

TITLE 8. DEPARTMENT OF INDUSTRIAL RELATIONS

NOTICE OF PROPOSED EMERGENCY ACTION

The Director (“Director”) of the Department of Industrial Relations (“Department”) proposes to amend section 16423 of Subchapter 4, Chapter 8, Division 1, Title 8, California Code of Regulations, and to delete Subchapter 4.5 (sections 16450 through 16464) in its entirety on a temporary emergency basis, for the purpose of suspending and postponing the commencement of fee-based compliance monitoring and enforcement by the Department on public works projects pursuant to sections 1771.3 and 1771.55 of the Labor Code and related statutes. This action needs to be taken on an immediate emergency basis due to questions raised over the legality of using bond funds to pay the fees set forth in section 16452, which in turn prevents the state from issuing bonds to fund public works construction, as explained more fully below. Because the applicability of sections 1771.3 and 1771.55 of the Labor Code and related statutes were conditioned upon the Director’s adoption of implementing regulations, the suspension and postponement of the effective date of those regulations has the effect of suspending and postponing implementation of the underlying statutes and removing the impediment to issuing bonds until the legal questions are addressed.

FINDING OF EMERGENCY

Finding: The Director finds that it is necessary to amend section 16450(a) of Title 8, California Code of Regulations, and to delete Subchapter 4.5 (sections 16450 through 16464) in its entirety on an immediate basis to address the situation described below in order to avoid serious harm to the public peace and general welfare.

Statement: The State Public Works Board has authorized the sale of general obligation and lease revenue bonds which are needed to fund construction of a range of public works projects costing in excess of \$17 billion, as set forth in the correspondence attached as Exhibit A to this Notice. Currently there is a limited window of opportunity to market and sell the bonds that opened with the adoption of the state budget earlier this month but closes the first of December.¹ Pursuant to section 1771.3 of the Labor Code and the implementing regulations at Title 8, Chapter 8, Subchapter 4.5 (commencing with section 16450) of the California Code of Regulations (“Subchapter 4.5”), the awarding bodies that use this bond funding may be subject to the assessment of a fee for labor compliance monitoring and enforcement by the Department on those projects. However, bond counsel for the State Public Works Board is unwilling to write an unqualified opinion letter for the bond sale due to the possibility that someone may question the legality of using bond funds to pay the fees in the manner prescribed in Subchapter 4.5. Without the customary unqualified opinion letter, the bonds will be unmarketable, leaving the state unable to pay for the projects in question, resulting in a loss of employment and economic stimulus to the community at a time of continuing stress to the local, state, and national

¹ The Treasurer’s ability to sell bonds is constrained by the state budget process. There is no ability or authority to do so in the absence of a state budget. The Treasurer also is unable to do so during “blackout periods” which correspond to the times when the Department of Finance is receiving the information used to prepare the proposed budget issued by the Governor in January of each year and the revised budget proposal issued in May.

economies. The issue raised by the Board's bond counsel extends to any "bond issued by the state to fund public works projects" (Labor Code section 1771.3(a)(2)), and thus could have the effect of suspending all state bond-funded public works construction in the state, with the resultant harm to individuals and the economy throughout the state, until the issue is resolved and bond counsel is once again able to issue unqualified opinion letters.

This emergency situation, that is, the unwillingness to write an unqualified bond opinion and resulting inability to sell bonds to fund public works construction, will persist as long as the Subchapter 4.5 fee regulations remain effective and the underlying legal issue remains unresolved. However, by suspending and postponing applicability of these fees and related regulations to current bond-funded projects, the impediment to providing an unqualified opinion for ongoing sales will be removed.

Bond-funded projects are believed to represent the vast majority of public works projects covered by Subchapter 4.5 and the underlying legislation known as SBX2-9. Although the legal questions underlying the emergency situation do not appear to extend to other types of projects, bond counsel has expressed an unwillingness to write an unqualified bond opinion so long as any part of Subchapter 4.5 and any references to that subchapter in section 16423 remain in effect. In addition, although it appears that the Director of Finance may not have formally approved the fees for bond-funded projects, as required for the legislation and regulations to go into effect under Labor Code section 1771.3(a)(2), bond counsel still believes it is necessary to suspend the regulations in order to forestall their application to bond-funded projects, inasmuch as the Director of Finance might provide the requisite approval at any time. Accordingly, the Director is taking this action to suspend and postpone all SBX2-9 and Subchapter 4.5 requirements.

History and reasons for not addressing situation through regular rulemaking: On February 20, 2009, the Governor signed into law Stats. 2009-2010 2d Ex. Sess., c. 7 [SBX2-9], which established a State Public Works Enforcement Fund that was to be maintained through the assessment of fees on specified public works projects and used to support the Department's enforcement of prevailing wage requirements on those projects. SBX2-9 and a related measure provided for this new fee-based monitoring and enforcement system to apply to any project using funds derived from a bond issued by the state to fund public works, projects built pursuant to specified design-build or other procurement authorities, and any project built by an awarding body that chose to pay the fee in exchange for higher exemptions from prevailing wage requirements.² The legislation further provided that this new system would not go into effect until the Director adopted implementing regulations and established the fees, subject to approval by the Director of Finance, that would be assessed for these services.³

Following the circulation of draft proposals and stakeholder meetings, the Director commenced a formal rulemaking on November 20, 2009 to adopt the Subchapter 4.5 regulations

² A list of statutes covered by this new requirement is attached as Exhibit B to this notice. Prior to the adoption of SBX2-9 and the Director's implementing regulations, most of these statutes required awarding bodies to use an approved labor compliance program ("LCP") to enforce prevailing wage requirements on covered projects.

³ The statutes set the maximum fee that could be assessed, and in the case of bond-funded projects, specifically required the fee to be approved by the Department of Finance.

needed to implement SBX2-9. The same regulations and rulemaking process were used to establish the fees. On June 29, 2010, the Office of Administrative Law approved and filed the regulations with the Secretary of State, with the regulations set to become effective on August 1, 2010. The significance of this effective date is that it made the new system applicable and effective for any project for which the contract was awarded on or after that date, while the preexisting requirements (*i.e.* the obligation to use an LCP under most of the statutes) would remain applicable to any contract awarded prior to that date for the life of the project.

The legal issue that led to this finding of emergency was first called to the Department's attention during the last week of July in the course of discussions with other state agencies over the impending application and implementation of Subchapter 4.5; and it has taken several more weeks for the Department to obtain a clear description and understanding of the issue being raised by bond counsel. Had the issue been called to Department's attention earlier, the emergency could have been averted simply by delaying the effective date of Subchapter 4.5. However, now that the regulations have gone into effect, it is no longer feasible to address the situation through a regular non-emergency rulemaking since the state would remain unable to sell public works bonds for the reasons stated above until the rulemaking was completed or the underlying issue was resolved.

Information relied upon in making this determination: This determination is based on the attached correspondence and supporting documentation provided by the State Public Works Board, the Department of Finance, the State Treasurer, and the Attorney General as well as conversations with representatives of these offices.

STATEMENT UNDER TITLE 1, CALIFORNIA CODE OF REGULATIONS, §48

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, 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 to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

Title 1, California Code of Regulations, section 55(b) sets forth the requirements for submitting comments to the Office of Administrative Law on the proposed emergency action. Comments must be in writing, must identify the topic of this rulemaking, and must be submitted directly to the Office of Administrative Law as follows:

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814-4339

Fax: (916) 323-6826
e-mail: staff@oal.ca.gov

In addition, a copy of the comments must be transmitted to the Department's contact person for this rulemaking. To ensure prompt receipt and consideration of your comments, the Department requests that you transmit a copy either by e-mail to SBX2-9comments@dir.ca.gov, or by fax, to the attention of John Cumming, at 415/703-4277.

AUTHORITY AND REFERENCE

Authority: Sections 54, 55, 1771.55(b), and 1773.5, Labor Code.

Reference: Sections 17250.30 and 81704, Education Code; section 6531, Government Code; sections 1771.3, 1771.55, 1771.75, 1771.85, and 1771.9, Labor Code; sections 6804, 20133, 20175.2, 20193, 20209.7, 20688.6, and 20919.3, Public Contract Code; and section 75075, Public Resources Code.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Overview:

The laws regulating public works projects require among other things that contractors and subcontractors pay their workers not less than the general prevailing wage rates as determined under the Labor Code. State prevailing wage requirements are enforced both by contracting agencies, known as "awarding bodies," through review of certified payroll records and taking cognizance of violations, and by the state Labor Commissioner (also known as the Chief of the Division of Labor Standards Enforcement), through the investigation of complaints and issuance of civil wage and penalty assessments.

Since the adoption of Labor Code section 1771.5 in 1989, the Director also has approved LCPs to monitor and enforce compliance with state prevailing wage requirements on behalf of awarding bodies. The first DIR-approved LCPs were established on a voluntary basis to obtain higher exemptions from prevailing wage requirements under subsection (a) of Labor Code section 1771.5. However, the Legislature later began to require awarding bodies to use LCPs to monitor and enforce compliance on specified projects, including school construction projects funded by the Kindergarten-University Public Education Facilities Bond Acts of 2002 and 2004 [Propositions 47 and 55] (Labor Code §§ 1771.7 and 1771.75), projects funded by the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 [Proposition 50] (Labor Code §§ 1771.8 and 1771.85), and projects built under a variety of statutes authorizing design-build procurement (*see, for example*, Public Contract Code §§ 20133 [applicable to counties] and 20209.7 [applicable to transit operators]).⁴

Dissatisfaction with the overall performance of LCPs led to the adoption of SBX2-9 in 2009. Essentially, SBX2-9 replaced the LCP requirement in a variety of statutes with a requirement to pay a fee for compliance monitoring and enforcement by the Department on the

⁴ See Exhibit B for a current complete list of statutes that require use of an LCP under specified circumstances.

same types of projects covered by those statutes.⁵ SBX2-9 also expanded the number of projects that would be covered by this requirement by extending it to any project funded in whole or in part by a state public works bond rather than just the four bonds that previously had been subject to an LCP requirement.

