Section 1771.75(e), the SAB shall provide an additional grant to cover the state's share of the DIR Fee. Therefore, a local match is required so that the DIR receives the full fee. This is consistent with the grant calculations for the new construction and modernization program grants.

The process of how the DIR will collect the funds has not been decided and will be presented at a future Implementation Committee meeting for discussion.

*Will the Office of Public School Construction (OPSC) please present scenarios of SFP projects and show which LCP rules they are subject to?*

The details and enforcement of SB X2 9 are continuing to be worked out by all agencies involved. At this time, the policies relating to the transitional issues brought up at the July 2010 Implementation Committee meeting have not been resolved. The OPSC will bring the scenarios back at a future Implementation Committee meeting. Below is a list of situations that have been brought to the attention of the OPSC:

- Kindergarten-University Public Education Facilities Bond Act of 2002 (Proposition 47) or Kindergarten-University Public Education Facilities Bond Act of 2004 (Proposition 55) projects which received the old LCP grant but will have a contract signed after 8/1/10
- Third Party LCP: Will the SAB provide funding to districts for third party LCP with current contracts?
- Emergency situation: How will the DIR Fee be determined for emergency projects?
- Multiple prime: Which contract is the determining factor? Will the DIR examine and charge each contract?
- Financial Hardship: What will the State fund?

- Unfunded approvals: How will the unfunded approval list projects be affected?
- Modernization reimbursements: Will a DIR Fee be assessed on projects funded after August 1, 2010 but with contracts signed before August 1, 2010?

*Will the Career Technical Education Facilities Program (CTEFP) maximum grant amount of \$3 million per project per school site allow for a funding increase for the DIR Fee?*

At this time, it appears that the SAB does not have the authority to provide an additional grant for the DIR Fee for any projects funded from Proposition 1D even though the DIR Fee may be enforced on those projects. As the CTEFP is funded solely by Proposition 1D, this would exclude CTEFP projects from receiving the additional grant.

*Will the DIR collect a LCP fee on CTEFP projects that are for equipment only or projects that are for equipment and construction?*

How the DIR Fee is applied to CTEFP projects, including those that include or consist of equipment only, will be decided by the DIR. It is recommended that districts contact the Compliance Monitoring Unit (CMU) of the DIR with any questions.

*What is the OPSC's outreach plan for communicating with school districts?*

The OPSC plans to reach out to school districts and educate them on how SBX2 9 will affect school construction projects, which projects will be affected, what SFP funds will be issued to the school districts and answer the school district's questions. The OPSC and the DIR will make joint presentations at as many County Office of Education (COE) meetings as possible. In addition to these meetings, the OPSC plans to communicate the new DIR Fee to school districts through updates by OPSC project managers at all remaining COE meetings, webinar presentations, an article in the OPSC publication Building Blocks, a frequently asked questions page on the OPSC website, and email notification.

## **Proposed Regulations**

The attachment includes the proposed regulations for the programs that may be affected by the DIR Fee for the enforcement of labor compliance. The proposed regulations, are structured so that the OPSC funds the additional grant according to the fee calculated by the DIR. By not including the calculation for the DIR Fee in the regulations the SFP has freedom to match the additional grant to the DIR Fee according to actual cost. Reasons behind the structure of the regulations:

### DIR Fee Criteria

The DIR Fee is in effect for public works projects with construction contracts awarded on or after August 1, 2010. The new SFP regulation sections and/or amendments to existing regulation sections were created to accommodate the new DIR Fee. The contract award date is the date that the school board awards the contract to a construction company. According to DIR, in cases where there are multiple contracts, the contract that triggers the DIR Fee is the main contract for new construction projects and the latest contract for modernization projects.

In the proposed regulations, the purpose of the DIR Fee is taken directly from LC Section 1771.75 (e). Similar text is also found in LC Section 1771.3(a)(2) and 1771.55(a)(3).

