

June 29, 2012

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS OF SCHOOLS, CHARTER SCHOOLS AND OTHER INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO AMEND VARIOUS REGULATION SECTIONS, ALONG WITH VARIOUS ASSOCIATED FORMS, TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

REGULATION SECTIONS PROPOSED FOR AMENDMENT: 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.

FORMS PROPOSED FOR AMENDMENT:

Application for Funding, Form SAB 50-04, (Revised ~~12/10~~ 12/11), referenced in Regulation Section 1859.2

Fund Release Authorization, Form SAB 50-05, (Revised ~~06/08~~ 12/11), referenced in Regulation Section 1859.2

Application for Joint-Use Funding, Form SAB 50-07, (Revised ~~12/10~~ 12/11), referenced in Regulation Section 1859.2

Application for Preliminary Apportionment, Form SAB 50-08, (Revised ~~12/10~~ 12/11), referenced in Regulation Section 1859.2

Application for Charter School Preliminary Apportionment, Form SAB 50-09, (Revised ~~12/10~~ 12/11), referenced in Regulation Section 1859.2

Application for Career Technical Education Facilities Funding, Form SAB 50-10, (Revised ~~12/10~~ 12/11), referenced in Regulation Section 1859.2

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-referenced Regulation Sections, and to amend the above-referenced associated forms, contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the OPSC, at its own motion or at the instance of any interested person, may adopt the proposal substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend the above-referenced regulation sections under the authority provided by Sections 17070.35, 17075.15, 17078.64 and 17078.72(k) of the Education Code, and Section 1771.3 of the Labor Code. The proposal interprets and makes specific reference Sections 17070.15, 17070.35, 17070.50, 17071.25, 17071.75, 17072.10, 17072.13, 17072.14, 17072.18, 17072.30, 17072.32, 17072.35, 17074.15, 17074.16, 17074.25, 17074.56, 17075.10, 17075.15, 17076.10, 17077.40, 17077.42, 17077.45, 17078.10, 17078.24, 17078.52, 17078.54, 17078.56, 17078.58, 17078.72, 17250.30, 17251, 100420(c) and 101012(a)(1) of the Education Code, and Section 1771.3 of the Labor Code.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on October 8, 1999.

The SAB, at its meeting on December 14, 2011, adopted emergency amendments to the SFP Regulations in order to implement recently enacted legislative requirements in accordance with:

- Senate Bill (SB) X2 9, Chapter 7, Statutes of 2010 (Padilla), as amended by
- Assembly Bill (AB) 436, Chapter 378, Statutes of 2011 (Solorio).

The emergency amendments will:

- require the Department of Industrial Relations (DIR) to directly provide prevailing wage monitoring services for all State bond funded public works projects with contracts awarded on or after January 1, 2012, and
- authorize an additional grant to school districts and charter schools calculated upon the maximum fee amount the DIR can charge for its monitoring service, and
- require all SFP funds to be returned to the State for projects that do not meet the appropriate prevailing wage monitoring compliance requirements.

The wage monitoring requirements and additional grant based upon the DIR monitoring fees will impact the following programs under the SFP:

- New Construction,
- Modernization,
- Critically Overcrowded School (COS) Facilities Program,
- Charter School Facilities Program (CSFP),
- Career Technical Education Facilities Program (CTEFP), and
- Joint-Use Program.

The DIR's Compliance Monitoring Unit (CMU) will provide their monitoring services. The proposed additional grant to school districts and charter schools will therefore be called the DIR CMU Additional Grant.

These monitoring services and the fees charged by the DIR will apply to SFP projects with a construction contract awarded after both:

- the DIR regulations are in effect (January 1, 2012) and
- the Department of Finance has approved the DIR's fee structure, except for school districts that:
- enforce a DIR-approved internal Labor Compliance Program (LCP), or

- have a qualifying collective bargaining agreement.
“Collective Bargaining Agreement” means an 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, pursuant to Labor Code Section 1771.3(b)(3).

DIR CMU Additional Grant.

The proposed emergency regulations also authorize an additional grant to school districts and charter schools calculated upon the maximum fee amount the DIR can charge for its monitoring service. The additional grant would be 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 on or 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 LCP. If the actual DIR costs are less than the grant provided, the remaining funds could be used by the district for other eligible SFP construction costs.