As noted above, SBX2-9 required the Director to establish the fees with the approval of the Department of Finance for this service and to adopt reasonable regulations setting forth the manner in which the Department would enforce compliance on covered projects. The legislation further provided that the new fee-based monitoring and enforcement system would only apply to projects awarded after the fees and regulations had been adopted.⁶ Thereafter, the Director proposed and adopted regulations that, among other things, addressed the new system's applicability, notices, fees, fee waivers, the establishment of a Compliance Monitoring Unit ("CMU"), payroll record review and other CMU monitoring and investigative activities, complaints, and the withholding of contract payments when payroll records are delinquent or inadequate. These regulations were approved on June 29, 2010 and became effective on August 1, 2010, making the provisions of SBX2-9 effective for projects for which the contract was awarded on or after that date.

Proposed Emergency Regulations:

The Director proposes to amend section 16423 by deleting all references to Subchapter 4.5 (thereby restoring the text that existed prior to August 1, 2010) and deleting the regulations in Subchapter 4.5 (sections 16450 through 16464) in their entirety. The Director also proposes to add two additional statutory references to the Reference notes for sections 16450 through 16453 and 16455.⁷

Comparable Statutes and Regulations:

Federal law requires the payment of prevailing wages and adherence to other minimum employment standards for work performed on federal public works projects through the Davis-Bacon Act, 40 U.S.C. sections 276a to 276a-7, the Contract Work Hours and Safety Standards

⁵ SBX2-9 retained the LCP enforcement model but shifted over to the Department the proactive compliance monitoring responsibilities that historically had been performed by awarding bodies and LCPs. The statute also permitted some awarding bodies to continue using their previously approved in-house LCPs in lieu of paying a fee for monitoring and enforcement by the Department.

⁶ Labor Code §1771.3(a)(1) set forth the parameters for the adoption of a fee for bond-funded projects, and subdivision (b) of that section states: "The fee imposed by this section shall not apply to any contract awarded prior to the effective date of the regulations adopted by the department pursuant to paragraph (2) of the subdivision (b) of [Labor Code] Section 1771.5." Most of the other statutes that were adopted or amended by SBX2-9 include language specifying that the new system would only apply to contracts awarded on or after both the establishment of the fee and the effective date of the regulations adopted pursuant to Labor Code §1771.55(b)(2). *See, for example*, Labor Code §1771.85(b) and Public Contract Code §20133(b)(3)(B).

⁷ The two additional statutes are sections 6804 and 20688.6 of the Public Contract Code, which were adopted through the enactment of Stat. 2009-2010 2d Ex. Sess., c. 2 [SBX2-4] and require the use of LCPs (prior to effective date of Subchapter 4.5) or fee-based monitoring and enforcement by the Department (on or after that date) for specified design-build projects.

Act, 40 U.S.C. sections 327 to 334, and related statutes that incorporate these requirements into specific federal programs. (See 29 C.F.R. § 5.1 for a list of 60 such laws.) Thirty-two other states in addition to California have public works prevailing wage statutes which are often referred to informally as “little Davis-Bacon” laws. One of the principle enforcement mechanisms prescribed by federal regulation and found in most state laws is a requirement for contractors to maintain and make available certified payroll records which can be monitored and audited by local and state regulators to detect errors and violations. Five other states have statutes that require or authorize the assessment of fees to fund state enforcement activities, and three of these states (Alaska, New York, and Oregon) assess fees based on a percentage of the contract price, similar to the maximum fee authorizations found in SBX2-9. However, the Director is not aware of how bond-funding requirements or limitations may affect prevailing wage enforcement in other states.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandates on Local Agencies or School Districts:

The proposed action does not impose mandates on local agencies and school districts. The underlying legislation requires awarding bodies to use an approved LCP or pay a fee to the Department for compliance monitoring and enforcement, as a condition for obtaining funds or authorization for specified projects; and the adoption of Subchapter 4.5 made these requirements effective. The proposal would suspend application of these regulatory requirements. In some cases this may result in increased costs for awarding bodies required to go back to using LCPs in order to meet preexisting statutory requirements (including for construction funded by Propositions 47, 50, and 55).

Costs or Savings to State Agencies; Reimbursable Costs Imposed on Local Agencies or School Districts; other nondiscretionary costs or savings imposed on local agencies; and costs or savings in federal funding to the state:

Adoption of the proposed emergency regulations will have the effect of returning prevailing wage enforcement requirements to the status that existed on July 31, 2010. This change will result in the Department’s inability to collect monitoring and enforcement fees as previously anticipated. The Department anticipates a \$1.3 million deficit for the 2010-2011 fiscal year due to the delay in implementing SBX2-9 and a corresponding inability to repay a \$1.3 million General Fund loan that it received to start up the program in the prior fiscal year.

The proposed emergency regulations will not impose any reimbursable costs on local agencies or school districts.

The return to the enforcement requirements that existed on July 31, 2010 may result in savings or costs to awarding bodies depending on the nature of any public works projects they plan to undertake. With the exception of projects funded by Propositions 47, 50, 55, and 84, there will be no requirement to pay a fee to the Department or use an approved LCP for labor compliance monitoring and enforcement based on the receipt of state bond funding. However, under Labor Code sections 1771.7 and 1771.8, the requirement to pay a fee to the Department

for compliance monitoring and enforcement will revert to an obligation for awarding bodies, including local agencies and school districts, to use an approved LCP to enforce compliance on projects receiving Proposition 47, 50, or 55 funding, while Public Resources Code section 75075, which was not amended by SBX2-9, will continue to require use of an LCP for projects funded by Proposition 84. For most local agencies and school districts this will be a costlier alternative to fee-based monitoring and enforcement by the Department.⁸

Under fourteen design-build and other special procurement statutes,⁹ the requirement to pay a fee to the Department for compliance monitoring and enforcement also will revert to an obligation for awarding bodies to use an approved LCP to enforce compliance on those projects. In addition, an exemption from this LCP requirement for projects covered by a project labor agreement will be reinstated.

Finally, awarding bodies will lose the option of paying a fee to the Department and meeting other specified obligations in order to obtain higher exemptions from prevailing wage requirements pursuant to Labor Code section 1771.55(a). Loss of the exemption means that awarding bodies without an approved LCP for all projects will be required to enforce prevailing wage requirements of all public works projects in excess of \$1,000 (Labor Code §1771) rather than only on projects for construction work of \$25,000 or more or contracts for alteration, demolition, repair, or maintenance work of \$15,000 or more.

The Director currently is aware of 14 awarding bodies with approximately 45 public works projects that signed up for monitoring and enforcement by the CMU and had submitted approximately \$31,000 in fees to the Department as of October 20, 2010.¹⁰ Included within these figures are five school districts and one county office of education that elected to have the CMU monitor and enforce compliance on all of their projects in exchange for higher prevailing wage exemptions under Labor Code section 1771.55(a). The Department will incur some administrative costs in returning fees to the affected awarding bodies. At this time the Department is unable to estimate what additional savings or costs may be incurred either by the 14 awarding bodies that had signed up for CMU monitoring and enforcement or by other awarding bodies that may have planned to do so for impending projects. The Department also is unable to estimate what additional costs awarding bodies will incur as a result of having to enforce prevailing wage requirements on projects that would have been exempt from those requirements pursuant to Labor Code section 1771.55(a).

The proposals do not involve any costs or savings in federal funding to the state.

⁸ See 2 Cal.Code Reg. §1859.71.4, which authorizes allocations for meeting LCP requirements at far greater percentage levels than the maximum fee authorized for the Department under Labor Code §1771.3. The State Allocation Board's funding requirements also contemplate matching contributions by the school district, which is not required or authorized under SBX2-9, and SAB audit records (referred to in the original SBX2-9 rulemaking) confirm that actual expenditures for use of LCPs on Proposition 47 and 55 funded projects greatly exceed the maximum authorized fee for compliance monitoring and enforcement by the Department.

⁹ See Exhibit B list.

¹⁰ Fees for some of the projects have not yet been invoiced or submitted.

EXHIBIT A

Correspondence and documentation provided by State Public Works Board, Department of Finance, State Treasurer, and Attorney General



CALIFORNIA STATE
PUBLIC WORKS BOARD

ARNOLD SCHWARZENEGGER, GOVERNOR

915 L STREET ■ NINTH FLOOR ■ SACRAMENTO CA ■ 95814-3706 ■ (916) 445-9694

October 15, 2010

Mr. John Duncan, Director
Department of Industrial Relations
455 Golden Gate Avenue, 10th floor
San Francisco, CA 94142

Dear Director Duncan:

The State Public Works Board (Board) issues lease revenue bonds to fund the vast majority of state's capital outlay construction projects for all state agencies, including the University of California and the California State University. When issuing its lease revenue bonds, the Board obtains unqualified opinion letters from its counsel (Issuers Counsel) and the Attorney General (Co-bond Counsel) stating that, among other things, issuance of the bonds is in compliance with all applicable requirements of state law and the bonds are valid and binding special obligations of the Board. The investing public relies on such unqualified opinion letters at the time the bonds are issued.

