

INITIAL STATEMENT OF REASONS

Section 1859.2. Definitions.

Specific Purpose of the Regulation

To provide the meaning of specific words and terms that are essential to these regulations.

Need for the Regulation

Form Definition: It was necessary to change the revision date of Form SAB 50-05 to “10/12” for the purpose of consistency throughout the School Facility Program (SFP) Regulations and so that applicants can file the most current State Allocation Board (SAB) Forms.

Section 1859.90.2. Priority Funding Process.

Specific Purpose of the Regulation

To set forth 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.

Need for the Regulation

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 a Labor Compliance Program (LCP) third party report pursuant to Regulation Section 1859.97(b), the report must be submitted to the Office of Public School Construction (OPSC) and Department of Industrial Relations (DIR) at least 60 days prior to submitting the Form SAB 50-05.

It was necessary to provide this criterion as it applies to SFP project applicants that may be funded from Propositions 47 or 55,* and which delayed initiating their LCP according to Labor Code Sections 1771.7 and 1771.5, and that seek to receive accelerated bond funding for their projects through the Priority Funding Process. These affected projects cannot be funded from these two Propositions unless the LCP third party report verifies LCP compliance. If the DIR does not notify the OPSC within 60 days that the verifications in the report are not correct, then the district is considered to be in compliance. This new criterion allows the 60 day period to have elapsed prior to the district submitting the fund release form so that there is no delay in the priority funding process for all the other applicants ready to move forward to construction. This requirement would apply on or after July 1, 2013 to allow school districts sufficient time to comply and to not disrupt the Priority Funding Process currently underway.

* The Kindergarten-University Public Education Facilities Bond Act of 2002 (Proposition 47).
The Kindergarten-University Public Education Facilities Bond Act of 2004 (Proposition 55).

Section 1859.97. Labor Compliance Program Documentation for Fund Release.

Specific Purpose of the Regulation

To set forth a new Regulation Section for implementing Labor Code Section 1771.7 requirements 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 was awarded prior to January 1, 2012.

To add Education Code Section 17070.35 as the authority citation and to add Labor Code Sections 1771.5 and 1771.7 as reference citations.

Need for the Regulation

It was necessary to clarify the requirements for school districts to initiate and enforce Labor Compliance Programs (LCPs) in order to receive school bond apportionments from either Proposition 47 or 55.

The LCP requirements are in accordance with Assembly Bill 1506, Chapter 868, Statutes of 2002 (Wesson), and are necessary to ensure that State bond funds authorized by Propositions 47 and 55 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 DIR Regulation Section 16432. These criteria ensure that various recordkeeping, federal and state labor law compliance, and payroll documentation are followed and maintained.

Proposed adoption of Regulation Section 1859.97 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, in cases where the construction contract was awarded prior to January 1, 2012. [This date is used because other criteria are applied to projects for which the construction contract was awarded on or after January 1, 2012, which are not subject to the LCP requirements, pursuant to Labor Code Section 1771.3.]

The district shall submit a “written finding” that it complied with the LCP requirement for applicable projects. This requirement and the term “written finding” are necessary because it reflects the requirement of Labor Code Section 1771.7(d)(1). However, if a school district delayed initiating an LCP but still wishes to document its LCP compliance as required for school bond project funding from Propositions 47 and/or 55, the regulatory amendments provide districts the option to hire a DIR-approved LCP third party contractor to review the district’s LCP and submit a report to the OPSC. If the report verifies the required compliance, and if bond funding is available, then project funding from Propositions 47 and 55 is permissible and the funds will be released.

In the approved emergency regulatory text, there is existing language in subsection (a) that states a written finding shall be submitted “to the OPSC and the DIR.” It was necessary to provide clarity to school districts that the written finding would be submitted to the OPSC because this would indicate that those projects were in compliance with the LCP requirements and the Form SAB 50-05 could be submitted to the OPSC and funds would then be released. However, the language “and the DIR” should be removed as the DIR does not need to review the written findings for projects that are in compliance. Rather, the DIR does need to review the written finding if the construction contracts were signed 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 [Regulation Section 1859.97(b) and (b)(3)]. Because the DIR has statutory

jurisdiction over the LCPs, the DIR would have the expertise in making the determination that the LCP-related verifications in the report are not valid.