With the attached version of the regulations, the SFP is able to accommodate for the DIR Fee assessed to design-build projects. The DIR Fee is applied to design-build projects differently than to other projects. Non design-build projects are calculated on state issued bond funds. For design-build projects, the DIR Fee is calculated on state issued bond funds or total project

cost (minus site acquisition), whichever is greater. Since “total project cost” can be interpreted multiple ways, the OPSC is awaiting clarification from the DIR.

### Bond Sources

Qualifying projects funded by Propositions 47 or 55 are subject to the new DIR Fee and are eligible for an additional grant for the State’s share. Projects funded by the Kindergarten-University Public Education Facilities Bond Act of 2006 (Proposition 1D) may be subject to the DIR Fee; however, SB X2 9 did not grant authority the SAB authority to provide an additional grant for the State’s share of the DIR Fee.

Pursuant to LC Section 1771.3 (a) (2) “The Director of Industrial Relations, with the approval of the Director of Finance, shall determine and assess a fee on any awarding body using funds derived from any bond issued by the state”. This includes projects funded by Proposition 47, 55 and 1D.

LC Section 1771.75 authorizes the SAB to provide an additional grant for the DIR Fee. In part (a), the LC identifies bond funds from Proposition 47 and 55 of the SFP as a funding source that triggers the DIR Fee assessment. Part (e) of LC Section 1771.75 is where authority to provide an additional grant is given to the SAB. There, it states that “for purposes of this section, the State Allocation Board shall increase the grant amounts...” LC Section 1771.75 specifies Proposition 47 and 55. Proposition 1D is clearly excluded. Therefore, the SAB may only provide an additional grant for the state’s share of the DIR Fee to projects funded from Propositions 47 and 55. The regulations are written to specify the bonding source.

### Waivers

The proposed regulations are phrased so that the SFP will have the ability to award the additional grant even if the school district receives a waiver from the DIR. A waiver would not exempt the school district from the prevailing wage requirements; it only exempts the school district from paying the fee and having the Compliance Monitoring Unit (CMU) unit review the project. The school district would still have to comply with the prevailing wage requirements. The OPSC’s intent is for the school district to use the funds, which would have otherwise gone to the DIR, for their internal program for prevailing wage enforcement.

Since the DIR will use the money collected from the fee to run their CMU, the OPSC plans to call the fee a DIR Fee as opposed to the LCP fee. By calling it the DIR Fee, it also makes it evident that there is a difference between the LCP and the new process with the DIR.

It is not possible to remove the LCP regulations and replace them with the new DIR Fee regulations because the LCP regulations may be in effect for some projects. The LCP may be in effect for public works projects with construction contract awarded prior to August 1, 2010. The DIR has stated that for projects funded prior to August 1, 2010 that award the construction contract on or after August 1, 2010, the DIR Fee will not be imposed.

At this time, Staff would like to seek further input from Committee members and stakeholders on the proposed regulations for the DIR Fee.

# ATTACHMENT

## Definitions

Section 1859.2. Definitions.

“DIR Fee” is the fee applied to any project funded in whole or in part by the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 with a construction contract award date on or after August 1, 2010 and is therefore subject to the Labor Code Section 1771.75. The Board shall award an additional grant equal to the state’s share of the fee as determined by the Department of Industrial Relations (DIR) to ensure compliance with and enforcement of prevailing wage laws.

---

## New Construction

Section 1859.71.4. New Construction Pupil Grant Increase for Labor Compliance Program.

- (a) For any project funded in whole or in part by Proposition 47 or Proposition 55 with a construction contract awarded prior to August 1, 2010, 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:
- (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

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17072.10, Education Code.

---

Section 1859.71.7. New Construction Additional Grant for the Department of Industrial Relations Fee.

- (a) For any project subject to the DIR Fee, the Board shall award an additional grant equal to the state's share of the fee.
- (b) In the event the DIR grants a fee waiver, the Board shall award an additional grant, in an amount equal to that as would be awarded for the state's share of the DIR Fee, to maintain an internal labor compliance program.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17250.30, Education Code

*Section 1859.72. New Construction Additional Grant for an Individual with Exceptional Needs.*

---

**Modernization**

Section 1859.78.1. Modernization Pupil Grant Increase for Labor Compliance Program

- (a) For any project funded in whole or in part by Proposition 47 or Proposition 55 with a construction contract awarded prior to August 1, 2010, 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:
  - (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.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17072.10, Education Code.