State Public Works Board staff has been advised that the Attorney General, as Co-bond Counsel, will not be able to provide their customary unqualified opinion letters that are necessary to support the sale of the Board's lease revenue bonds. The inability to obtain these approving opinions is for bonds that are covered by recently adopted regulations providing for the assessment of a fixed fee in connection with public works projects funded with monies derived from bonds issued by the State. (Title 8, Division 1, Chapter 8, Subchapter 4.5 of the California Code of Regulations.) At this time, the Attorney General has expressed concern that the fee amount, calculated as one-fourth of one percent of the bond funds released by the funding agency for the project, is not sufficiently correlated with the costs of ensuring prevailing wage compliance on the project to constitute a permissible expenditure of bond funds. The Attorney General is therefore declining to issue an unqualified opinion letter with respect to the Board's lease revenue bonds.

Without unqualified opinion letters from the Co-bond Counsel, and Issuers Counsel, the Board will not be able to issue its lease revenue bonds which will result in dozens upon dozens of critical state capital outlay projects not being funded and, consequently not being constructed. A good number of state construction projects are fully designed and ready to go out to bid, but, the Board's bonds are necessary to provide construction funding in order for construction contracts to be awarded. These projects include, but are not limited to:

- The replacement of dozens of courthouses that currently have unsecured paths to transport inmates, unsecured entry points, and no holding cells for inmates.

Mr. John Duncan
October 15, 2010
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- Kitchen replacement projects in several of the state's mental hospitals in order to meet food safety regulations.
- Construction of new medical, dental, and mental health treatment space in numerous state prisons statewide that will help resolve outstanding litigation challenging the constitutionality of existing prison healthcare.
- Various seismic structural upgrades, and fire, life, safety, and access compliance improvements on the state's higher education campuses statewide.
- Construction of new jail facilities that will provide additional housing that will help prevent the early release of prisoners.

We hope this information is helpful in remedying the situation so the state's critical construction projects that have direct impact on the health and/or safety of the state's charges and the public can be financed and proceed to construction.

Sincerely,



for Greg Rogers
Administrative Secretary



**DEPARTMENT OF
FINANCE**
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

October 15, 2010

Mr. John Duncan, Director
Department of Industrial Relations
455 Golden Gate Avenue, 10th floor
San Francisco, CA 94142

Dear Director Duncan:


Attached please find a list of projects that have been identified as having a high priority due to the public health and safety benefit that will be realized as a result of these projects moving forward. This list of critical projects can only move forward and proceed into the construction phase upon the issuance of either state general obligation bonds and/or State Public Works Board lease revenue bonds.

Through conversations with the Attorney General's Office and the Office of the State Treasurer, the Department of Finance understands that the Attorney General will not be able to provide their customary unqualified opinion letters that are necessary to support the sale of the state's general obligation bonds and the sale of the state's lease revenue bonds.

Without unqualified bond opinion letters the state will not be able to issue its general obligation bonds or its lease revenue bonds which means the crucial health and safety projects on the attached list will not receive the necessary construction funding to be built.

We hope this information is helpful in remedying the situation so the state's critical construction projects that have direct impact on the health and/or safety of the state's charges and the public can be financed and proceed to construction.

Sincerely,


FRED KLASS
Chief Operating Officer

Attachment

cc: Mr. Steve Coony, Chief Deputy Treasurer

Health and or Safety Bond Funded Programs/Projects

Number	Org.	Dept	Program/Project Name	Program / Project Description	Project Costs	Bond Fund Type	
					(in thousands)	GO	LR
1	0250	JC	San Diego County: New San Diego Central Courthouse	Replace Seismic Risk Level V facility with new 71-courtroom facility	572,967		x
2	0250	JC	Sacramento County: New Sacramento Criminal Courthouse	Replace Seismic Risk Level V facility with new 44-courtroom facility	365,130		x
3	0250	JC	Tuolumne County: New Sonora Courthouse	Replace Seismic Risk Level V facility with new 5-courtroom facility	60,368		x
4	0250	JC	El Dorado: New Placerville Courthouse	Replace Seismic Risk Level V facility with new 6-courtroom facility	77,190		x
5	0250	JC	Los Angeles County: New Santa Clarita Courthouse	Replace with new 4-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	49,521		x
6	0250	JC	Inyo County: New Independence Courthouse	Replace with new 2-courtroom facility. No smoke detectors, fire alarms, or sprinklers.	27,415		x
7	0250	JC	Kern County: New Delano Courthouse	Replace with new 3-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	35,879		x
8	0250	JC	Merced County: New Los Banos Courthouse	Replace with new 2-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	27,422		x
9	0250	JC	Stanislaus County: New Modesto Courthouse	Replace with new 26-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	235,542		x
10	0250	JC	Placer County: New Tahoe Area Courthouse	Replace with new 1-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	16,751		x
11	0250	JC	Santa Clara County: New Family Justice Center	Replace with new 20-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	208,774		x
12	0250	JC	Riverside County: New Hemet Courthouse	Replace with new 9-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	98,217		x
13	0250	JC	Los Angeles County: New LA Mental Health Courthouse	Replace with new 3-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	41,944		x
14	0250	JC	Los Angeles County: New Eastlake Juvenile Courthouse	Replace with new 5-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	57,328		x
15	0250	JC	Nevada County: New Nevada City Courthouse	Replace with new 6-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	72,854		x
16	0250	JC	Kern County: New Mojave Courthouse	Replace with new 3-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	36,653		x
17	0250	JC	Plumas County: New Quincy Courthouse	Replace with new 3-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	37,112		x
18	0250	JC	Sierra County: New Downieville Courthouse	Replace with new 1-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	15,897		x
19	0250	JC	Alpine County: New Markleeville Courthouse	Replace with new 1-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates) No fire suppression system.	15,323		x

Health and or Safety Bond Funded Programs/Projects

Number	Org.	Dept	Program/Project Name	Program / Project Description	Project Costs	Bond Fund Type	
					(in thousands)	GO	LR
20	0250	JC	Santa Barbara County: New Santa Barbara Criminal Courthouse	Replace with new 8-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates) No smoke detectors, fire alarms. Sprinklers only on ground floor of multi-level facility.	98,617		x
21	0250	JC	Fresno County: Renovate Fresno County Courthouse	Renovate 25-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	100,917		x
22	0250	JC	Glenn County: Renovation/Addition to Willows Courthouse	Renovate the existing 2 courtroom facility and add 1-courtroom (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates) No smoke detectors, fire alarms, or sprinklers.	39,827		x
23	0250	JC	Kings County: New Hanford Courthouse	Replace with new 12-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	121,616		x
24	0250	JC	Siskiyou County: New Yreka Courthouse	Replace with new 6-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	83,719		x
25	0250	JC	Mendocino County: New Ukiah Courthouse	Replace with new 9-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates) No smoke detectors, fire alarms, or sprinklers.	101,941		x
26	0250	JC	Los Angeles: New Glendale Courthouse	Replace with new 8-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates) No smoke detectors, fire alarms, or sprinklers.	95,644		x
27	0250	JC	Yolo County: New Woodland Courthouse	Replace with new 14-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	139,233		x
28	0250	JC	Butte County: New North Butte County Courthouse	Replace with new 5-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	60,218		x
29	0250	JC	Tehama County: New Red Bluff Courthouse	Replace with new 5-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates) No sprinkler system.	56,600		x
30	0250	JC	Los Angeles County: New Southeast Los Angeles Courthouse	Replace with new 9-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	87,412		x
31	0250	JC	Riverside County: New Indio Juvenile and Family Courthouse	Replace with new 5-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	54,749		x
32	0250	JC	Monterey County: New South Monterey County Courthouse	Replace with new 3-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates) No sprinkler system.	42,489		x
33	0250	JC	Imperial County: New El Centro Family Courthouse	Replace with new 4-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	49,850		x
34	0250	JC	Sutter County: New Yuba City Courthouse	Replace with new 7-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates) No smoke detectors, fire alarms, or sprinklers.	64,653		x
35	0250	JC	Shasta County: New Redding Courthouse	Replace with new 14-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	145,097		x

