

November 20, 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 October 24, 2012. These emergency regulatory amendments to the School Facility Program (SFP) Regulations will clarify the requirements for school districts to initiate and enforce Labor Compliance Programs (LCPs) in order to receive school bond apportionments from either:

- the Kindergarten-University Public Education Facilities Bond Act of 2002 (Prop. 47) or
- the Kindergarten-University Public Education Facilities Bond Act of 2004 (Prop. 55).

The LCP requirements are in accordance with Assembly Bill 1506, Chapter 868, Statutes of 2002 (Wesson). The proposed emergency regulations are necessary to ensure that State bond funds authorized by these two Propositions are apportioned only to SFP projects that comply with the LCP requirements. The verification criteria are incorporated from Labor Code Sections 1771.5 and 1771.7, and the Department of Industrial Relations (DIR) Regulation Section 16432. These criteria ensure various record-keeping, federal and state labor law compliance, and payroll documentation.

The proposed emergency regulatory amendments would add a new regulation section to clarify the LCP "written finding" requirement specified in Labor Code Section 1771.7(d)(2)(B), and provide criteria for districts to receive Proposition 47 or 55 bond funding in cases where a district initiated and enforced an LCP after the construction contract was awarded for the project.

Such districts would be able to verify their LCP compliance by submitting a report to the Office of Public School Construction (OPSC) and the DIR prepared by a contracted third party LCP provider that includes:

- verification that the applicable duties of an LCP were performed on the project,
- verification that the performance of the applicable LCP duties began within one month after the commencement of the construction work, and
- a written record of the LCP's confirmation of monthly payroll records for the project.

Attached to this Notice is the specific regulatory language of the proposed emergency action, proposed amendments to Form SAB 50-05, and the Finding of Emergency. You may also review the proposed regulatory language, the Form, and the Finding of Emergency on the OPSC Web site at www.dgs.ca.gov/opsc. Copies of the amended regulatory text and form 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 November 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 SAB, at its October 24, 2012 meeting, adopted emergency regulatory amendments to the SFP Regulations to clarify the requirements for school districts to initiate and enforce LCPs in order to receive school bond apportionments from either Proposition 47 or Proposition 55.

Under the proposed amendments, districts that contracted with a third party LCP provider or obtained DIR approval of its LCP after the construction contract was awarded would be required to submit a report to the OPSC and the DIR from a third party LCP provider that includes:

- verification that the applicable duties of an LCP were performed on the project,
- verification that the performance of the applicable LCP duties began within one month after the commencement of the construction work, and
- a written record of the LCP's confirmation of monthly payroll records for the project.

The DIR would have 60 days to review the report and determine it to be incorrect, thereby preventing project funding from Proposition 47 or 55. Districts would also need to provide a notice to each worker that the district submitted the report and that the workers may contact the OPSC and the DIR concerning the accuracy of the findings. The emergency regulations would apply to projects with construction contracts awarded prior to January 1, 2012 (because different criteria became effective for projects with construction contracts awarded on or after January 1, 2012).

Finally, for districts wishing to accelerate bond funding for their projects through the priority funding process, they must give the DIR 60 calendar days to review the report of an untimely LCP initiation prior to submitting the *Fund Release Authorization*, (Form SAB 50-05) to receive the funds. To allow districts sufficient time to comply, this requirement would only apply on or after July 1, 2013.

A summary of the proposed emergency regulatory amendments, adoption of a new section, and amendments to an associated form, are 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 the Form SAB 50-05 to "10/12."

Existing Regulation Section 1859.90.2 ("Priority Funding Process"):

- establishes 30-calendar day application filing periods for school districts and charter schools to apply for apportionments of available State school bond funds, provided that they submit the Form SAB 50-05 in a specified time period.
- projects under the Charter School Facilities Program (CSFP) may apply for advance release of design funds from a Preliminary Charter School Apportionment under specified criteria.
- projects under the Critically Overcrowded School Facilities Program may apply for advance release of environmental hardship site acquisition funds under specified criteria.
- projects under the CSFP may apply for advance release of site acquisition funds from a Preliminary Charter School Apportionment under specified criteria.

