

April 1, 2011

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 February 23, 2011. These amendments to the School Facility Program (SFP) Regulations clarify the Labor Compliance Program (LCP) requirements due to the Department of Industrial Relations (DIR) repealing its LCP monitoring service on November 4, 2010. The SAB adopted language specifying "no later than May 1, 2011" as the date for school districts that had been using the DIR service to implement another acceptable LCP compliance method as required by Labor Code (LC) Sections 1771.5 and 1771.7.

Attached to this Notice is the specific regulatory language of the proposed emergency action and the Finding of Emergency. You may also review the proposed regulatory language and Finding of Emergency on the Office of Public School Construction (OPSC) Web site at [www.dgs.ca.gov/opsc](http://www.dgs.ca.gov/opsc). 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 early April 2011. 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.

From August 1 to November 4, 2010, the DIR provided LCP monitoring services for all State bond-funded public works projects (Propositions 1D, 55, and 47). The OAL on November 4, 2010 approved the repeal of the DIR regulations for this LCP monitoring service, and school districts that had been using the service were required to either hire a third party LCP administrator or seek approval from the DIR to initiate and enforce the LCP internally. This required change in the compliance method applies to projects funded from the University Public Education Facilities Bond Act of 2002 (Proposition 47) or the Kindergarten-University Public Education Facilities Bond Act of 2004 (Proposition 55).

AB 1506, Chapter 868, Statutes of 2002 (Wesson), requires an LCP for school construction projects funded from either Proposition 47 or Proposition 55. School districts subject to these requirements must 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. The purpose of the LCP was to ensure appropriate compliance with certain labor laws for school construction projects, such as the appropriate prevailing wage payments for construction work.

LC Section 1771.7 requires school districts using funds from those Acts to initiate and enforce, or contract with a third party to initiate and enforce a LCP.

LC Section 1771.5 outlines the requirements of a LCP for projects subject to LC Section 1771.7.

LC Section 1771.7(d)(2)(C) requires the SAB to verify school district compliance.

The SAB adopted language specifying “no later than May 1, 2011” as the date for the impacted districts to implement another acceptable LCP compliance method without a negative impact to the district’s participation in State-funded programs. The proposed amendments affect projects with contracts awarded between August 1, 2010 and November 4, 2010. The proposed amendments will only impact projects funded from Propositions 47 and 55 because those projects funded from Proposition 1D are not required to have an LCP, pursuant to LC Section 1771.7.

The proposed amendments would allow affected school districts sufficient time for such steps as school board approval, advertising and obtaining bids from third party contractors, awarding contracts, amending existing contracts to enforce or conform with LCP requirements, and other contractual and documentary matters. The OPSC currently verifies that school districts have a LCP for projects at the time of fund release and during the audit, so the proposed amendments are to the pertinent regulation sections and SAB Form.

A summary of the proposed emergency regulatory amendments is as follows:

Existing Regulation Section 1859.90 specifies the process for school districts to request the release of funds for SAB-approved apportionments, and requires that their requests be submitted within 18 months of the SAB apportionment approval. The proposed emergency amendments add the following new paragraph:

“For all contracts associated with the project (as defined in LC Section 1720) awarded between August 1, 2010 and November 4, 2010, school districts must have either a Department of Industrial Relations approved third party Labor Compliance Program or a Department of Industrial Relations approved in-house Labor Compliance Program, if required pursuant to Labor Code (LC) Section 1771.7, no later than May 1, 2011.”

Existing Regulation Section 1859.106 specifies allowable district expenditures and State apportionments for new construction projects, Joint-Use projects, Critically Overcrowded School Facilities projects, charter school projects, modernization projects, projects with additional DTSC costs, and compliance with site acquisition guidelines, upon audit review. The proposed emergency amendments add the following new paragraph:

“For all contracts associated with the project (as defined in LC Section 1720) awarded between August 1, 2010 and November 4, 2010, school districts must have either a Department of Industrial Relations approved third party Labor Compliance Program or a Department of Industrial Relations approved in-house Labor Compliance Program, if required pursuant to Labor Code (LC) Section 1771.7, no later than May 1, 2011.”

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 add the following paragraph under “General Information:”

“For all contracts associated with the project (as defined in LC Section 1720) awarded between August 1, 2010 and November 4, 2010, school districts must have either a DIR approved third party LCP or a DIR approved in-house LCP, if required pursuant to Labor Code (LC) Section 1771.7, no later than May 1, 2011.”

The proposed emergency amendments to Form SAB 50-05 also add data and document submittal requirements, with corresponding data fields, for fund releases for new construction/modernization/charter school rehabilitation, and Joint-Use projects, including contract award dates, construction contract signature dates, Division of the State Architect approval date, percent of construction under binding contract, and issue date of first Notice to Proceed.

Finally, the proposed emergency amendments make paragraph numbering corrections, clarify the need for the “First” Notice to Proceed, and add concluding data fields for school district representatives to enter their name and job title, e-mail address and telephone number.

### 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 – Labor Compliance Program Regulatory Amendments,” 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](mailto: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](http://www.oal.ca.gov) under the heading “Emergency Regulations,” and 2) the OPSC at [www.dgs.ca.gov/opsc](http://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

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707 Third Street, Room 1-430  
West Sacramento, CA 95605

E-mail Address: [robert.young@dgs.ca.gov](mailto: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.