Health and or Safety Bond Funded Programs/Projects

Number	Org.	Dept	Program/Project Name	Program / Project Description	Project Costs	Bond Fund Type	
					(in thousands)	GO	LR
36	0250	JC	Lake County: New Lakeport Courthouse	Replace with new 4-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	44,949		x
37	0250	JC	Sonoma County: New Santa Rosa Criminal Courthouse	Replace with new 15-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates) No smoke detectors, fire alarms, or sprinklers.	149,761		x
38	0250	JC	Calaveras County: New San Andreas Courthouse	Replace with new 4-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	40,429		x
39	0250	JC	Madera County: New Madera Courthouse	Replace with new 10-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	88,248		x
40	0250	JC	Riverside County: New Riverside Mid-County Courthouse	Replace with new 6-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	54,546		x
41	0250	JC	San Benito County: New Hollister Courthouse	Replace with new 6-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	33,508		x
42	0250	JC	San Bernardino County: New San Bernardino Courthouse	Replace with new 35-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	304,682		x
43	0250	JC	San Joaquin County: New Stockton Courthouse	Replace with new 30-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	243,266		x
44	0250	JC	Tulare County: New Porterville Courthouse	Replace with new 9-courtroom facility (safety/security deficiencies: no secure path to transport inmates; multiple unsecured entry points; no holding cells for inmates)	81,055		x
45	0977	CHFFA	Children's Hospital Program - 2004 (Prop 61)	Improvement projects for hospitals to improve the health and welfare of California's critically ill children.	73,715	x	
46	0977	CHFFA	Children's Hospital Program - 2008 (Prop 3)	Improvement projects for hospitals to improve the health and welfare of California's critically ill children.	465,162	x	
47	1760	OPSC	Alpaugh Unified	Soil liquefaction caused classroom foundations to deteriorate	802	x	
48	1760	OPSC	Alpaugh Unified	Soil liquefaction caused classroom foundations to deteriorate	212	x	
49	1760	OPSC	Alisal Union Elementary	Mold Remediation in 34 Classrooms, administration building and Multipurpose Room	7,598	x	
50	1760	OPSC	Piedmont City Unified	Seismic Rehabilitation of South wing of Classrooms	476	x	
51	1760	OPSC	Bass Lake Joint Union Elementary	Traffic hazards close to school	1,435	x	
52	1760	OPSC	Santee Elementary	Traffic hazards close to school	2,896	x	
53	1760	OPSC	Santee Elementary	Traffic hazards close to school	975	x	
54	1760	OPSC	Santee Elementary	Traffic hazards close to school	2,817	x	
55	1760	OPSC	Susanville	Fire code compliance	1,902	x	
56	1760	OPSC	Carlsbad Unified	Soil remediation at school site due to high levels of toxins in the soil.	518	x	
57	2240	HCD	Housing and Emergency Shelter Trust Fund Acts of 2002 and 2006 (Proposition 46 and 1C Housing Bonds)	Grants and loans to provide affordable and safe housing for lower income families through new construction and rehabilitation	103,760	x	
58	3540	CALFIRE	Replace Forest Fire Stations (Statewide)	Replace old and outdated forest fire stations. Health and safety inadequacies (space and design) related to staffing and equipment.	82,409		x
59	3790	DPR	San Elijo State Beach Replace Lifeguard Tower	Construct new lifeguard tower to replace old unsafe one (Safety).	5,081	x	

Health and or Safety Bond Funded Programs/Projects

Number	Org.	Dept	Program/Project Name	Program / Project Description	Project Costs	Bond Fund Type	
					(in thousands)	GO	LR
60	3860	DWR	Flood Control & Prevention (Prop 84)	Direct Flood Control Projects, subventions to locals for flood control.	87,983	x	
61	3860	DWR	Central Valley & Delta Flood Control (Prop 1E)	Evaluation, repair, rehabilitation, reconstruction, replacement, improvement or addition of facilities in the State Plan of Flood Control, including related mitigation measures.	1,251,509	x	
62	3860	DWR	Flood Control Subventions (Prop 1E)	Subventions to locals for flood control projects or state's share of nonfederal costs for flood control projects under various state and federal laws.	420,770	x	
63	3860	DWR	Flood Protection Corridors (Prop 1E)	Protection, creation and enhancement of flood protection corridors & bypasses, including floodplain mapping, acquiring easements and wildlife enhancements. Available to various departments.	147,583	x	
64	3860	DWR	Storm water management (Prop 1E)	Storm water flood management projects.	64,680	x	
65	3900	Air Board	Lower-Emission School Bus Program	Proposition 1B authorized \$200 million for school bus retrofit and replacement to reduce air pollution and to reduce children's exposure to diesel exhaust from older school buses.	1,400	x	
66	3900	Air Board	Goods Movement Emission Reduction Program	Proposition 1B authorized \$1 billion in funding administered by the state to local agencies (e.g., air districts and seaports) to reduce air pollution emissions and health risk from freight movement along trade corridors. Local agencies apply for funding, which is in turn offered as financial incentives freight equipment owners to upgrade to cleaner technologies.	229,000	x	
67	3940	Water Board	Clean Water & Water Quality - Section 79540a	Proposition 50 authorized \$3.4 billion for clean drinking water and beach protection in 2002; the State Water Board was allocated \$529 million. These projects protect the beneficial uses of water throughout the state through the implementation of best management practices for the control of nonpoint source pollution.	2,478	x	
68	3940	Water Board	Coastal Water Quality - Santa Monica Bay Restoration - Section 795433(2)	Proposition 50 - These projects implement best management practices for the control of nonpoint source pollution to restore and protect surface and groundwater quality and the environment of coastal waters, estuaries, bays, and near shore waters.	4,732	x	
69	3940	Water Board	Water Recycling - Section 79550(g)	Proposition 50 - Projects include recycling grants to ensure that entities have access to recycled water which reduces the use of fresh water and protects water quality by preventing cross contamination.	5,557	x	
70	3940	Water Board	Integrated Water Management - Section 79564	Proposition 50 - These projects will develop Watershed Management Plans that set strategies to address activities that degrade water quality and restore the beneficial uses of the state's waters.	23,745	x	
71	3940	Water Board	Clean Beaches	Proposition 40 authorized \$2.6 billion for clean water, air, parks, and coastal protection in 2002; the State Water Board was allocated \$166 million. These projects protect swimmers' safety and helps protect and restore California's coastal water quality. Projects include construction of disinfection facilities, diversions that prevent polluted storm water from reaching the beach, and scientific testing and monitoring.	4,971	x	
72	3940	Water Board	Urban Storm water	Proposition 40 - These projects implement storm water runoff pollution reduction and prevention best management practices. Projects include diversion of dry weather flows to public treatment works for treatment, and the acquisition and development of constructed wetlands.	3,805	x	
73	3940	Water Board	Nonpoint Source	Proposition 40 - These projects implements best management practices that protect the beneficial uses of water throughout the state through the control of nonpoint source pollution.	4,890	x	
74	3940	Water Board	Agricultural Water Quality	Proposition 40 - These projects implement best management practices that help eliminate polluted runoff from agricultural lands.	1,643	x	
75	3940	Water Board	Small Community Groundwater	Proposition 40 - These projects will treat groundwater to remove contaminates.	331	x	

Health and or Safety Bond Funded Programs/Projects

Number	Org.	Dept	Program/Project Name	Program / Project Description	Project Costs	Bond Fund Type	
					(In thousands)	GO	LR
76	3940	Water Board	Integrated Watershed Mgmt - General	Proposition 40 - These projects will develop Watershed Management Plans that set strategies to address activities that degrade water quality and restore the beneficial uses of the state's waters.	2,260	x	
77	3940	Water Board	Water Recycling	Proposition 13 authorized \$1.97 billion for statewide CALFED Bay-Delta water projects in 2000. The State Water Board was allocated \$695 million. The 2010-11 Governor's Budget appropriates \$2.3 million from this fund for community water recycling project grants to ensure that entities have access to recycled water which reduces the use of fresh water and protects water quality by preventing cross contamination.	2,315		x
78	4300	DDS	Porterville: New Main Kitchen	Build replacement kitchen to prepare and distribute meals to residents per food safety regulations.	28,031		x
79	4440	DMH	Patton: Construct New Main Kitchen	Build replacement kitchen to prepare and distribute meals to residents per food safety regulations.	37,023		x
80	4440	DMH	Napa: Construct New Main Kitchen	Build replacement kitchen to prepare and distribute meals to residents per food safety regulations.	33,034		x
81	4440	DMH	Atascadero:250 Bed Addition Remediation	Remediation of mold throughout the building including resident quarters.	6,598		x
82	5225	CDCR	Infill Facilities Program, Phase I	Design and construct housing units, support buildings, and programming space in order to add up to 12,000 beds at CDCR facilities. This program will help prevent the early release of prisoners, increasing public safety.	1,800,000		x
83	5225	CDCR	Medical/Dental/Mental Health Facilities, Phase I	Design and construct medical, dental, and mental health treatment or housing space at existing prison facilities for up to 6,000 inmates. This program will help resolve outstanding litigation challenging the constitutionality of existing prison healthcare.	710,940		x
84	5225	CDCR	Reentry Facilities Program, Phase I	Acquire land for, design, and construct reentry program facilities to provide housing for up to 6,000 inmates. This program will help prevent the early release of prisoners, increasing public safety.	975,000		x
85	5225	CDCR	Infill Facilities Program, Phase II	Design and construct housing units, support buildings, and programming space in order to add up to 4,000 beds at CDCR facilities. This program will help prevent the early release of prisoners, increasing public safety.	600,000		x
86	5225	CDCR	Medical/Dental/Mental Health Facilities, Phase II	Design and construct medical, dental, and mental health treatment or housing space at existing prison facilities for up to 2,000 inmates. This program will help resolve outstanding litigation challenging the constitutionality of existing prison healthcare.	285,700		x
87	5225	CDCR	Reentry Facilities Program, Phase II	Acquire land for, design, and construct reentry program facilities to provide housing for up to 10,000 inmates. This program will help prevent the early release of prisoners, increasing public safety.	1,625,000		x
88	5225	CDCR	County Jail Facilities, Phase I	Assist counties in the construction of local jail facilities. This program will help prevent the early release of prisoners, increasing public safety.	750,000		x
89	5225	CDCR	County Jail Facilities, Phase II	Assist counties in the construction of local jail facilities. This program will help prevent the early release of prisoners, increasing public safety.	470,000		x
90	5225	CDCR	Local Youthful Offender Rehabilitative Facilities Program	Assist counties in the construction of local youthful offender rehabilitative facilities. This program will help prevent the early release of prisoners, increasing public safety.	100,000		x
91	5225	CDCR	San Quentin State Prison: Condemned Inmate Complex	Design and construct a new condemned inmate complex that will include housing, all appropriate support facilities, and a correctional treatment center. This project will address existing health, safety, and security deficiencies in the existing condemned inmate housing.	356,275		x
92	5225	CDCR	California Men's Colony: Central Kitchen Replacement	Design and construct a new kitchen to replace the existing central kitchen that has deteriorated significantly and no longer meets sanitation, health, and safety requirements.	15,263		x

