

FINDING OF EMERGENCY

The State Allocation Board (SAB) finds that an emergency exists, and that the proposed regulations are necessary for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

Specific Facts Showing the Need for Immediate Action

Immediate action is needed to approve emergency regulatory amendments to the School Facility Program (SFP) Regulations to implement:

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

Early implementation is important because the legislation requires school district compliance on and after January 1, 2012. Delay in the effective date of the proposed emergency regulations will facilitate school districts operating in violation of the newly changed Labor Code sections, comprising a misuse of State bond funds. The Department of Industrial Relations (DIR) must now directly provide prevailing wage monitoring services for all State bond funded public works projects. This specifically impacts SFP school facility projects because they are funded by State bond funds. Projects with construction contracts awarded on or after January 1, 2012 are subject to the new requirements.

The emergency amendments will 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, 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 earliest implementation of the emergency regulations is needed to enforce the legislation, promote the general and economic welfare of California workers by assuring that taxpayer dollars are only apportioned to projects where prevailing wage requirements are enforced, and to recover State bond funds from districts that are not in compliance.

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 the monitoring services. The CMU fees charged to school districts for its services 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 Regulations Section 16452.

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 LCP program, 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. This additional grant will be called the DIR CMU Additional Grant. 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 applies 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

*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)

funds. SB X2 9 specified that prevailing wage monitoring and enforcement must be directly administered by the DIR, with the exception of projects for which the school district had 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 OAL and are in effect as of January 1, 2012. Any public works projects for which the construction contract is awarded on or after the effective date of the regulations (January 1, 2012) will be subject to its provisions, including the requirement that the DIR will “enforce compliance with applicable prevailing wage requirements” for these projects. For SFP projects, applicable school districts will pay the DIR for these costs. Similar to SB X2 9, 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).

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 projects 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)].

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 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.

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.

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

Authority and Reference Citations

Authority: Section 17070.35, 17075.15, 17078.64, and 17078.72(k) of the Education Code, and Section 1771.3 of the Labor Code.

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, 17074.32, 17074.56, 17075.10, 17075.15, 17076.10, 17077.40, 17077.42, 17077.45, 17078.10, 17078.24, 17078.52, 17078.56, 17078.58, 17078.72, 17250.30, 17251, 100420(c) and 101012(a)(1) of the Education Code, Section 1771.3 of the Labor Code, and Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code.

Informative Digest/Policy Overview Statement

Senate Bill 50, Chapter 407, Statutes of 1998, established the School Facility Program which streamlined funding processes, eliminated State oversight, and made school districts more accountable for their projects. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were adopted by the Office of Administrative Law and filed with the Secretary of State on October 8, 1999.

The State Allocation Board (SAB), at its December 14, 2011 meeting, adopted emergency regulatory amendments to the School Facility Program (SFP) Regulations to implement recently enacted legislative requirements for the Department of Industrial Relations (DIR) to directly provide prevailing wage monitoring services for all State bond funded public works projects, in accordance with Senate Bill X2 9, Chapter 7, Statutes of 2010 (Padilla), as amended by Assembly Bill 436, Chapter 378, Statutes of 2011 (Solorio). The emergency amendments will 1) 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 2) require all SFP funds to be returned to the State for projects that do not meet the appropriate prevailing wage monitoring compliance requirements.

As discussed above, AB 1506 required an LCP for school construction projects funded from either Proposition 47 or Proposition 55. 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. Then SB X2 9 (see Labor Code Sections 1771.55 and 1771.75) applied the LCP requirements to any State bond funded public works project, including Proposition 1D. SB X2 9 specified that the LCP must be either directly administered by the DIR, or by the school district if approved by the DIR. It superseded AB 1506 in that contracting with a third party administrator no longer demonstrated LCP compliance. On August 1, 2010 the DIR began providing monitoring services for labor compliance for all bond-funded public works projects, and school districts that did not have an approved in-house LCP began using the DIR services instead of a third party administrator.

Repeal of DIR Implementing Regulations: On October 21, 2010, the DIR began notifying participating school districts of the impending repeal of its implementing regulations and that the DIR would no longer be providing LCP monitoring services. The Office of Administrative Law (OAL) approved the DIR's request to repeal the regulations effective November 4, 2010. The LCP requirements then reverted back to those of LC Section 1771.7 as created by AB 1506, and contracting with a third party LCP administrator was again a permissible compliance method. The DIR advised school districts that projects funded from Propositions 47 and 55 must either continue using their DIR-approved in-house LCP or contract with a third party administrator, pursuant to LC Section 1771.7. The repeal of the DIR regulations also made applicable the provision that an LCP is not required for projects funded from Proposition 1D.

Then AB 436 was signed into law on September 30, 2011, amending many of the provisions in SB X2 9. DIR regulations to implement the bill went into effect on January 1, 2012. Any public works projects for which the construction contract is awarded on or after January 1, 2012 will be subject to its provisions.

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 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 applicable Education Code and Government Code sections are 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 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 (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 applicable Education Code and Government Code sections are 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 subsection (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 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 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.

Labor Code Section 1771.3 and applicable Education Code and Government Code sections 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.

Labor Code Section 1771.3 and applicable Education Code and Government Code sections 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 to subsections (a), (b), and (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.

Labor Code Section 1771.3 and applicable Education Code and Government Code sections 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 would be added 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 50-05, *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 labor compliance program 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 documents would provide sufficient verification of the statutory requirements of prevailing wage monitoring.
- School districts would provide the contract award date(s) on the proposed Form SAB 50-05 to allow the OPSC to determine if the award date falls after the effective date of the new regulations.

- 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).
- 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 would be added 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.
- 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 would be added 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 would be added 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).

Mandate on Local Agencies or School Districts

The Executive Officer of the SAB has determined that the proposed emergency 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 local agencies or school districts to incur additional costs in order to comply with the proposed emergency regulations.

Cost Estimate

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact that might result from the proposed emergency regulatory action and it has been determined that:

- There will be no costs or savings to the State.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.