For example, if the total new construction project cost is \$2 million, and the State’s 50 percent share is \$1 million, then the DIR CMU Additional Grant (1/4 of one percent) equals \$2,500, for which the State’s 50 percent share is a final State apportionment of \$1,250. The same calculation method applies for modernization projects, except that the State share is 60 percent.

Legislative and Regulatory Background.

AB 1506, Chapter 868, Statutes of 2002 (Wesson) required a LCP for school construction projects funded from either Proposition 47 or Proposition 55. The purpose of the LCP was to ensure appropriate compliance with certain labor laws, such as the appropriate prevailing wage payments for construction work. School districts subject to these requirements had to either contract with a DIR-approved third party to perform the LCP, or seek approval from the DIR to initiate and enforce the LCP internally.

SB X2 9 applied to any State funded public works project, including Propositions 47, 55, 1D,* and any future bond act that does not include language specifically excluding it from these provisions. It amended the Labor Code to require the DIR to perform prevailing wage monitoring and enforcement for all school construction projects that receive State bond funds. SB X2 9 specified that 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 its requirements.

Modifications Under AB 436. On September 30, 2011, AB 436 was signed into law, amending many of the provisions in SB X2 9. DIR regulations to implement the bill were approved by the Office of Administrative Law effective January 1, 2012. Any public works projects for which the construction contract was awarded on or after the effective date of the regulations (January 1, 2012) would be subject to its provisions, including the requirement that the DIR “enforce compliance with applicable prevailing wage requirements” for these projects. For SFP projects, applicable school districts would pay the DIR for these costs. The amount the DIR may charge is capped at one quarter of one percent of the State “bond proceeds”, pursuant to Labor Code Section 1771.3(a).

*Bond/Proposition References:

Kindergarten-University Public Education Facilities Bond Act of 2002 (Proposition 47)

Kindergarten-University Public Education Facilities Bond Act of 2004 (Proposition 55)

Kindergarten-University Public Education Facilities Bond Act of 2006 (Proposition 1D)

New Prevailing Wage Monitoring Requirements. 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 are subject to the new requirement for the prevailing wage monitoring and enforcement provisions, regardless of which bond funded the project.

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 Labor Code Section 1771.3(a).
- Total project costs, pursuant to DIR Regulation Section 16452.

The total State bond amount is equal to 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 CSFP projects pursuant to SFP Regulation Section 1859.168, or CTEFP projects pursuant to SFP Regulation Section 1859.194.

Districts are exempt from this fee if the district continues to operate its existing DIR-approved internal LCP 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.”

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. “Design-build” means a procurement process in which both the design and construction of a project are procured from a single entity [Public Contract Code Section 20193(c)(2)].

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 so that they do not exceed the statutory cap. The DIR is developing a process to adjust any district payments that receive an adjustment.

School districts are required to notify the DIR of any projects that are or may be subject to Labor Code Section 1771.3 when the school board awards the contract, pursuant to the DIR Regulations. 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.

The regulatory amendments are therefore consistent and compatible with State laws and regulations.

A summary of the proposed emergency regulatory amendments, including associated forms, is as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed emergency amendments change the revision date of Forms SAB 50-04, 50-05, 50-07, 50-08, 50-09, and 50-10 to “12/11.” The amendments also add a definition of “Total Projected Bond Apportionment” for the purpose of complying with the statutory cap to the DIR CMU costs as calculated based upon a percentage of the State bond proceeds. Labor Code Section 1771.3 is added to the list of reference citations.

Existing Regulation Section 1859.71.4 implements provisions for increased SFP funding for a LCP as authorized in Assembly Bill 1506, Chapter 868, Statutes of 2002. It sets forth a sliding scale and calculation for new construction projects that determines the per-pupil grant increase

for initiating and enforcing a labor compliance program. The proposed emergency amendments clarify in subsection (a) the authority and funding for the existing grant increase for LCP for construction contracts awarded prior to January 1, 2012, and add new subsections (c) through (f):

(c) implementing the statutorily authorized additional grant for DIR prevailing wage monitoring and enforcement, equaling 50 percent of one-fourth of one percent of the Total Projected Bond Apportionment for qualifying projects with construction contracts awarded on or after January 1, 2012, and

(d) setting forth the new statutory requirement pursuant to Labor Code Section 1771.3 that any public works projects paid from State bonds and for which the construction contract is awarded on or after January 1, 2012 is subject to the DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless exempt pursuant to Labor Code Section 1771.3(b), and

(e) requiring school districts that fail to meet the requirements in subsection (d) to return to the State all State funding for the project, including interest at the higher of two specified rates, with the interest due to be returned calculated from the date the funds were received by the school district until the date of the Board's finding, and

(f) requiring school districts to return to the State all State funding for a project, including interest as described in subsection (e), if the DIR revokes approval for the district's internal LCP enforcement and the district then fails to provide appropriate prevailing wage monitoring through the DIR or other exemptions as specified in Labor Code Section 1771.3, for any construction projects for which the violations occurred.