Health and or Safety Bond Funded Programs/Projects

Number	Org.	Dept	Program/Project Name	Program / Project Description	Project Costs	Bond Fund Type	
					(in thousands)	GO	LR
93	5225	CDCR	California Rehabilitation Center: Replace Men's Dorms, Phase II	Design and construct new dormitory housing units to replace deteriorated and seismically unfit World War II era dormitories. This project will also help prevent the early release of prisoners, increasing public safety.	14,993		x
94	5225	CDCR	California Rehabilitation Center: Replace Men's Dorms, Phase III.	Design and construct new dormitory housing units to replace deteriorated and seismically unfit World War II era dormitories. This project will also help prevent the early release of prisoners, increasing public safety.	14,950		x
95	6600	Hastings	Hastings School of Law	Exterior Repair and Waterproofing to prevent mold.	3,000	x	
96	6600	Hastings	Hastings School of Law	Exterior Lighting: enhancement of security for student, faculty and staff.	80	x	
97	6600	Hastings	Hastings School of Law	Sidewalk replacement, code issue with the City of San Francisco which has issued notices to repair the sidewalk.	200	x	
98	6610	CSU	Systemwide: Future projects multiple campuses	Multi Campus: Seismic Upgrades and structural repairs.	211,553	x	
99	6610	CSU	Systemwide: Future projects multiple campuses	Multi Campus Capital Renewal: HVAC, Plumbing and Exterior Building skin and Window System repairs to prevent mold.	50,000	x	
100	6610	CSU	Systemwide: Future projects multiple campuses	Pathways, access compliance and capital renewal projects.	421,695	x	
101	6440	UC	Systemwide: Future projects multiple campuses	Multi Campus Capital Renewal: HVAC, Plumbing and Exterior Building skin and Window System repairs to prevent mold.	23,230	x	
102	6440	UC	Systemwide: Future projects multiple campuses	Multi Campus: Critical fire, life, and safety projects.	974,663	x	
103	6440	UC	Systemwide: Future projects multiple campuses	Multi Campus: Seismic Upgrades and structural repairs.	210,158		
104	6440	UC	Systemwide: Future projects multiple campuses	Multi Campus: Water System Distribution and Fire Line Improvement Projects	10,461	x	
105	6440	UC	Systemwide: Future projects multiple campuses	Multi Campus: Right sizing electrical systems projects.	43,809	x	
106	6440	UC	UCD	Davis - Briggs Hall fire life safety modernization/Improvements and Building Renewal	23,326	x	
107	6440	UC	UCLA	Los Angeles - School of Medicine High-Rise Fire Systems, and Seismic Renovations.	14,407	x	
108	6440	UC	UCLA	Los Angeles - Life Sciences Building Seismic Renovations.	16,130	x	
109	6870	CCC	Systemwide: Future projects multiple districts	Multi Campus: Pathways, access compliance and capital renewal projects.	246,921	x	
110	6870	CCC	Systemwide: Future projects multiple districts	Multi Campus: Seismic Upgrades and structural repairs.	110,098	x	
111	6870	CCC	Systemwide: Future projects multiple districts	Multi Campus: Replace Fire Alarm Systems	24,226	x	
112	6870	CCC	El Camino College Compton Center	Infrastructure Replacement: Water, sewer, and electrical systems to make buildings functional.	16,208	x	
113	6870	CCC	El Camino College Compton Center	Allied Health Bldg. Renovation to remediate hazardous materials and repair water line systems and make the building functional.	8,946	x	
114	6870	CCC	Gavilan College	Replace water supply system for the college.	6,590	x	
115	8570	DFA	Tulare Animal Health and Food Safety Lab	Construct replacement animal health and food safety laboratory to continue to verify the safety of food for human consumption.	47,452		x
116	8955	CDVA	Yountville: Replace Central Plant	Replace outdated and overloaded facility that provides heating, cooling and electrical distribution for the Veterans Home.	2,473	x	
Total Est. Project Costs					\$17,733,156		

OFFICE OF THE TREASURER

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October 15, 2010

Mr. John Duncan, Director
Department of Industrial Relations
Office of the Director
455 Golden Gate Avenue
San Francisco, CA 94102

RE: Labor Compliance Program Regulations

Dear Mr. Duncan:

When issuing bonds on behalf of the State of California, including general obligation ("GO") bonds and lease revenue bonds, the State Treasurer's Office obtains unqualified opinion letters from bond counsel and the Attorney General's Office stating that, among other things, issuance of the bonds is in compliance with all applicable requirements of state law. The investing public relies on such unqualified opinion letters at the time the bonds are issued.

The State Treasurer's Office has been advised by deputies in the Attorney General's Office that they will be unable to provide the customary unqualified opinion letter for bonds due to recently promulgated regulations requiring payment of a fee by public entities undertaking certain public works projects that are funded with bond proceeds. This would include both GO bonds issued by the State and lease revenue bonds issued by the State Public Works Board ("SPWB"). At this time, the Attorney General's Office has determined that the methodology for calculating the fee which is to be used for the administration and enforcement of prevailing wage requirements on the project conflicts with the requirements of the applicable bond law. Given this conflict, the Attorney General's Office cannot deliver a clean bond opinion for any new issues of GO bonds or SPWB bonds subject to the fee while the current regulations remain in effect.

Without an unqualified opinion letter from the Attorney General's Office, the State will not be able to issue GO bonds and the SPWB will not be able to issue lease revenue bonds as currently planned for November 2010 for any projects that are subject to the fee established in the recently promulgated regulations.

Sincerely,

Blake Fowler

Blake Fowler, Director
Public Finance Division

EDMUND G. BROWN JR.
Attorney General

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October 19, 2010

The Honorable Bill Lockyer
California State Treasurer
915 Capitol Mall, Suite 110
Sacramento, CA 95814

Ana J. Matosantos
Finance Director – State of California
915 L Street
Sacramento, CA 95814

RE: Impact of DIR Regulations Imposing Fees for Prevailing Wage Monitoring on State
General Obligation Bond Programs

Dear Mr. Lockyer and Ms. Matosantos:

You have asked whether the regulatory fees imposed under newly-adopted Department of Industrial Relations (DIR) regulations¹ would be a proper use of state general obligation bond (GO Bond) proceeds. We understand that the fees prescribed in the new regulations are intended to cover the DIR's newly expanded role in monitoring and enforcing prevailing wage laws on state public works projects, as contemplated by SBX2-9 (Stats. 2009, ch. 7). We also understand that you need a prompt response from our office because any indication that such a use of GO Bond proceeds is illegal would prevent this office from issuing unqualified opinions on the validity of GO Bonds to be issued this Fall.

For reasons we explain below, we believe that the methods for determining and imposing the fees, as specified in the new regulations, are incompatible with fundamental, constitutional and statutorily-based GO Bond law. That law requires that any costs to be paid from bond proceeds must be shown to directly relate to the particular object or purpose that is specified in the individual bond act. (Cal. Const., art. XVI, § 1; *see also* Gov. Code, § 16727, subs. (a) and (d).) The DIR regulations, which impose a flat percentage fee on all GO bond funds, fail to satisfy this legal requirement.

¹ The new regulations were adopted in the form of amendments and additions to Regulations Governing Labor Compliance Programs; Compliance Monitoring and Enforcement by Department of Industrial Relations; and Related Revisions. (Cal. Code Regs., tit. 8, §§ 16421, et seq.)

In order to expedite our response to you on this important question, we limit the scope of this letter to the fees as prescribed in the DIR regulations without addressing any other potential issues arising from the DIR's use of GO Bond proceeds to pay its costs of monitoring and enforcing prevailing wage laws. Accordingly, for purposes of this letter, we assume (without analyzing or opining) that SBX2-9 is legally valid and that prevailing wage compliance is a proper use of bond proceeds. With your permission, we focus solely on the impact of the DIR regulations on our ability to give a clean bond opinion.²

Background

General Obligation Bonds.

The California Constitution imposes a voter-approval requirement on state GO Bonds. (Cal. Const., art. XVI, § 1.) Once the voters approve a GO Bond Act, the Legislature cannot significantly alter the project or the uses for bond proceeds the voters approved. A California Court has expressly held: “[t]he legislature’s annual appropriations of money in the bond-financed fund for a public function unrelated to the bond-financed scheme would impliedly repeal an important feature of the bond law.” (*Veterans of Foreign Wars v. State of California* (1974) 36 Cal.App.3d 688, 693.) The Court explained that “[t]he constitutional injunction against later repeal of the bond law aims to prevent the legislature from making substantial changes in the scheme or design which induced voter approval.” (*Ibid.*) Thus, a new statute substantially changing the use of bond proceeds approved by the voters is an implied repeal of the voters’ approval in violation of article 16, section 1 of the State Constitution. (*Id.* at 694-695.) To determine the “scheme or design” the voters contemplated, we look to the GO Bond Act’s “specific object” or purpose. (Cal. Const., art. XVI, § 1 (“[A]ll moneys raised by authority of [a GO Bond Act] shall be applied only to the specific object therein stated or to the payment of the debt thereby created.”) [emphasis added].)

