

February 3, 2012

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

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED EMERGENCY REGULATORY ACTION

In accordance with Assembly Bill 1302, Chapter 713, Statutes of 2006, enclosed are proposed emergency regulations adopted by the State Allocation Board (SAB) at its meeting on December 14, 2011. These emergency amendments to the School Facility Program (SFP) Regulations will 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 (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

- 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.

Attached to this Notice is the Finding of Emergency. Due to the voluminous amount of amended regulatory text and six associated forms, this information is not attached and may be reviewed, along with the Finding of Emergency, on the Office of Public School Construction (OPSC) Web site at www.dgs.ca.gov/opsc. 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. The proposed emergency regulations would amend the SFP Regulations under the California Code of Regulations, Title 2, Chapter 3, Subchapter 4, Group 1, State Allocation Board, Subgroup 5.5, Regulations relating to the Leroy F. Greene School Facilities Act of 1998.

The OPSC, on behalf of the SAB, will be submitting these emergency regulations to the Office of Administrative Law (OAL) during February 2012. The following is an overview of the proposed regulatory amendments.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established the SFP through Senate Bill 50, Chapter 407, Statutes of 1998. 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 OAL and filed with the Secretary of State on October 8, 1999.

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 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

*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)

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 OAL and will be in effect on January 1, 2012. Any public works projects for which the construction contract is awarded on or after the effective date of the regulations (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. 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).

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 Regulations 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.

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.

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).

SUBMISSION OF COMMENTS

Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the OAL, the adopting agency provide a Notice of the Proposed Emergency Action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulations to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6.

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed emergency regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OAL within five days after the SAB submits the emergency regulations to the OAL for review.

Please reference submitted comments as regarding “State Allocation Board – Prevailing Wage Monitoring by the DIR,” addressed to:

Reference Attorney

Mailing Address: Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

E-mail Address: staff@oal.ca.gov

Fax No.: (916) 323-6826

For the status of the SAB submittal to the OAL for review, and the end of the five-day written submittal period, please consult the Web site of 1) the OAL at www.oal.ca.gov under the heading “Emergency Regulations,” and 2) the OPSC at www.dgs.ca.gov/opsc under the Tab “Resources,” then click on “Laws and Regulations,” then click on “SFP Pending Regulatory Changes.”

Pursuant to Title I, Section 55, please send a copy of written comments regarding the proposed regulatory action, as well as requests for a copy of the proposed regulatory action, and questions concerning the substance of the proposed regulatory action, 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 Emergency 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, Ms. Lisa Jones, Supervisor, Regulations Team, at (916) 376-1753.