Labor Code Section 1771.3 is added to the list of authority citations, and Education Code Section 17072.30 is added to the list of reference citations.

Existing Regulation Section 1859.78.1 implements provisions for increased SFP funding authorized in Assembly Bill 1506, Chapter 868, Statutes of 2002. It sets forth a sliding scale and calculation for modernization projects that determines the per-pupil grant increase for the initiation, enforcement, and monitoring of a labor compliance program. The proposed emergency amendments lengthen the Section Title to include "Prevailing Wage Monitoring and Enforcement Costs," and clarify in subsection (a) the authority and funding for the existing grant increase for LCP for construction contracts awarded prior to January 1, 2012. In addition, the proposed emergency amendments add new subsections (b) through (e):

(b) implementing the statutorily authorized additional grant for DIR prevailing wage monitoring and enforcement, equaling 60 percent of one-fourth of one percent of the Total Projected Bond Apportionment for qualifying projects with construction contracts awarded on or after January 1, 2012, and

(c) setting forth the new statutory requirement pursuant to Labor Code Section 1771.3 that any public works projects paid from State bonds and for which the construction contract is awarded on or after January 1, 2012 is subject to the DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless exempt pursuant to Labor Code Section 1771.3(b), and

(d) requiring school districts that fail to meet the requirements in subsection (c) to return to the State all State funding for the project, including interest at the higher of two specified rates, with the interest due to be returned calculated from the date the funds were received by the school district until the date of the Board's finding, and

(e) requiring school districts to return to the State all State funding for a project, including interest as described in subsection (d), if the DIR revokes approval for the district's internal LCP enforcement and the district then fails to provide appropriate prevailing wage monitoring through the DIR or other exemptions as specified in Labor Code Section 1771.3, for any construction projects for which the violations occurred.

Labor Code Section 1771.3 is added to the list of authority citations, and Education Code Section 17072.30 is added to the list of reference citations.

Existing Regulation Section 1859.79.2 specifies the permissible and impermissible uses of Modernization Grant Funds, including the permissible use of modernization funds for the costs incurred by a school district for the initiation and enforcement of a labor compliance program. The proposed emergency amendments add "Labor Code Section 1771.3(a)" to the list of authorizing Code sections for Modernization grant funding. In addition, Education Code Section "17070.15(f)" is corrected to "17070.15(i)." Labor Code Section 1771.3 is added to the list of reference citations.

Existing Regulation Section 1859.82 establishes the criteria a district must meet to be 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. Subsections (a) and (b) include the sentence: "The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4." The proposed emergency amendments clarify in both subsections (a) and (b) the authority and funding for the existing grant increase for LCP for construction contracts awarded prior to January 1, 2012, and add a new sentence implementing the statutorily authorized additional grant for DIR prevailing wage monitoring and enforcement, equaling 50 percent of one-fourth of one percent of the Total Projected Bond Apportionment for qualifying projects with construction contracts awarded on or after January 1, 2012. Education Code Section 17250.30 and Labor Code Section 1771.3 are added to the list of reference citations.

Existing Regulation Section 1859.83 sets forth district eligibility criteria for excessive cost hardship grant funding as a result of specified unusual circumstances that create excessive project costs beyond the control of the district, including subsection (e) "Excessive Cost" for qualifying rehabilitation projects, for which: "The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4." The proposed emergency amendments clarify in subsection (e) the authority and funding for the existing grant increase for LCP for construction contracts awarded prior to January 1, 2012, and add a new sentence implementing the statutorily authorized additional grant for DIR prevailing wage monitoring and enforcement, equaling 50 percent of one-fourth of one percent of the Total Projected Bond Apportionment for qualifying projects with construction contracts awarded on or after January 1, 2012. Education Code Section 17250.30 and Labor Code Section 1771.3 are added to the list of reference citations.