---

Section 1859.78.1.5. Modernization Additional Grant for the Department of Industrial Relations Fee.

- (a) For any project subject to the DIR Fee, the Board shall award an additional grant equal to the state's share of the fee.
- (b) In the event the DIR grants a fee waiver, the Board shall award an additional grant, in an amount equal to that as would be awarded for the state's share of the DIR Fee, to maintain an internal labor compliance program.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17250.30, Education 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). Modernization funding may also be used for the DIR Fee or 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, 17250.30 and 100420(c), Education Code.

---

## Critically Overcrowded Schools

### 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.
- (b) An amount equal to 12 percent of the amount determined in (a) for multilevel construction, if requested by the district.
- (c) An amount equal to one-half of the site acquisition value determined in Section 1859.145.1.
- (d) An amount for site development cost determined, at the option of the district, by one of the following:
- (1) One-half of the Site Development Cost for the specific site as authorized by Section 1859.76.
  - (2) One-half of the Site Development Cost as authorized by Section 1859.76 using historical information in the General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the General Location.
  - (3) \$70,000 multiplied by the proposed acres requested on the Form SAB 50-08.
- (e) If the Preliminary Application request is for a small new school on a site with no existing school facilities, an amount equal to the difference in the amount determined in (a) and the amount shown in the Chart in Section 1859.83(c).  
To determine the number of classrooms in the proposed project, divide the number of pupils requested on Form SAB 50-08, by 25 for elementary school pupils, 27 for middle and high school pupils, 13 for Non-Severely Disabled Individuals with Exceptional Needs and 9 for Severely Disabled Individuals with Exceptional Needs. Round up.
- (f) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a) for a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent when the following criteria are met:
- (1) The district has requested an increase for multilevel construction pursuant to (b) above.
  - (2) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size determined by multiplying the sum of the pupil grants requested on Form SAB 50-08, and the current CBEDS enrollment on the site (if applicable) by .01775 for elementary school pupils, .021 for middle school pupils and .02472 for high school pupils. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50-08, as either elementary, middle or high school pupils based on the type of project selected by the district on Form SAB 50-08. For purposes of COS projects, if the site for which the Preliminary Apportionment is requested is a Source School, for purposes of assigning Qualifying Pupils in the Preliminary Application, subtract those Qualifying Pupils from the current CBEDS enrollment on the site before completing this calculation.
  - (3) The value of the property as determined in Section 1859.145.1(a)(1) is at least \$750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing school site.
- (g) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a), (b), (d)(3), (e) and (f) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).
- (h) For purposes of COS projects, an amount equal to 12 percent of the sum of the amounts determined in (a) through (g) for all Preliminary Applications received no later than May 1, 2003. For all Preliminary Applications received after May 1, 2003 an amount equal to the sum of the amounts determined in (a) through (g) multiplied by a factor determined as follows:

- (1) Divide the January Class B Construction Cost Index in effect at the time of 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) Subtract 1 from the quotient in (1). Round to two decimal places.
  - (i) If the district qualifies for financial hardship assistance pursuant to Section 1859.81 at the time of submittal of the Preliminary Application, an amount equal to the sum of the amounts determined in (a) through (h) less any district funds determined available for the project pursuant to Section 1859.81(a). Districts must meet the financial hardship criteria pursuant to Section 1859.81 at the time the request is made to convert the Preliminary Apportionment to a Final Apportionment, including an accountability of any district contribution made available at the time of the Preliminary Apportionment was made, in order to continue with financial hardship assistance for the project.
  - (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. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4 or may be eligible for an additional grant for the DIR Fee as prescribed in Section 1859.71.7, if required by the Labor Code.

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

Reference: Sections 17075.10, 17078.10, ~~and~~ 17078.24 and 17250.30, Education Code.