Delayed Initiation of LCP. 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. This criterion is because it is required by law in Labor Code Section 1771.7 and applicable DIR Regulations prior to January 1, 2012;
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. This criterion is because Labor Law Section 1771.7 and DIR Regulations prior to January 1, 2012 required the DIR to approve district LCPs or third party contracted LCPs;
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. This requirement for a report by an independent DIR-approved LCP contractor was necessary to reasonably comply with the "written finding" submittal requirement in Labor Code Section 1771.7(d)(1), so that school districts with delays in starting their LCPs could still have the opportunity to verify their LCP compliance and qualification for Proposition 47 and/or 55 bond funding. The third party 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. This criterion was necessary because Labor Code Section 1771.5(b) and then-effective DIR Regulations list the required components of a compliant LCP; 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). This criterion was chosen in order to have a fair, uniform, and verifiable starting date for late-commencing LCPs to review past and present documents and activities to ensure LCP compliance and to qualify for school bond funding; 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, Regulation Section 16432(c). This criterion was necessary in order to incorporate the payroll record confirmation requirements of Labor Code Section 1771.5(b)(3), (4), (5), (6), and (7), and DIR Regulation Section 16432.
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, a 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. This criterion was necessary as a safeguard to ensure that despite the delayed initiation of an LCP for a school construction project, a reporting mechanism is in place to ensure that even the earliest paychecks to workers can be verified for proper payroll procedure.
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. This criterion was necessary because the DIR is the State authority for LCP compliance, and both the DIR (for compliance purposes) and the OPSC (for bond funding purposes) need the opportunity to review a third party LCP report in advance.

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 in #3 above. This criterion was necessary to afford a reasonable time period for DIR reviews because their finding of LCP non-compliance means that bond funding may not be made from Propositions 47 and/or 55.

It was necessary to instruct school districts to submit the report outlined in Regulation Section 1859.97(b)(3) because Labor Code Section 1771.7 has jurisdiction over the DIR administering LCP requirements on applicable public works projects.

Citations: It was necessary to add Education Code Section 17070.35 as the authority citation because it authorizes the SAB to prescribe regulations to administer the SFP. It was also necessary to list Education Code Sections 17072.32 and 17074.16 as these sections pertain to the release of funds for projects under the New Construction and Modernization Programs. It was necessary to list Labor Code Sections 1771.5 and 1771.7 as reference citations because they are authoritative provisions for the LCP criteria being adopted.

SCHOOL FACILITY PROGRAM FORM

Fund Release Authorization, Form SAB 50-05 (Revised 10/12).

Specific Purpose of the Form

To add document submittal requirements for projects requiring LCP compliance with Labor Code Section 1771.7, to add the acronym "LCP" for Labor Compliance Program, and to revise the date of the Form to "10/12."

Need for the Form

Heading on All Three Pages: It was necessary to change the revision date of Form SAB 50-05 to "10/12" for the purpose of uniformity throughout the SFP Regulations and so that applicants file the most current SAB Forms.

Page 1, General Information, Column 1, Second Paragraph, #3: It was necessary to add "(LCP)" as the acronym for Labor Compliance Program for easier reference in this Form. This is a non-substantive addition for improved readability and consistency of the Form.

Page 1, General Information, Column 1, Second Paragraph, #3, New Third and Fourth Bullets: It was necessary to advise school district and charter school applicants requesting the State to release approved funding of the following document submittal requirements for projects requiring LCP compliance with Labor Code Section 1771.7:

- 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 applying for 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.

Page 3, Certifications, 8th Bullet: It was necessary to use the acronym “LCP” since it is defined in the SFP Regulations (Regulation Section 1859.2). This is a non-substantive change in order to maintain consistency throughout the SFP Regulations.

No alternatives were considered because the application of AB 1506, Labor Code Sections 1771.5 and 1771.7, and Title 8, California Code of Regulations, Regulation Section 16432 require the compliance criteria in the proposed regulatory amendments.

Technical Documents Relied Upon

The State Allocation Board’s Action item, dated October 24, 2012, entitled “School Facility Program Regulatory Amendments.”

The Economic Impact Assessment prepared pursuant to Government Code Section 11346.3(b).

Alternatives to the Proposed Regulatory Action that would be as Effective and Less Burdensome to Private Persons

The SAB finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Alternatives to the Proposed Regulatory Action that would Lessen any Adverse Economic Impact on Small Business

The SAB has determined that the proposed regulations do not affect small businesses.

Finding of Significant Adverse Economic Impact on Businesses

The SAB has determined that the adoption of the regulations will not affect businesses, including small businesses, because they are not required to comply with or enforce the regulations, nor will they benefit from or be disadvantaged by the regulations.

Impact on Local Agencies or School Districts

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