Existing Regulation Section 1859.106 specifies, for purposes of the Program Accountability Expenditure Audit, the allowable district expenditures and State apportionments for new construction projects, Joint-Use projects, Critically Overcrowded School Facilities projects, charter school projects, modernization projects, and compliance with site acquisition guidelines. The proposed emergency amendments add new subsections (c) and (d):

(c) an adjustment in the SFP grant for projects that received funding pursuant to Sections 1859.71.4(c) or 1859.78.1(b), to equal 50 percent or 60 percent, respectively, of one-fourth of one percent of the difference between the original Total Projected Bond Apportionment and the newly calculated amount, and

(d) a limitation that any adjustments pursuant to Section 1859.106 will be made only if sufficient bond authority is available, or else the adjustments to the projects will be placed on the Unfunded List.

Labor Code Section 1771.3 is added to the list of reference citations.

Existing Regulation Section 1859.125 sets forth the criteria for Joint-Use project grant determinations based upon square footage, including the sentence: “The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.” The proposed emergency amendments clarify the authority and funding for the existing grant increase for LCP for construction contracts awarded prior to January 1, 2012, and add a new sentence pertaining to qualifying projects with construction contracts awarded on or after January 1, 2012, that the grant may be adjusted in the manner prescribed in Section 1859.71.4(c) and subject to the limitations in Section 1859.71.4(d). Education Code Section 17250.30 and Labor Code Section 1771.3 are added to the list of reference citations.

Existing Regulation Section 1859.125.1 sets forth the criteria for additional Type I Joint-Use project “Extra Cost” grant funding in addition to the square footage Joint-Use Grant provided in Section 1859.125, including the sentence: “The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.” The proposed emergency amendments clarify the authority and funding for the existing grant increase for LCP for construction contracts awarded prior to January 1, 2012, and add a new sentence pertaining to qualifying projects with construction contracts awarded on or after January 1, 2012, that the grant may be adjusted in the manner prescribed in Section 1859.71.4(c) and subject to the limitations in Section 1859.71.4(d). Education Code Section 17250.30 and Labor Code Section 1771.3 are added to the list of reference citations.

Existing Regulation Section 1859.145 sets forth the criteria under the COS Program to determine preliminary apportionments, including the sentence: “The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.” The proposed emergency amendments clarify the authority and funding for the existing grant increase for LCP for construction contracts awarded prior to January 1, 2012, and add a new sentence pertaining to qualifying projects with construction contracts awarded on or after January 1, 2012, that the grant may be adjusted in the manner prescribed in Section 1859.71.4(c) and subject to the limitations in Section 1859.71.4(d). Education Code Section 17250.30 and Labor Code Section 1771.3 are added to the list of reference citations.

Existing Regulation Section 1859.163.1 sets forth the criteria for eligible construction and site acquisition costs for preliminary charter school new construction apportionment determinations, including a cost factor for the amount to initiate and enforce a labor compliance program if required by the Labor Code. The proposed emergency amendments delete from subsection (a) and re-state in new subsection (c) the criteria for the existing grant increase for initiating and enforcing a LCP for construction contracts awarded prior to January 1, 2012. New subsection (c) is added stating that the qualifying amount toward the Preliminary Charter School Apportionment will be either:

- (1) 50 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) 50 percent of the amount of the prevailing wage monitoring and enforcement 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 California School Finance Authority attributable to either (1) or (2) above, as applicable.

Existing subsection (c) is renumbered “(d)” because of the new subsection (c) added above. The total Preliminary Charter School Apportionment amount is changed from the total of (a) and (b) to the total of (a), (b), and (c). New subsections (e), (f), and (g) are added as follows:

(e) setting forth the new statutory requirement pursuant to Labor Code Section 1771.3 that any public works projects paid from State bonds and for which the construction contract is

awarded on or after January 1, 2012 is subject to the DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless exempt pursuant to Labor Code Section 1771.3(b), and

(f) requiring school districts that fail to meet the requirements in subsection (e) to return to the State all State funding for the project, including interest at the higher of two specified rates, with the interest due to be returned calculated from the date the funds were received by the school district until the date of the Board's finding, and

(g) requiring school districts to return to the State all State funding for a project, including interest as described in subsection (f), if the DIR revokes approval for the district's internal LCP enforcement and the district then fails to provide appropriate prevailing wage monitoring through the DIR or other exemptions as specified in Labor Code Section 1771.3, for any construction projects for which the violations occurred.