In addition to this constitutional law, state statutes also impose limits on the use of GO Bond proceeds. In particular, the State General Obligation Bond Law (the GOBL) (Gov. Code, §§ 16720, et seq.) establishes a standardized set of procedures to govern state GO Bonds. (*Id.* at § 16721.)

² Generally speaking, a bond opinion is unqualified if counsel is “firmly convinced (also characterized as having a ‘high degree of confidence’) that, under the law in effect on the date of the opinion, the highest court of the relevant jurisdiction, acting reasonably and properly briefed on the issues, would reach the legal conclusions stated in the opinion.” (Nat. Assoc. of Bond Lawyers Comm. on Opinions and Documents, Model Bond Opinion Report (February 2003); see also *Weiss v. Securities and Exchange Comm.* (D.C. Cir. 2006) 468 F.3d 849 [standards published by the National Association of Bond Lawyers could be presumed by bond purchasers to apply to bond opinions].) To the extent that we are aware at the time of issuing the opinion that the eligibility of the project or the intended use of bond proceeds is not consistent with the law, we cannot give an unqualified opinion.

Government Code section 16727 is the GOBL provision that governs the use of state GO Bond proceeds. (Gov. Code, § 16727.) It begins with the following restrictive language: “Proceeds from the sale of any bonds issued pursuant to this chapter shall be used only for the following purposes....” The statute identifies five permissible uses of bond proceeds in separate subparagraphs, lettered (a) through (e). (*Id.*) The only provisions apparent to us that would authorize using bond proceeds to pay the DIR’s fees are those pertaining specifically to construction and acquisition of capital assets authorized in subdivision (a), and to administrative costs authorized in subdivision (d). (*See* Gov. Code, § 16727, as a whole, and its subdivisions (a) and (d) in particular.) We conclude that the DIR fees addressed in this letter must, therefore, be shown to fit within one or the other of these two subdivisions of section 16727 if paid with GO Bond proceeds.³

Subdivision (d) authorizes the use of GO Bond proceeds “[t]o pay the costs of a state agency that has responsibility for administering the bond program...includ[ing] those incurred by the Treasurer, the Controller, the Department of Finance, and the Public Works Board for staff, operating expenses and equipment, and consultants’ costs.” (*Id.* at 16727, subd. (d).)

We interpret subdivisions (a) and (d) of Government Code section 16727 narrowly—as permitting the use of bond proceeds to pay costs of capital assets or administration only when those costs directly relate to the purpose of (as distinguished from merely benefiting) the specific bond program. This narrow interpretation is supported by the legislative history of Government Code section 16727—since it unequivocally shows that the Legislature intended to curtail the “disturbing practice” of using bond proceeds for operating costs that were unrelated to GO Bond projects. (*See, e.g.,* Sen. Rules Com., Off. Of Sen. Floor Analysis, 3rd reading analysis of Sen. Bill 512, as amended Aug. 26, 1992.)⁴

Case law also supports the conclusion that only directly-related costs may be paid from GO Bond proceeds. For example, in a case discussing this very provision of the GOBL, the Court allowed bond proceeds to be used for time staff spent acting as construction project administrators under the bond program, but did not allow bond proceeds to be used for the costs of the district’s routine work and overhead expenses. (*See San Lorenzo Valley Community*

³ Each GO Bond Act must incorporate the GOBL (Gov. Code, § 16724(g)), but may modify it. (*Id.*, § 16721). In the case of a conflict between the GOBL and the GO Bond Act, the GO Bond Act controls. (§ 16723.) Some GO Bond Acts do not incorporate section 16727 at all. (*See, e.g.,* Ed. Code, § 100910, subd (a).) In those cases, the GO Bond Acts must detail the proper uses of bond proceeds. Because of the variations among GO Bond Acts, the text of each must be reviewed in order to determine whether a particular expense may be paid from its proceeds. Such a review is beyond the scope of this letter.

⁴ “To the extent we find the statutory language susceptible of more than one reasonable interpretation, we examine other sources, including the history of the provision’s enactment, for insight into the Legislature’s intent.” (*Mumson v. Del Taco, Ind.* (2009) 46 Cal.4th 661, 670 (citations omitted).)

Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist. (2006) 139 Cal.App.4th 1356, 1402 (interpreting § 16727, subd. (d) and other education-related laws.)

The DIR Fee

SBX2-9 became effective on May 21, 2009. (Stats. 2009, ch. 7 (SBX2-9)) This new statute revised the state's methods for assuring compliance with prevailing wage requirements on state public works projects, including projects funded by state GO Bonds. (Lab. Code, § 1771.3); *see also* Cal. Regs., tit. 8, § 16450, subd. (a) (stating that the implementing regulations are applicable to "any public works project that is funded in whole or in part from any bond issued by the state to fund public works projects".) SBX2-9 also required the DIR to "adopt reasonable regulations setting forth the manner in which the department will ensure compliance with and enforce prevailing wage requirements on the project." (Lab. Code, § 1771.55, subd. (b)(1).)

For public works projects funded by state-issued bonds, SBX2-9 authorized fees that could be charged "in an amount not-to-exceed 0.25% of the bond proceeds." (Lab. Code, § 1771.3, subd. (a)(2).) The legislation also required the DIR to "[a]dopt reasonable regulations setting forth the manner in which the department will ensure compliance with and enforce prevailing wage requirements on the project...." (*See* Lab. Code, § 1771.55.) In addition, SBX2-9 conditioned the effective date of the fees upon the adoption of implementing regulations. (*Id.* at 1171.3, subd. (b).)

The implementing regulations became effective on August 1, 2010. They established that the fees would be based on a flat percentage of total project funds at the maximum rate allowed by SBX2-9—one-fourth of one percent—to be paid by each awarding body:

For any project subject to the requirements of this subchapter solely by reason of the receipt of state-issued bond funds, the fee shall be one-fourth of one percent *of the funds released by the funding agency for the project.*

(Cal. Code Regs., tit. 8, § 16452, subd. (a)(1) (emphasis added).) And the regulations also require a subsequent fee to be calculated and paid "at the time of each successive release of *state-issued bond funding from which an additional fee is due.*" (*Id.*, § 16452, subd. (b) (emphasis added).)

In conversations with DIR staff, they have suggested that the regulations are not defective because they do not require the fees to be paid out of bond proceeds. However, we do not think that the plain language of the regulations supports this suggested interpretation. Both the up-front timing of when the fees are collected and the choice of language—*of the funds released and bond funding from which an additional fee is due*—reasonably indicate that the regulations were drafted to make certain that the DIR could collect its fees *from bond proceeds* at the moment when those bond proceeds are available, but not yet spent.

Notably, the DIR regulations do not include any provisions for later reconciliation with the actual DIR monitoring costs for each project or for refunding any amounts collected in excess of each program's actual, incurred costs. They also fail to ensure that individual accounts for each Bond Act would be established to prevent commingling among project funds and to ensure that none of the proceeds of an individual Bond Act would be diverted to some other project or other impermissible purpose. The DIR's Final Statement of Reasons for Proposed Amendments to the Regulations (Final Statement of Reasons)⁵ explained why general rather than detailed accounting methods were adopted:

The Director also considered adopting a provision that would provide for later recalculation of fees and supplemental payments or refunds at the conclusion of the project. However, the Director decided against this option on the grounds that it likely would not generate sufficient additional fees or refunds (with project cost overruns likely to be far more typical than overestimates) to warrant the associated administrative and enforcement costs for awarding agencies and the Department.

(Final Statement of Reasons, p. 4.) Hence, the regulations, as adopted, took DIR internal needs for funding and cost efficiency into account, without addressing the constitutional and statutory bond law requirements.

Analysis

The Flat Percentage DIR Fee Fails the Bond Law Requirement that Costs Paid with GO Bond Proceeds Must Actually and Directly Relate to the Particular GO Bond Program and that Such Costs be Reasonable.

Our office has routinely advised that in order to be paid from bond proceeds, costs must be: (1) reasonable, (2) directly-related to the particular GO Bond program, and (3) compliant with the terms and limitations stated in the individual GO Bond Acts. But the fee-setting methodology established in the DIR's recently-adopted regulations for monitoring compliance with prevailing wage laws does not permit compliance with any of these requirements. The DIR's Initial Statement of Reasons that accompanied the draft regulations included the following comment—a comment that demonstrates that the regulations were drafted to maximize the level of DIR funding and to produce accounting efficiencies for the Department rather than to establish precise, cost-accounting methods that are essential to lawful use of GO Bond proceeds:

⁵ Government Code section 11346.2 requires that an initial statement of reasons for proposing new regulations or amendments of existing regulations must be submitted to the Office of Administrative Law (OAL) along with the agency's notice of proposed action. (Gov. Code, § 11346.2, subd. (b).) Similarly, Government Code section 11346.9 requires the proposing agency to file a "final statement of reasons" with OAL at the close of the regulation adoption procedures. (*Ibid.*, § 11346.9.)