## Facility Hardship

### 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 for projects where the construction contract was executed on or after May 20, 2006, and the project funding provided shall be for the minimum work necessary to obtain DSA approval.
  - (A) If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the

Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for a Modernization Excessive Cost Hardship Grant for rehabilitation costs pursuant to Section 1859.83 (e) or a grant not to exceed 50 percent of the cost estimate that has been reviewed and approved by the OPSC and approved by the board for seismic rehabilitation.

- (B) If the request is for replacement facilities that included structural and/or seismic deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA. For seismic deficiencies of the Most Vulnerable Category 2 Buildings, the report and the cost estimate for the minimum work necessary must be reviewed by the DSA.
- (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. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4 or may be eligible for an additional grant for the DIR Fee as prescribed in Section 1859.71.7, if required by the Labor Code.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district, the HSAA or Super HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

- (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. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4 or may be eligible for an additional grant for the DIR Fee as prescribed in Section 1859.71.7, if required by the Labor Code.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

<i>Facility</i>	<i>Elementary School Pupils</i>	<i>Middle School Pupils</i>	<i>High School Pupils</i>
Multi-Purpose (includes food service)	5.3 sq. ft. per pupil minimum 4,000 sq. ft.	5.3 sq. ft. per pupil minimum 5,000 sq. ft.	6.3 sq. ft. per pupil minimum 8,200 sq. ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium (includes shower/locker)	N/A	12.9 sq. ft. per pupil minimum 6,828 sq. ft. maximum 16,000 sq. ft.	15.3 sq. ft. per pupil minimum 8,380 sq. ft. _maximum 18,000 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil plus 600 sq. ft.	3.3 sq. ft. per pupil plus 600 sq. ft.	4.3 sq. ft. per pupil plus 600 sq. ft.

Any facilities eligible for facility hardship not shown in the above chart or for Alternative Education facilities not shown in the table in Section 1859.77.3(a)(5) shall be eligible for

replacement square footage equal to the facilities replaced. For an Alternative Education school eligible for a facility hardship, utilize the square footage provided in Section 1859.77.3(a)(5), with the exception of toilet and administration where the chart above shall be utilized.

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

(c) A district seeking replaced facilities as a result of either (a) or (b) above must submit Form SAB 50-04 for the replaced facilities:

- (1) Within 18 months if the replacement facilities will be located on the same site.
- (2) Within 24 months if the replacement facilities will be located on a replacement site.

If an Approved Application for the replaced facility is not accepted within the time periods identified in (c)(1) or (c)(2) above, the Board shall re-review the criteria submitted by the district for replacement of the facility prior to apportionment of the replaced facility.

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.

---

#### 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...

- (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. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4 or may be eligible for an additional grant for the DIR Fee as prescribed in Section 1859.71.7, if required by the Labor Code.

...

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.

---

## Charter

### 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.

- (a) The Preliminary Charter School Apportionment for construction costs shall be equal to the sum of (1) through (9 ~~10~~) 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.
    - (D) \$16,653 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
    - (E) \$11,137 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
  - (2) An amount equal to 12 percent of the amount determined in (1) for multilevel construction, if requested by the Charter School.
  - (3) An amount for site development cost determined, at the option of the Charter School, by one of the following:
    - (A) One-half of the site development cost for the specific site as authorized by Section 1859.76.
    - (B) One-half of the site development cost as authorized by Section 1859.76 using historical information in the Charter School General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the Charter School General Location.
    - (C) \$70,000 multiplied by the proposed acres requested on the Form SAB 50-09.
  - (4) General Site Development costs within school property lines for an addition to an existing school site project wherein additional acreage is acquired or a new school project, determined as follows:
    - (A) \$9,600 per proposed acre requested on the Form SAB 50-09. This sum may be increased pursuant to the provisions in Section 1859.83(b). The per acre amount shown above shall be adjusted annually in the manner prescribed in Section 1859.71.
    - (B) 6 percent for Elementary School Pupils and Middle School Pupils and 3.75 percent for High School Pupils of the funding provided by Sections 1859.163.1(a)(1) multiplied by two. For purposes of this calculation, the percentage amount for Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupils shall be based on the type of project selected by the Charter School on the Form SAB 50-09.
    - (C) 6 percent for Elementary School Pupils and Middle School Pupils and 3.75 percent for High School Pupils of the funding provided by Sections 1859.163.1(a)(2) and (5) multiplied by two.
  - (5) If the Preliminary Application request is for a small project that will house no more than 200 pupils, an amount pursuant to the following:
    - (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).
    - (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).