Education Code Section 17250.30 and Labor Code Section 1771.3 are added to the list of reference citations.

Existing Regulation Section 1859.163.5 sets forth the criteria for preliminary charter school rehabilitation apportionment determinations, including a cost factor for the amount to initiate and enforce a labor compliance program if required by the Labor Code. The proposed emergency amendments re-number or re-letter all existing subsections. In addition, former subsection (g) is deleted and re-stated in new subsection (b) - - this is the criteria for the existing grant increase for initiating and enforcing a LCP for construction contracts awarded prior to January 1, 2012.

New subsection (b) states that the qualifying amount toward the Preliminary Charter School Apportionment will be either:

- (1) 50 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) 50 percent of the amount of the prevailing wage monitoring and enforcement 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.

New subsections (c), (d), and (e) are added as follows:

(c) setting forth the new statutory requirement pursuant to Labor Code Section 1771.3 that any public works projects paid from State bonds and for which the construction contract is awarded on or after January 1, 2012 is subject to the DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless exempt pursuant to Labor Code Section 1771.3(b), and

(d) requiring school districts that fail to meet the requirements in subsection (c) to return to the State all State funding for the project, including interest at the higher of two specified rates, with the interest due to be returned calculated from the date the funds were received by the school district until the date of the Board's finding, and

(e) requiring school districts to return to the State all State funding for a project, including interest as described in subsection (d), if the DIR revokes approval for the district's internal LCP enforcement and the district then fails to provide appropriate prevailing wage monitoring through the DIR or other exemptions as specified in Labor Code Section 1771.3, for any construction projects for which the violations occurred.

Education Code Sections 17078.56 and 17250.30, and Labor Code Section 1771.3 are added to the list of reference citations.

Existing Regulation Section 1859.193 sets forth the criteria under the CTEFP to determine grants to local educational agencies for constructing qualifying new facilities, or modernizing or reconfiguring existing school buildings. The proposed emergency amendments add new subsections (a)(1)(C), (b)(1)(D), and (c)(1)(C) that CTEFP projects may qualify for the new additional grant for prevailing wage monitoring and enforcement costs as prescribed in Section 1859.71.4(c), for public works projects awarded on or after January 1, 2012.

In addition, new subsections (a)(4), (a)(5), and (a)(6) are added as follows:

(a)(4) setting forth the new statutory requirement pursuant to Labor Code Section 1771.3 that any public works projects paid from State bonds and for which the construction contract is awarded on or after January 1, 2012 is subject to the DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless exempt pursuant to Labor Code Section 1771.3(b), and

(a)(5) requiring school districts that fail to meet the requirements in subsection (a)(4) to return to the State all State funding for the project, including interest at the higher of two specified rates, with the interest due to be returned calculated from the date the funds were received by the school district until the date of the Board's finding, and

(a)(6) requiring school districts to return to the State all State funding for a project, including interest as described in subsection (a)(5), if the DIR revokes approval for the district's internal LCP enforcement and the district then fails to provide appropriate prevailing wage monitoring through the DIR or other exemptions as specified in Labor Code Section 1771.3, for any construction projects for which the violations occurred.

Also, new subsections (b)(5), (b)(6), and (b)(7) are added as follows:

(b)(5) setting forth the new statutory requirement pursuant to Labor Code Section 1771.3 that any public works projects paid from State bonds and for which the construction contract is awarded on or after January 1, 2012 is subject to the DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless exempt pursuant to Labor Code Section 1771.3(b), and

(b)(6) requiring school districts that fail to meet the requirements in subsection (b)(5) to return to the State all State funding for the project, including interest at the higher of two specified rates, with the interest due to be returned calculated from the date the funds were received by the school district until the date of the Board's finding, and

(b)(7) requiring school districts to return to the State all State funding for a project, including interest as described in subsection (b)(6), if the DIR revokes approval for the district's internal LCP enforcement and the district then fails to provide appropriate prevailing wage monitoring through the DIR or other exemptions as specified in Labor Code Section 1771.3, for any construction projects for which the violations occurred.