[U]ltimately, the projects must generate a level of funding to support the Department's compliance monitoring and enforcement on subject projects statewide, and a flat percentage fee that can be calculated once and paid up front (similar to how many insurance premiums are billed and paid) will generate a more predictable level of funding, *without focusing unduly on the cost or "profitability" of monitoring and enforcement on any specific project....*

(Initial Statement of Reasons, p. 12 (emphasis added).)

As shown in the above description of the DIR prevailing wage fee program, the DIR started its analysis with the total amount of money it wanted to support the whole DIR program of monitoring all public works projects statewide. And rather than working within the "not-to-exceed" percentage figures stated in SBX2-9 for calculating the fee, the DIR selected a flat percentage of estimated project costs at the highest level permissible under the statute. The DIR then provided that the fees would have to be paid by each public works program at the very beginning of a project. Thus, the DIR wanted to make sure that it was paid "up-front" before actual costs for an individual project could possibly be calculated or known.

The fee-determination methods adopted in the regulations appear to be based upon an assumption that each and every one of the statewide public works projects would actually produce exactly same ratio between the DIR's monitoring costs and the total costs of the particular project. This assumption fails to consider that some projects would have higher materials and other costs than others. Higher materials costs do not necessarily translate into higher labor costs that would create a need for more extensive prevailing-wage monitoring. The assumption also fails to take into account that some projects would be easier and less costly for the DIR to monitor than others. It appears that the DIR was concerned with making sure that its own, aggregate monitoring costs would be covered to the greatest degree permitted under SBX2-9—regardless of the laws governing the use of GO Bond proceeds.

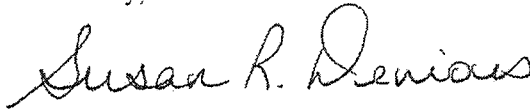
As a result of the methodology adopted in the regulations, the DIR could not possibly show that the fees it collected from GO bond proceeds were actually and directly-related to the individual GO Bond program or that the paid costs were reasonable. And because of the absence of tracking procedures to determine the actual costs incurred on a given bond project, there would be no way of knowing whether any excess amount collected from one particular bond program was used to support some other project or some other, unrelated DIR expense, contrary to the constitutional and statutory limits placed on the use of GO Bond proceeds. (Cal. Const., art. XVI, § 1; Gov. Code, § 16727.)

The Honorable Bill Lockyer
Ana J. Matosantos
October 19, 2010
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Conclusion

In summary, the current regulations pertaining to the DIR fee provide an imprecise methodology and establish accounting procedures that conflict with the requirements of black-letter GO Bond law—law that requires that all expenses to be paid with bond proceeds must be shown to be reasonable in amount and to directly relate to the single purpose or project stated in the individual GO Bond Act. Given this conflict, our office cannot deliver a clean bond opinion for any new issues of GO Bonds while the current regulations governing DIR fees remain in effect.

Sincerely,



SUSAN R. DENIOUS
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

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DEPARTMENT OF
FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DDF.CA.GOV

October 20, 2010

Mr. John Cumming, Counsel
Department of Industrial Relations,
Office of the Director, Legal Unit
455 Golden Gate Avenue, Suite 9516
San Francisco, California 94102

Dear Mr. Cumming:


This letter is intended to describe when the State Public Works Board (SPWB) is able to issue bonds, which the State Treasurer sells, in order to obtain money to fund construction of its projects. SPWB bonds, like General Obligation bonds, can only be sold during certain discrete times of the year.

During a budget impasse, the state does not have market access. Thus, after June 30th of any year, the state is unable to sell bonds until a new budget is enacted. This year, the state was blocked from accessing the market from June 30th until October 8th.

Additionally, there are two separate "black-out periods." These black-out periods correspond to the times when the Department of Finance is receiving information used to prepare the Governor's Budget in January of each year and the revised budget proposal issued in May. Federal securities law requires that information that a reasonable investor would want to know must be disclosed. However, during these "black-out periods" information is being received too frequently, decisions are being made, and the situation is too fluid to provide disclosure that would satisfy federal law. Therefore, the state must not issue bonds during these periods. The next the black-out period will begin December 3, 2010, and will not end until sometime after the Governor's Budget is released. The spring black-out period generally lasts a few weeks before and after May 15th.

Thus this year, the SPWB will only be able to issue bonds between now and December 3, 2010. Neither SPWB bonds nor General Obligation bonds have been issued since June. Any failure to sell bonds during this time critical period will mean that funds will be unavailable to address needed health and safety projects.

Sincerely,



JENNIFER K. ROCKWELL
Chief Counsel

EXHIBIT B

Statutes Requiring Awarding Bodies to Use Compliance Monitoring Unit (CMU) or an Approved Labor Compliance Program (LCP) for Prevailing Wage Monitoring and Enforcement [as of 10/20/2010]

STATUTES REQUIRING AWARDING BODIES TO USE DLSE'S COMPLIANCE MONITORING UNIT (CMU) OR AN APPROVED LABOR COMPLIANCE PROGRAM (LCP) FOR PREVAILING WAGE MONITORING AND ENFORCEMENT [as of 10/20/2010]

Statute:	Applies to:	Requires:
<p>Education Code §17250.30 -- sunsets on 1/1/2014 [Stats. 2001, Chap. 412 (AB 1402); amended by Stats. 2002, c. 664 (AB 3034), §57; Stats. 2007, c. 471 (SB 614), §2; and Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §2]</p>	<p>School districts entering into design-build contract for construction of school facility costing over \$2.5 million.</p>	<p><i>Public works contracts awarded prior to effective date of SBX2-9 regulations:</i> Approved LCP or contract with approved third party LCP, <i>unless</i> there is a collective bargaining agreement binding all contractors performing work on the project.</p> <p><i>Public works contracts awarded on or after effective date of SBX2-9 regulations:</i> Fee-based monitoring by CMU <i>unless</i> district has its own approved LCP for all projects.^{1, 2}</p>
<p>Education Code §81704 -- sunsets on 1/1/2014 [Stats. 2002, Chap. 637 (AB 1000); amended by Stats. 2007, c. 471 (SB 614), §8; and Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §3]</p>	<p>Community College Districts entering into design-build contract for construction of school facility costing over \$2.5 million.</p>	<p><i>Public works contracts awarded prior to effective date of SBX2-9 regulations:</i> Approved LCP or contract with approved third party LCP, <i>unless</i> there is a collective bargaining agreement binding all contractors performing work on the project.</p> <p><i>Public works contracts awarded on or after effective date of SBX2-9 regulations:</i> Fee-based monitoring by CMU <i>unless</i> district has its own approved LCP for all projects.^{1, 2}</p>
<p>Government Code §6531 [Stats. 2002, Chap. 2002 (AB 2867); amended by Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §4]</p>	<p>Model school construction project undertaken by San Diego Model School Development Agency within City Heights Project Redevelopment Area.</p>	<p><i>Public works contracts awarded prior to effective date of SBX2-9 regulations:</i> Approved LCP or contract with approved third party LCP, <i>unless</i> there is a collective bargaining agreement binding all contractors and subcontractors performing work on the project; however the JPA is not precluded from operating an LCP with respect to those projects.</p> <p><i>Public works contracts awarded on or after effective date of SBX2-9 regulations:</i> Fee-based monitoring by CMU <i>unless</i> district has its own approved LCP for all projects.^{1, 2}</p>

Statute:**Applies to:****Requires:**

<p>Health and Safety Code §32132.5 by reference to Public Contract Code §20133 [Stats. 2008, Chap. 415 (SB 1699)]</p>	<p>Design-build contracts for construction of building or improvements at Sonoma Valley Hospital.</p>	<p><i>Public works contracts awarded prior to effective date of SBX2-9 regulations:</i> Approved LCP or contract with approved third party LCP, <i>unless</i> there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</p> <p><i>Public works contracts awarded on or after effective date of SBX2-9 regulations:</i> Fee-based monitoring by CMU <i>unless</i> district has its own approved LCP for all projects.^{1, 2}</p>
<p>Labor Code §1771.3 [Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §5]³</p>	<p>Public works contract awarded on or after effective date of SBX2-9 regulations that uses funds derived from any bond issued by the state to fund Public works projects.</p>	<p>Fee-based monitoring by CMU <i>unless</i> awarding body has its own approved LCP for all projects.¹</p>
<p>Labor Code §1771.7 [Stats. 2002, Chap. 868 (AB 1506); amended by Stats. 2003, c. 834 (AB 324), Stats. 2005, c. 606 (AB 414); and Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §8]³</p>	<p>Public works contract awarded prior to effective date of SBX2-9 regulations that uses funds derived from Kindergarten-University Public Education Facilities Bond Acts of 2002 (Prop. 47) and 2004 (Prop. 55).</p>	<p>Approved LCP or contract with approved third party LCP.^{4, 5}</p>
<p>Labor Code §1771.75 [Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §9]³</p>	<p>Public works contract awarded on or after effective date of SBX2-9 regulations that uses funds derived from Kindergarten-University Public Education Facilities Bond Acts of 2002 (Prop. 47) and 2004 (Prop. 55).</p>	<p>Fee-based monitoring by CMU <i>unless</i> awarding body has its own approved LCP for all projects.^{1, 5}</p>