The proposed emergency regulatory amendments add a new document submittal criterion to be included in the district or charter school's written statement accompanying their application to participate in the Priority Funding Process, as follows:

- Acknowledgement that if the district submits the Form SAB 50-05 on or after July 1, 2013 and is required to submit an LCP third party report pursuant to Regulation Section 1859.97(b), the report must be submitted to the OPSC and the DIR at least 60 days prior to submitting the Form SAB 50-05.

Proposed adoption of Regulation Section 1895.97 would implement the requirements of Labor Code Section 1771.7 that a school district shall initiate and enforce, or contract with a third party to initiate and enforce, an LCP for any project funded in whole or in part from Propositions 47 or 55, and for which the construction contract is awarded prior to January 1, 2012. The district shall submit a "written finding" that it complied with this requirement for applicable projects.

However, if the construction contract was signed either prior to the district's LCP being approved by the DIR or prior to the district entering into a contract with a third party to implement the LCP, then a district must meet six criteria to establish compliance with the LCP requirement (criterion 3 has three subparts):

1. The DIR has approved either the district's or the third party LCP, and such approval had not been revoked at the time of implementing the LCP;
2. The district or the third party with whom the district contracted to implement its LCP submitted an application for approval of its LCP in accordance with the DIR's LCP regulations prior to January 1, 2012;
3. The district submits the report of a third party that has been approved by the DIR to operate an LCP in accordance with the DIR LCP regulations, and such approval has not been revoked as of the date of the report. In the case of a district that has entered into a contract with a third party to implement the LCP, the report must be prepared by a different third party that has been approved by the DIR to implement an LCP, and such approval had not been revoked as of the date of the report. The report must include all of the following:
 - Verification that the applicable duties of an LCP were all performed on the project, as set forth in Labor Code Section 1771.5(b) and DIR regulations; and
 - Verification that the performance of the applicable LCP duties began within one month after the commencement of the construction work on the project as set forth in Labor Code Section 1771.7(b); and
 - A written record of the LCP's confirmation of payroll records for each month in which a contractor or subcontractor reports having workers employed on the public work project, pursuant to Title 8, California Code of Regulations, Section 16432(c).
4. The district shall provide notice to each worker for which confirmation of payroll records has been performed pursuant to Title 8, California Code of Regulations, Section 16432(c), informing that the district has submitted a written report to the OPSC that the district has initiated and enforced, or contracted with a third party to initiate and enforce, an LCP on the project to monitor and ensure the payment of prevailing wages to workers. The notice shall inform these workers of the manner in which they may contact the OPSC and the DIR concerning the accuracy of the report set forth in #3 above.
5. The district shall provide the DIR a copy of the report set forth in #3 above at the same time the report is submitted to the OPSC. The DIR may notify the OPSC if the DIR determines the verifications in the awarding body's report to be incorrect.
6. The report shall not be determined to comply with Labor Code Section 1771.7(a) if the DIR submits the notice described in #5 above within 60 calendar days of receiving the report set forth in #3 above.

Existing Form SAB 50-05 is submitted by school districts and charter schools requesting 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 regulatory amendments expand paragraph #3 under General Information by adding document submittal requirements for projects requiring LCP compliance with Labor Code Section 1771.7. These districts must additionally submit:

- A written finding that the district has initiated and enforced, or had contracted with a third party to initiate and enforce, an LCP pursuant to Regulation Section 1859.97(a); and
- If the district is requesting funds be released through the priority funding process on or after July 1, 2013, and if the district's LCP approval or contract date with an approved LCP third party is later than the construction contract date(s), then the district must have submitted the report specified in Regulation Section 1859.97(b) at least 60 days before submitting the Form SAB 50-05.

In addition, Labor Compliance Program is abbreviated to LCP on page 1 and page 3.

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 "Labor Compliance Program Requirements – AB 1506," 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 emergency regulatory action, as well as requests for a copy of the proposed emergency regulatory action, and questions concerning the substance of the proposed emergency 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.