Finally, new subsections (c)(5), (c)(6), and (c)(7) are added as follows:

(c)(5) setting forth the new statutory requirement pursuant to Labor Code Section 1771.3 that any public works projects paid from State bonds and for which the construction contract is awarded on or after January 1, 2012 is subject to the DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless exempt pursuant to Labor Code Section 1771.3(b), and

(c)(6) requiring school districts that fail to meet the requirements in subsection (c)(5) to return to the State all State funding for the project, including interest at the higher of two specified rates, with the interest due to be returned calculated from the date the funds were received by the school district until the date of the Board's finding, and

(c)(7) requiring school districts to return to the State all State funding for a project, including interest as described in subsection (c)(6), if the DIR revokes approval for the district's internal LCP enforcement and the district then fails to provide appropriate prevailing wage monitoring through the DIR or other exemptions as specified in Labor Code Section 1771.3, for any construction projects for which the violations occurred.

Education Code Section 17250.30 and Labor Code Section 1771.3 are added to the list of reference citations.

Existing Form SAB 50-04, *Application for Funding*, is submitted by school districts to apply for State funding for new construction or modernization projects. The proposed emergency amendments provide for the following:

- In order to determine whether the project will be subject to the AB 436 provisions, the proposed changes collect the following information:
 - Contract Award Dates(s)
 - 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 qualifying 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 internal LCP, pursuant to AB 1506. This would allow the OPSC to determine whether a project would be eligible to be funded from Proposition 47 or 55.
- A certification that the district has contracted or will contract with the DIR for prevailing wage monitoring and enforcement if the construction contract(s) is awarded on or after January 1, 2012 and the district project is not exempt from this requirement pursuant to Labor Code Section 1771.3(b).

Existing Form SAB 50-05, *Fund Release Authorization*, is the Form submitted by school districts and charter schools asking for the State to release their approved funding, provided the project is at least 50 percent under contract and the school district has met other specific criteria. The proposed emergency amendments provide for the following:

- Require verification that the district has notified the DIR for public works contracts awarded on or after January 1, 2012. This notification is required pursuant to the DIR's regulations and alerts the DIR's CMU that the prevailing wage monitoring services must be provided for the construction project. If the construction contract was awarded between January 1, 2012 and July 1, 2012, the district may submit a copy of the notice it sent to the DIR in lieu of the DIR acknowledgement. For those projects, districts would be able to submit either 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. For contracts awarded after July 1, 2012, districts must submit the DIR notification along with the Form SAB 50-05.
- School districts that continue to operate a DIR-approved internal LCP are provided an option to submit either the project notification to the DIR or documentation from the DIR that the internal program is approved. Either document would provide sufficient verification of the statutory requirements of prevailing wage monitoring.

- School districts will provide the contract award date(s) to allow the OPSC to determine if the award date falls after the effective date of the new regulations.
- A certification is added that the district will contract with the DIR for the required prevailing wage monitoring and enforcement, or that the requirement is waived pursuant to the exemptions set forth in Labor Code Section 1771.3(b).
- Four concluding identification fields are added for the signer's printed name, title, e-mail address and phone number.
- Under General Information, non-substantive corrections are made to paragraph numbers.

Existing Form SAB 50-07, *Application for Joint-Use Funding*, is used by school districts to request funding for Joint-Use Projects (Types I and II). The proposed emergency amendments provide for the following:

- 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(s)
 - 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 qualifying 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 internal LCP, pursuant to AB 1506. This would allow the OPSC to determine whether a project would be eligible to be funded from Proposition 47 or 55.
- A certification that the district will contract with the DIR for prevailing wage monitoring and enforcement if the construction contract(s) is awarded on or after January 1, 2012 and the district project is not exempt from this requirement pursuant to Labor Code Section 1771.3(b).

Existing Form SAB 50-08, *Application for Preliminary Apportionment*, is used by school districts to file for a preliminary apportionment under the COS Program once the SAB has determined or adjusted the school district's eligibility for new construction funding. The proposed emergency amendments provide for the following:

- 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.
- Clarify that the certification about LCPs initiated pursuant to Labor Code Section 1771.7 and funded from Proposition 47 or 55 pertains to construction contracts awarded before January 1, 2012.
- Add a certification that the district will contract with the DIR for prevailing wage monitoring and enforcement if the construction contract(s) is awarded on or after January 1, 2012 and the district project is not exempt from this requirement pursuant to Labor Code Section 1771.3(b).

