

DEPARTMENT OF INDUSTRIAL RELATIONS

Office of the Director

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AB 547 Advisory Committee
DRAFT – MINUTES OF MEETING
Wednesday, December 15, 2022
 Via Video/Audio Conference

In Attendance:**DIR:**

Deanna Ping, *DIR Chief Deputy Director*
 Sulma Guzman, *Legislative and Regulatory Affairs, Deputy*
 Kumani Armstrong, *Special Counsel*
 Zakiya Ali, *DLSE*
 Patricia Salazar, *DLSE*
 Dave Gurley, *DLSE*

Committee Members:

Yardenna Aaron, *Maintenance Cooperation Trust Fund*
 Anabella Aguirre, *Ya Basta*
 Chris Bouvier, *ABM Industries Inc.*
 Lucia Carillo, *DMS Facility Services*
 Sandra Díaz, *SEIU United Service Workers West*
 Alejandra Domenzain, *UC Berkeley - LOHP*
 Dick Dotts, *DMS Facility Services*
 Andrew Gross Gaitan, *SEIU United Service Workers West*

Beatriz Guillen, *Maintenance Cooperation Trust Fund*
 Rashida Harmon, *DFEH*
 Sandra Henriquez, *VALOR*
 David Hernandez, *Servicon Systems, Inc.*
 Stacey Jue, *ABM Industries Inc.*
 Veronica Lagunas, *Ya Basta*
 Beth Malinowski, *SEIU California*
 Maria Nieto, *Maintenance Cooperation Trust Fund*
 Tony Ruiz, *SEIU United Service Workers West*
 Maricela Salinas, *Maintenance Cooperation Trust Fund*
 Luis Sandoval, *Building Skills Partnership*
 Jessica Stender, *Equal Rights Advocates*
 Denise Velasco, *Maintenance Cooperation Trust Fund*
 Laura Zwick, *ABM Industries Inc.*

Interpreters:

David Myers, *DIR Interpreter*

I. Approval of Minutes

Motion: Approval of the minutes from the September 14, 2022 meeting

Vote: The committee members in attendance voted unanimously for approval of the minutes from the September 14, 2022 meeting.

II. Application for Qualified Organizations

- Discussion of committee's role in the application process; what can be expected
- Committee's future role and protocol for those recommendations
- Detailed revised timeline so everyone knows exactly what to expect

III. Qualified Organization Assessment Form (QOAF)

- Deadlines kept getting pushed out
- LCO's goal is to get the application process started
- Application was posted on November 20, 2022 and extended the application process until the end of December 2022. This was done to meet the January 1, 2023 deadline. This was not meant to surprise anyone.
 - Criticism and complaints received for not providing a warning. Since then, the application was pulled from the website.
- Questions/Comments:
 - Sandra Diaz – We had major concerns with the process and timeline. Happy that we can review the application and the supporting documents thoroughly, and have this space today for a discussion.
 - Sandra Henriquez – Appreciate DIR pulling back the application and allowing the space for committee input
- DIR/LCO will be transparent with the next steps. No more surprises.
- Application – Includes language directly from statute
 - Intent is to keep the application short, reiterate the statutory law, and request documents in every category, both for peer trainers and QOs.
 - Want to keep the general format
 - Don't want it to turn into a micro review but more of a macro discussion on improvements
 - Small edits – send to AB547 email
 - Supporting documents overlaps with the application – Putting the documents on the applications can create problems because they are not mentioned in the statute. This would be an underground regulation to specifically require documents on the application that are not referenced in the statute.
 - What can we do to incorporate all those documents? DIR/LCO suggests creating an appendix. In the next couple weeks, there will be an opportunity to provide more documents for LCO and then put into a PDF document. Then LCO can attach that document to the website. Applicants can use this appendix as a tool.
- Discussion - Application:
 - Tony Ruiz
 - To pull the language directly from the statute is the most conservative approach that you could take because it would avoid any underground regulation. Wondering if this would inhibit meaningful review from committee. Do we have room to go outside of the statutory language? This would be solving the underground regulation problem, but also creating another problem in the application process.
 - Dave Gurley
 - What about the compromise of the appendix so applicants can see what LCO can accept?
 - Kumani Armstrong
 - Appendix is more a list of suggestions to satisfy certain aspects of the form. Designed to not be an exhaustive list, but more of a broad suggestive list.
 - Sulma Guzman
 - What are underground regulations and potential impact on the state agency?
 - Kumani Armstrong