- (6) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (1) and (5), plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent when the following criteria are met:
- (A) The Charter School has requested an increase for multilevel construction pursuant to (2) above.
  - (B) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size.
  - (C) The value of the property as determined in Section 1859.163.2(a) is at least \$750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing school site.
- (7) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (1), (2), (3)(C), (4)(A) and (B), (5) and (6) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).
- (8) For all Preliminary Apportionments received after February 23, 2005, an amount equal to the sum of the amounts 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) For any project funded in whole or in part by Proposition 47 or Proposition 55 with a construction contract awarded prior to August 1, 2010, 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) For any project subject to the DIR Fee as prescribed in Section 1859.71.7, if required by the Labor Code.
- ~~(10)~~ (11) 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) 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 total amount calculated in (a) above will be added to any amount calculated in (b) above, which will provide the Preliminary Charter School Apportionment amount.

The amounts shown in (a)(1) shall be adjusted annually in the manner prescribed in Section 1859.71.

Subsection (a)(4) of this section shall be suspended no later than January 1, 2008, unless otherwise extended by amendments as adopted by the Board.

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

Reference: Sections 17078.52, ~~and~~ 17078.56 and 17250.30, Education 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) below:

- (a) The lesser of the amount determined in (1) or (2) below:
  - (1) The dollar value calculated using a per square foot amount and the total eligible square footage for the site as follows:
    - (A) Determine the total square footage for each classroom included in the project (limited by the Charter School's projected enrollment).
    - (B) Determine the total square footage for any multi-purpose room included in the project.
    - (C) Determine the total square footage for any gymnasium included in the project.
    - (D) Determine the total square footage for any library included in the project.
    - (E) Determine the total square footage for any administration building included in the project.
    - (F) Add the total square footage in (A) through (E) above to obtain the total square footage for the project.
    - (G) From the total determined in (F), 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) The dollar value calculated using the new construction grant amount and the project capacity based on the State loading standards as follows:
    - (A) Determine the proposed grade level usage of each classroom in the project (limited by the Charter School's projected enrollment).
    - (B) Multiply the number of classrooms at the K-6 grade level by 25, the number of classrooms at the 7-12 grade level by 27, the number of non-severe classrooms by 13, and the number of severe classrooms by 9.
    - (C) Multiply the number of pupils calculated pursuant to (B) by the appropriate dollar value determined in Section 1859.163.1(a)(1).
- (b) 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) 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).
  - (2) 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).
- (c) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a) and (b), 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) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a), (b), (c), and (e) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).

- (e) \$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) For all Preliminary Apportionments received after February 23, 2005, an amount equal to the sum of the amounts determined in (a) through (e) multiplied by a factor determined as follows:
  - (1) 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) Subtract 1 from the quotient in (1). Round to two decimal places.
- (g) An amount to initiate and enforce a LCP as prescribed in Section 1859.71.4 or for the DIR Fee as prescribed in Section 1859.71.7, if required by the Labor Code.
- (i) 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) through (g) above.

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

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

Reference: Sections 17071.25, 17078.52, 17078.54, ~~and 17078.58~~ and 17250.30, Education Code.