Existing Form SAB 50-09, *Application for Charter School Preliminary Apportionment*, is used by school districts and charter schools for purposes of requesting a preliminary apportionment for the new construction of charter school facilities. The proposed emergency amendments provide for the following:

- In order to determine whether the project will be subject to the AB 436 provisions, the proposed changes collect the following information:
 - Contract Award Dates(s)
 - 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 qualifying 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 internal LCP, pursuant to AB 1506. This would allow the OPSC to determine whether a project would be eligible to be funded from Proposition 47 or 55.
- A certification that the district will contract with the DIR for prevailing wage monitoring and enforcement if the construction contract(s) is awarded on or after January 1, 2012 and the district project is not exempt from this requirement pursuant to Labor Code Section 1771.3(b).

Existing Form SAB 50-10, *Application for Career Technical Education Facilities Funding*, is the form submitted by school districts or joint powers authorities to request a CTEFP grant. The proposed emergency amendments provide for the following:

- In order to determine whether the project will be subject to the AB 436 provisions, the proposed changes collect the following information:
 - Contract Award Dates(s)
 - 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 qualifying 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 internal LCP, pursuant to AB 1506. This would allow the OPSC to determine whether a project would be eligible to be funded from Proposition 47 or 55.
- A certification that the district will contract with the DIR for prevailing wage monitoring and enforcement if the construction contract(s) is awarded on or after January 1, 2012 and the district project is not exempt from this requirement pursuant to Labor Code Section 1771.3(b).

Due to the large amount of regulatory text and six associated forms, this information is not attached and may be reviewed on the Office of Public School Construction Web site at:

http://www.documents.dgs.ca.gov/opsc/Regulations/SFP_Proposed/12-2011/LCP_Amend.pdf.

Copies of the amended regulatory text and forms will be mailed to any person requesting this information by using the OPSC contact information set forth below under "Submission of Comments, Documents and Additional Information" (page 15).

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require school districts or charter schools to incur additional costs in order to comply with the proposed regulations.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION/RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The Executive Officer of the SAB has made the following initial determinations have been made relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- The proposed regulatory amendments will have a minimal impact in the creation or elimination of jobs within the State, the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California. However, SB X2 9 as amended by AB 436 require State bond-funded public works projects with construction contracts awarded on or after January 1, 2012 to have the DIR directly monitor and enforce prevailing wage compliance. The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- The proposed regulations do not require a report to be submitted other than as required by law. However, SB X2 9 as amended by AB 436 requires that school districts and charter schools report to the DIR when they award a construction contract on or after January 1, 2012 for a State bond-funded public works project.
- There will be no non-discretionary costs or savings to local agencies.
- The proposed regulations create no costs to school districts and charter schools beyond those required by law, except for the required district/charter school contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- The proposed regulations create no costs or savings to any State agency beyond those required by law.
- The SAB has made an initial determination that there will be no impact on housing costs.
- The proposed regulatory action promotes fairness and social equity by carrying out the intent of AB 436 that employees need to be properly paid on all State bond-funded public works projects for which the construction contract is awarded on or after January 1, 2012.
- There are benefits to the health and welfare of California residents, worker safety, and the State's environment. Implementing these amendments will have a positive impact on the availability of a skilled labor force, and encourage improved health and safety of construction and trades employees through proper apprenticeship and training. Public health and safety is enhanced through the proposed regulations because a properly paid and trained work force will build school construction projects that are structurally Code-compliant and safer for use by pupils, staff, and others on the site.

It is SB X2 9 as amended by AB 436 that create the prevailing wage monitoring requirements. The proposed regulations incorporate these legal requirements into the SFP Regulations to carry out the Legislative purposes. The SAB finds that the proposed emergency amendments are reasonably necessary to implement SB X2 9 as amended by AB 436.