Statute:	Applies to:	Requires:
<p>Labor Code §1771.8 [Stats. 2002, Chap. 892 (SB 278); amended by Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §10]³</p>	<p>Public works contract awarded prior to effective date of SBX2-9 regulations that uses funds made available by the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Prop. 50).</p>	<p>Approved LCP or contract with approved third party LCP.</p>
<p>Labor Code §1771.85 [Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §11]³</p>	<p>Public works contract awarded on or after effective date of SBX2-9 regulations that uses funds made available by the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Prop. 50).</p>	<p>Fee-based monitoring by CMU <i>unless</i> awarding body has its own approved LCP for all projects.¹</p>
<p>Labor Code §1771.9 [Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §13]</p>	<p>Public works contract awarded on or after effective date of SBX2-9 regulations that is financed in any part by the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century. (Prop. 1A [2008])</p>	<p>Fee-based monitoring by CMU <i>unless</i> awarding body has its own approved LCP for all projects.¹</p>
<p>Public Contract Code §6804 -- sunsets on 1/1/2014 [Stats. 2009-2010 2d Ex. Sess., c. 2 (SBX2-4), §3]</p>	<p>Up to 15 design-build demonstration projects (5 by local transportation entities and 10 by Caltrans) authorized by the California Transportation Commission</p>	<p><i>Public works contracts awarded prior to effective date of SBX2-9 regulations:</i> Approved LCP or contract with approved third party LCP, <i>unless</i> there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</p> <p><i>Public works contracts awarded on or after effective date of SBX2-9 regulations:</i> Fee-based monitoring by CMU <i>unless</i> awarding body has its own approved LCP for all projects.^{1,2}</p>

Statute:	Applies to:	Requires:
<p>Public Contract Code §20133 -- <i>sunsets on 1/1/2014</i></p> <p>[Stats. 2000, Chap. 594 (AB 2296); amended by Stats. 2005, c. 350 (AB 1511) and c. 376 (SB 287); Stats. 2006, c. 538 (SB 1852), § 541; Stats. 2007, c. 584 (SB 233), § 1; Stats. 2007, c. 585 (SB 416), § 1.5; Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §14; and Stats. 2010, c. 629 (SB879), §1]</p>	<p>Counties for design-build contracts for buildings, directly related improvements, and wastewater treatment facility construction projects costing over \$2.5 million. [Legislation to extend sunset date and make other revisions pending.]</p>	<p><i>Public works contracts awarded prior to effective date of SBX2-9 regulations:</i> Approved LCP or contract with approved third party LCP, <i>unless</i> there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</p> <p><i>Public works contracts awarded on or after effective date of SBX2-9 regulations:</i> Fee-based monitoring by CMU <i>unless</i> county has its own approved LCP for all projects.^{1, 2}</p>
<p>Public Contract Code §20175.2 -- <i>sunsets on 1/1/2016</i></p> <p>[Stats. 2005, Chap. 228 (AB 1329); amended by Stats. 2006, c. 244 (SB 535), § 1; Stats. 2007, c. 473 (SB 645), § 1; Stats. 2008, c. 314 (AB 642), §1; and Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §15]</p>	<p>Cities for design-build contracts for building construction projects (not including streets and highways, public rail transit, or water resources facilities and infrastructure) costing over \$1 million.</p>	<p><i>Public works contracts awarded prior to effective date of SBX2-9 regulations:</i> Approved LCP or contract with approved third party LCP, <i>unless</i> there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</p> <p><i>Public works contracts awarded on or after effective date of SBX2-9 regulations:</i> Fee-based monitoring by CMU <i>unless</i> city has its own approved LCP for all projects.^{1, 2}</p>
<p>Public Contract Code §20193 -- <i>sunsets on 1/1/2020</i></p> <p>[Stats. 2008, Chap. 314 (AB 642), §2; amended by Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §16]</p>	<p>Up to 20 design-build projects by qualified local entities for construction of wastewater treatment, solid waste, or water recycling facilities costing over \$2.5 million.</p>	<p><i>Public works contracts awarded prior to effective date of SBX2-9 regulations:</i> Approved LCP or contract with approved third party LCP, <i>unless</i> there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</p> <p><i>Public works contracts awarded on or after effective date of SBX2-9 regulations:</i> Fee-based monitoring by CMU <i>unless</i> awarding body has its own approved LCP for all projects.^{1, 2}</p>

Statute:	Applies to:	Requires:
<p>Public Contract Code §20209.7 -- sunsets on 1/1/2015 [Stats. 2000, Chap. 541 (AB 958); amended by Stats. 2001, c. 159 (SB 662), § 167; Stats. 2004, c. 196 (SB 1130), §3; Stats. 2006, c. 262 (AB 372), §2; Stats. 2008, c. 185 (AB 387); and Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §17]</p>	<p>Transit operators entering into design-build contracts for (1) non-rail transit projects exceeding \$2.5 million in cost, (2) capital maintenance or capacity-enhancing rail projects exceeding \$25 million in cost, or (3) acquisition and installation of items related to safety, disaster preparedness, or homeland security [with no cost threshold].</p>	<p><i>Public works contracts awarded prior to effective date of SBX2-9 regulations:</i> Approved LCP or contract with approved third party LCP, <i>unless</i> there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</p> <p><i>Public works contracts awarded on or after effective date of SBX2-9 regulations:</i> Fee-based monitoring by CMU <i>unless</i> district has its own approved LCP for all projects.^{1, 2}</p>
<p>Public Contract Code §20688.6 -- sunsets on 1/1/2016 [Stats. 2009-2010 2d Ex.Sess., c. 2 (SBX2-4), §4]</p>	<p>Up to 10 design-build community redevelopment infrastructure projects that cost in excess of \$1 million and are approved by the State Public works Board.</p>	<p><i>Public works contracts awarded prior to effective date of SBX2-9 regulations:</i> Approved LCP or contract with approved third party LCP, <i>unless</i> there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</p> <p><i>Public works contracts awarded on or after effective date of SBX2-9 regulations:</i> Fee-based monitoring by CMU <i>unless</i> awarding body has its own approved LCP for all projects.^{1, 2}</p>
<p>Public Contract Code §20785 by reference to Public Contract Code §20133 -- sunsets on 1/1/2013 [Stats. 2007, c. 473 (SB 645)]</p>	<p>Orange County Sanitation District for design-build contracts for construction projects (including but not limited to public wastewater facilities) that cost in excess of \$6 million.</p>	<p><i>Public works contracts awarded prior to effective date of SBX2-9 regulations:</i> Approved LCP or contract with approved third party LCP, <i>unless</i> there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</p> <p><i>Public works contracts awarded on or after effective date of SBX2-9 regulations:</i> Fee-based monitoring by CMU <i>unless</i> district has its own approved LCP for all projects.^{1, 2}</p>

Statute:	Applies to:	Requires:
<p>Public Contract Code §20919.3 -- <i>sunsets on 12/1/2012</i></p> <p>[Stats. 2003, Chap. 889 (AB 14); amended by Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §19]</p>	<p>Los Angeles Unified School District for job order construction contracts of \$1 million or less.</p>	<p><i>Public works contracts awarded prior to effective date of SBX2-9 regulations:</i> Approved LCP or contract with approved third party LCP, <i>unless</i> there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.⁶</p> <p><i>Public works contracts awarded on or after effective date of SBX2-9 regulations:</i> Fee-based monitoring by CMU <i>unless</i> district has its own approved LCP for all projects.^{1, 2, 6}</p>
<p>Public Contract Code §21162 by reference to Public Contract Code §20133</p> <p>[Stats., Chap. 847 (A.B.674), § 2]</p>	<p>Santa Clara Valley Water District for design-build contracts for building construction</p>	<p><i>Public works contracts awarded prior to effective date of SBX2-9 regulations:</i> Approved LCP or contract with approved third party LCP, <i>unless</i> there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</p> <p><i>Public works contracts awarded on or after effective date of SBX2-9 regulations:</i> Fee-based monitoring by CMU <i>unless</i> district has its own approved LCP for all projects.^{1, 2}</p>
<p>Public Resources Code §75075</p> <p>[Initiative Measure (Prop. 84, §1, approved Nov. 7, 2006)]</p>	<p>Public works projects financed in any part by the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006)</p>	<p>Approved LCP or contract with approved third party LCP.</p>
<p>Streets and Highways Code §143(e) by reference to Chapter 6.5 (commencing with section 6800) of Part 1 of Division 2 of the Public Contract Code</p> <p>[As amended by Stats. 2009-2010 2d Ex. Sess., c. 2 (SBX2-4), §5]</p>	<p>Specified transportation projects that are authorized by the California Transportation Commission and use the design-build procurement process</p>	<p><i>Public works contracts awarded prior to effective date of SBX2-9 regulations:</i> Approved LCP or contract with approved third party LCP, <i>unless</i> there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</p> <p><i>Public works contracts awarded on or after effective date of SBX2-9 regulations:</i> Fee-based monitoring by CMU <i>unless</i> awarding body has its own approved LCP for all projects.^{1, 2}</p>

Notes:

1. Awarding body must operate LCP on all projects in which it participates or on all projects in which it participates that otherwise would be subject to CMU and cannot contract with third party to operate LCP.
2. Prior exception for projects covered by collective bargaining agreements no longer applies.
3. Legislation to amend statute [SB 856] passed by Legislature and awaiting action by Governor as of 10/20/2010.
4. Additional requirements specified in statute for California State University.
5. Additional requirements specified in statute for University of California or any campus of that university.
6. Los Angeles Unified School has operated an approved LCP on all of its projects since prior to adoption of statute through the present.