## Joint Use

### 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):

- (a) The sum of the amounts determined below:
  - (1) \$173.30 for the Toilet Facilities in the Joint-Use Project as calculated in (a)(1)(B) below:
    - (A) Divide the eligible square footage of the Joint Use Project as determined in Section 1859.124 by the total square footage of the joint-use facility.
    - (B) Multiply the quotient determined in (a)(1)(A) by the Toilet Facilities in the joint-use facility.
  - (2) \$96.30 for non-Toilet Facilities in the Joint-Use Project as calculated in (a)(2)(B) below:
    - (A) Divide the eligible square footage of the Joint Use Project as determined in Section 1859.124 by the total square footage of the joint-use facility.
    - (B) Multiply the quotient determined in (a)(2)(A) by the non-Toilet Facilities in the joint-use facility.
  - (3) 50 percent of site development work that meets the following criteria:
    - (A) It is necessary and applicable to the Joint-Use Project.
    - (B) It meets the requirements for service site development or utility costs as outlined in Section 1859.76(a) and/or (c). Off-site development work is not allowed as part of a Joint-Use Project; however, if off-site development work is necessary pursuant to Section 1859.76(b) for a Type I Joint-Use Project, the district may request the eligible off-site work under the qualifying SFP New Construction project pursuant to Section 1859.123.

(C) It is considered excessive site development costs and not eligible for funding under the qualifying SFP New Construction or Modernization project pursuant to Section 1859.123 or 1859.123.1.

(4)(A) For any project subject to the DIR Fee, the Board shall award an additional grant equal to the state's share of the fee.

(B) In the event the DIR grants a fee waiver, the Board shall award an additional grant, in an amount equal to that as would be awarded for the state's share of the DIR Fee, to maintain an internal labor compliance program.

(b) \$1 million if the Joint-Use Project will be located on a school site that is or will be serving Elementary School Pupil(s). \$1.5 million if the Joint-Use Project will be located on a school site that is or will be serving Middle School Pupil(s). \$2 million if the Joint-Use Project will be located on a school site that is or will be serving High School Pupils.

If the district is requesting funding for site development work applicable to the Joint-Use Project, the district must submit a detailed cost estimate and appropriate DSA approved plans, with the Form SAB 50-07. The cost estimate must include appropriate justification documents that indicate the work is necessary to complete the Joint-Use Project and conform to the requirements of Section 1859.76.

Utility service(s) cost shall be prorated, if necessary, for any excess capacity not needed to service the Joint-Use Project.

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). The district may be eligible for the funding provided to initiate and enforce an LCP as prescribed in Section 1859.71.4 or an additional grant for the DIR Fee as prescribed in Section 1859.71.7, if required by Labor Code.

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.

---

#### 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):

(1) The sum of the following:

(A) 50 percent of the estimated cost to construct the Joint-Use Project.

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

1. It is necessary and applicable to the Joint-Use Project.
2. It meets the requirements of Section 1859.76(a) and/or (c).
3. It is considered excessive site development costs and not eligible for funding under the qualifying SFP New Construction project pursuant to Section 1859.123.

4. The district did not receive funding for the site development work under Section 1859.125.
  - (2) The sum of the following:
    - (A) \$173.30 for the Toilet Facilities in the Joint-Use Project.
    - (B) \$96.30 for the non-Toilet Facilities in the Joint-Use Project.
    - (b) An amount determined by subtracting (b)(2) from (b)(1):
      - (1) \$1 million if the Joint-Use Project will be located on a school site that is or will be serving Elementary School Pupil(s). \$1.5 million if the Joint-Use Project will be located on a school site that is or will be serving Middle School Pupil(s). \$2 million if the Joint-Use Project will be located on a school site that is or will be serving High School Pupils.
      - (2) The Joint-Use Grant amount determined in Section 1859.125 based on square footage, if applicable. If the district is requesting funding for site development work applicable to the Joint-Use Project, the district must submit a detailed cost estimate and appropriate DSA approved plans with the Form SAB 50-07. The cost estimate must include appropriate justification documents that indicate the work is necessary to complete the Joint-Use Project and conform to the requirements in Section 1859.76. Utility service(s) cost shall be prorated, if necessary, for any excess capacity not needed to service the Joint-Use Project. The amounts shown in (a) are adjusted in a manner prescribed in Section 1859.71. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4 or may be eligible for an additional grant for the DIR Fee as prescribed in Section 1859.71.7, if required by Labor Code. 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.