The SAB finds the proposed regulations fully consistent with the stated purposes and benefits of AB 436 as set forth in the Bill's Legislative Declaration. The AB 436 Legislative Declaration recites:

1. that in 2009 the Legislature determined that it would be more cost effective to use the experience of the DIR to monitor and enforce compliance with prevailing wage requirements on public works projects than to use LCPs;
2. the Legislature therefore required that, upon adoption of implementing regulations and fee schedules, the DIR would monitor and enforce compliance with the prevailing wage requirements on all future awarded contracts for public works projects for which LCPs have previously been used, or for public works projects paid in whole or part with State bond funds,

but with exceptions for awarding bodies to continue existing approved LCPs in lieu of the DIR monitoring and enforcement;

3. the Legislature further authorized that the cost of the DIR monitoring and enforcement activities on State bond-funded public works projects could be paid from State bond proceeds;
4. that AB 436 is intended to clarify the method by which the DIR may charge and be reimbursed for monitoring and enforcing compliance with the prevailing wage requirements for contracts for construction of public works projects paid for out of public funds derived from State-issued bonds;
5. that the Legislature finds that it “is and historically has been a necessary and prudent oversight activity” to have monitoring and enforcement of applicable prevailing wage requirements on public works projects paid for out of public funds derived from State-issued bonds;
6. that the authority to use State bond proceeds for the construction of public works projects inherently includes authority to pay reasonable costs of such oversight activities that are directly related to such construction from State bond proceeds allocated to such construction;
7. the Legislature finds that the reasonable and directly related costs for such monitoring and enforcement for compliance with prevailing wage requirements on State bond-funded public works projects is a necessary and prudent oversight activity and constitutes an inherent cost of construction, payable from State bond proceeds allocated to such project.

In addition, various provisions of AB 436 recite purposes to foster a “skilled labor force availability,” to verify the existence of a “registered apprenticeship program approved by the California Apprenticeship Council,” and to be consistent with the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, the federal Occupational Safety and Health Act of 1970 (Public Law 91-596), and the Contractors’ State License Law (Chapter 9 commencing with Section 7000) of Division 3 of the Business and Professions Code.

The SAB finds that the proposed emergency amendments are fully consistent with and help to implement the DIR regulations that became effective January 1, 2012. The DIR regulations, California Code of Regulations, Title 8, Chapter 8, Subchapters 4 and 4.5, amending the “Operation of Labor Compliance Program and Contracts Subject to Labor Compliance Program Jurisdiction,” and adopting new regulation sections for “Compliance Monitoring and Enforcement by Department of Industrial Relations,” including Notices, Fees, and Fee Waivers. The DIR authority to establish fee rates for its services derives from the AB 436 repeal and adoption of Labor Code Section 1771.5(h). The proposed additional grant to school districts and charter schools in these SAB regulatory amendments is calculated upon that maximum fee amount the DIR can charge for its monitoring service.

The proposed SAB regulatory amendments also incorporate the AB 436 creation of exceptions to the DIR prevailing wage monitoring requirement for construction contracts under the control of the awarding body that were previously approved by the DIR to operate its own in-house LCP for all projects, or meets the LCP requirements through a third party contract. This exception was codified in amendments to Public Contract Code Section 20919.3. That list can be reviewed at www.dir.ca.gov/lcp.asp. Also excepted from the DIR CMU monitoring and enforcement requirement, in accordance with AB 436 and Labor Code Section 1771.3, are projects covered by qualified project labor agreements (i.e., collective bargaining agreements that bind all contractors on the project and contain mechanisms for resolving wage disputes).

The proposed requirement in the regulations that all SFP funds must be returned to the State for projects that do not meet the prevailing wage monitoring compliance requirements carries out the purposes of AB 436 and ensures the legal use of State bond funds on public works projects.

EFFECT ON SMALL BUSINESSES

It has been determined that the adoption of the regulation sections will not affect small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. The regulations only apply to school districts and charter schools for purposes of funding school facility projects.

SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OPSC no later than August 13, 2012, at 5:00 p.m. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Robert Young, Regulations Coordinator

Mailing Address: Office of Public School Construction
707 Third Street, Room 1-430
West Sacramento, CA 95605

E-mail Address: robert.young@dgs.ca.gov

Fax No.: (916) 376-5332

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Robert Young at (916) 375-5939. If Mr. Young is unavailable, these questions may be directed to the backup contact person, Lisa Jones, Supervisor, Regulations Team, at (916) 376-1753.

ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulations substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulations should be addressed to the agency's regulations coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in ~~strikeout~~/underline.
2. A copy of this Notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received, they will be added to the rulemaking file. The file is available for public inspection at the OPSC during normal working hours. Items 1 through 3 are also available on the OPSC Internet Web site at: <http://www.dgs.ca.gov/opsc> under "Resources," then click on "Laws and Regulations," then click on "SFP Pending Regulatory Changes."

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulations coordinator named in this notice or may be accessed on the Web site listed above.