

REPORT OF THE EXECUTIVE OFFICER  
State Allocation Board Meeting, March 28, 2007

LABOR COMPLIANCE PROGRAM GRANT FOR JOINT-USE PROJECTS

PURPOSE OF REPORT

To present a report as requested by the State Allocation Board (SAB) regarding Labor Compliance Program funding on School Facility Joint-Use Program projects.

BACKGROUND

At the February 2007 SAB meeting, the Board requested Staff to report back on the SAB's authority to utilize the revenues transferred into the 2004 Bond accounts to cover the costs of implementing Labor Compliance Programs (LCP) for School Facility Program (SFP) Joint-Use projects and on the SAB's authority to augment the per pupil grants for school districts that voluntarily initiate and enforce a LCP.

AUTHORITY

Labor Code Section 1771.7(a) requires school districts that are funding public works projects from the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 to initiate and enforce or contract with a third party to initiate and enforce a LCP for those projects.

Labor Code Section 1771.7(e) provides the authority for the SAB to increase the per pupil grant amounts provided for modernization and new construction projects to accommodate the state's share of the increased costs of those projects due to the initiation and enforcement of the LCP.

DISCUSSION

The SAB's Legal Counsel has confirmed his position that Labor Code Section 1771.7(a) defines and limits the application of mandatory labor compliance programs to projects using funds "derived from" the two specific bond acts noted above (see Attachment). The funds identified in the February 2007 SAB item being transferred into the 2004 State School Facilities Fund originated from other previous bond acts, lease payments, and sales revenue authorized by the State Relocatable Classroom Law of 1979 (Education Code Section 17085 et seq.). Therefore, a LCP cannot be required for School Facility Program (SFP) Joint-Use projects funded with revenues derived from the State School Building Aid Fund.

The SAB's Legal Counsel has opined that Labor Code Section 1771.7(e) provides the authority for the SAB to provide for additional grant amounts to school districts that voluntarily implement a LCP for their joint-use projects (see Attachment).

Staff estimates that the maximum State share of the funding needed to cover the increased costs for school districts to initiate and enforce LCPs for the joint-use projects approved at the February 2007 SAB meeting would be less than \$100,000. Staff has also confirmed that there are sufficient revenues in the State Building Aid Fund available for transfer into the Kindergarten-University Public Education Facilities Bond Act of 2004 in order for the SAB to provide the additional grant amounts to school districts that voluntarily implement a LCP for their joint-use projects, should that be the Board's will.

RECOMMENDATION

Accept the report.

BOARD ACTION

In considering this Item, the Board accepted the report. In addition, Staff was requested to bring regulatory recommendations to address Labor Compliance Program (LCP) issues regarding joint-use, new construction and modernization funding of projects as soon as possible, along with the item to adjust the LCP grants. Once these regulations are adopted by the Board and are effective, Staff is requested to present an item to provide LCP grants to those districts with qualifying Joint-Use projects that voluntarily initiate and enforce a LCP.

**Date:** March 21, 2007

**To:** Lori Morgan Acting Executive Officer  
State Allocation Board

**From:**  Garry Ness, Assistant Chief Counsel  
Department of General Services  
Office of Legal Services  
707 Third Street, 7<sup>th</sup> Floor  
West Sacramento, CA 95605

**Subject:** Labor Compliance Program Grant Augmentation

### QUESTION

At its meeting of February 28, 2007, the State Allocation Board asked our opinion on the following question:

If a district continues to voluntarily implement a labor compliance program on a project for which such programs are no longer mandated by statute, can the State Allocation Board continue to augment grant amounts of the purpose of reimbursing the district for the costs of initiating and enforcing a labor compliance program?

### CONCLUSION

It is our opinion that Labor Code section 1771.7(e) is sufficiently broad that it can be read to authorize the State Allocation Board to continue to provide for additional grant amounts under the circumstances described above.

### ANALYSIS

Labor Code section 1771.7 was enacted as part of Chapter 868, Statutes of 2002 (AB 1506, Wesson). Subdivisions (c) and (d) of Section 1 of Chapter 868 sets forth the Legislature's intent in enacting this law and read as follows:

(c) It is a matter of statewide concern that every school district in California pay the prevailing rate of per diem wages to workers employed on public works undertaken by those school districts.

(d) Therefore, it is the intent of the Legislature in enacting this act that every school district in California pay the prevailing rate of per diem wages to workers employed on public works undertaken by these school districts.

Thus, it was the intent of the Legislature that school districts ensure compliance with the prevailing wage laws for workers employed on public works projects undertaken by these school districts.

Subdivision (a) of Labor Code section 1771.7, requires school districts that are funding public works projects from the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 to initiate and enforce or contract with a third party to initiate and enforce a labor compliance program for those projects. The statute does not require public works funded from other funding sources, including the Kindergarten-University Public Education Facilities Bond Act of 2006, to have a labor compliance program for those projects.

Subdivision (e) of Labor Code section 1771.7, however, directs the State Allocation Board to increase the per pupil grant amounts provided for modernization and new construction projects to accommodate the state's share of the increased costs of those projects due to the initiation and enforcement of the labor compliance program. It specifically provides:

(e) Notwithstanding Section 17070.63 of the Education Code, for purposes of this act, the State Allocation Board shall increase as soon as feasible, but no later than July 1, 2003, the per pupil grant amounts as described in Sections 17072.10 and 17074.10 of the Education Code to accommodate the state's share of the increased costs of a new construction or modernization project due to the initiation and enforcement of the labor compliance program.

Thus, the Legislature provided the Board with the ability to increase the state's share of increased costs of new construction or modernization projects to accommodate labor compliance programs. Indeed, the Board has adopted regulations that have implemented this requirement. Even though Subdivision (a) of the section was not amended to mandate labor compliance programs for projects funded from 2006 Bond Act proceeds, it is our opinion that labor compliance programs may continue to be voluntarily implemented by school districts in order to comply with the legislative intent expressed in Chapter 868, Statutes of 2002, to ensure that prevailing wage rates are paid on public works projects constructed by school districts.

Prior to the enactment of Labor Code section 1771.7, some school districts had established labor compliance programs for their public works projects. Because the costs of those programs were not specifically identified as an additional grant augmentation for purposes of the Leroy F. Greene School Facilities Act of 1998 (SFA), school districts were required to pay for the cost of those programs using the combination of state and local funding available at that time, without a further state augmentation. However, with the enactment of Labor Code section 1771.7(e), specific authority has been given to the State Allocation Board to provide additional funding to pay for the costs of such programs. Focusing on the legislative intent of Labor Code

section 1771.7 as specifically identified in Chapter 868, Statutes of 2002, it is our opinion that Subdivision (e) can be read to authorize the State Allocation Board to continue to augment the per pupil grant amounts as necessary to accommodate the state's share of the cost of implementing labor compliance programs if school districts choose to voluntarily implement such programs on SFA projects funded from other State bond proceeds.

Labor compliance programs have been identified by the legislature as a tool that can be used by school districts to ensure prevailing wage rates are paid. The legislature has further indicated that this is a matter of statewide concern. . "The fundamental goal of statutory interpretation is to ascertain and carry out the intent of the legislature (*People v. Cruz* (1996) 13 Cal. 4<sup>th</sup>, 764, 782)." By reading Subdivision (e) of Labor Code section 1771.7 to authorize the Board to continue funding labor compliance programs, we believe the Board will be continuing to carry out the expressed legislative intent of Section 1 of Chapter 868 of the Statutes of 2002.

If you have any questions, please contact me at (916) 376-5102.