- Government outlines how state agencies have to do rulemaking. Cannot do things without going through a public process. Underground regulations come into play when agencies start making requirements without going through that public process. It is a very time consuming process, and we are trying to avoid having to do that.
- Sandra Henriquez
 - Working in CA with programs and funds administered by state agencies, it is routine that state agencies provide additional guidance in terms of how to meet the language in the statute. Seems to me that we should go through the regulatory process in order to uphold the spirit of the law. I don't think having the appendices is sufficient. It is too subjective on what is and is not acceptable.
- Andrew Gross Gaitan
 - I haven't seen the appendix and how it's framed. Need to remember that the janitorial industry is the underground economy. It's been at the workforce agency's list as problematic for not following even basic rules. We've had 2 cycles of the legislation. 2nd cycle was to put a priority on the concept that the best people to do the training would be the people who have worked in the industry as janitors. This would be true training, not just only understanding sexual assault and trauma, but functioning as a peer trainer with other workers in the industry. I know there are going to be issues around transparency in terms of what the committee is able to see or review from an applicant.
- Deanna Ping
 - We thought the statute is already prescriptive. Written in a very clear way.
- Andrew Gross Gaitan
 - There is an association at LAX of exclusively non-union service providers that are closely affiliated with airlines for America, who is all about keeping prices down for those services. In the janitorial industry, there is a non-profit entity who is also a non-union association. How do we balance the concern between underground regulation versus defending the process of deciding who qualifies if anyone wants to challenge that process? Any employer, who actually wants to follow the law and implement the training as it was intended, is at a huge economic disadvantage from their competitors who are not paying all their employees an extra 16 hours and also dealing with coordination, logistics, and so forth. This is something that the entire workforce has to go through. The concern here is how do we make sure that the entities that are going to deliver the training really have the authority to approve or disprove that they are authentic or not?
- Chris Bouvier
 - You have legitimate contractors, including those on this call, who will be wanting to do this the right way. Doing it right involves expenses, including expenses that we're already incurring, and have been incurring since last year due to our decision to finance this training through our collective bargaining agreement. We have all covered janitorial contractors to be subject to the same type of rules and the same training. We would certainly want the process to result in qualified training organizations that are all doing the same thing, and not any of them cutting corners to evade the rigorous requirements. We would support the application process that produces a uniform compliant training organization.
- David Hernandez

- Make sure the end result to achieve the spirit of what we were going into when this legislation was created. We want the learning component to be equally good for every janitor to go through it and for every janitorial employment organization to do it the right way. Other than just checking boxes on a form, the law would suggest that we have to be able to validate these things in some way.
- Sandra Diaz
 - I think there has to be more consideration on how we frame the QO and partner organization in relation to each other. In terms of the appendix, it's meant to be used as a tool. It makes it seem like it's an option to use it or now. Concern that the information that will be provided on the form doesn't capture the qualifications right here. Important to establish this experience with the population, that it's led by janitors or survivors that are invested in transforming it. Concern that the application and documents won't allow the committee to do a meaningful review of the applicants. Would rather see this as strong as possible for it to be successful because this is the first of its kind. Would like to be able to evaluate the conversation of further rule-making because we didn't get what we needed out of this process.
- Jessica Stender
 - We equally advocate as one of the cosponsors on the bill, and strongly in support of these efforts. Align our positions with what Andrew and Sandra previously stated.
- Deanna Ping
 - Why we thought this approach was the right approach was because we don't know what documents will be submitted, and that could help inform what is appropriate. We wanted to see the ways in which that could be demonstrated, and talk to the committee about it.
- Andrew Gross Gaitan
 - Can the index idea be more tighter than just guidance and recommendations? If the statues doesn't give you the authority to be prescriptive on what counts as legitimate documentation or now, what is the alternative? What would that path look like in terms of process and time?
- Dave Gurley
 - The notion of requiring specific documents certainly sounds like an underground regulation that would require formal regulatory rule-making. If this is the path that we are looking at, we need to talk to the Labor Commissioner to even discuss this option. What can we do in short of the rule-making process? Creating a subcommittee to review the documents? High-level summary to be provided to the committee for review? The rule-making process is daunting, and we already went through the rule-making process with AB 547. Doing that again may create unintended consequences. There must be some implied power that we have to implement the statutory requirements here in short of rulemaking process.
- Kumani Armstrong
 - Rulemaking is a very time-consuming process. There is an economic impact analysis done and sent to the Department of Finance. Many layers. I would suspect that the committee would need to be extended or meet more often to determine what would go into those regulations. Appendix is a performance-

based type of standard that allows for flexibility for people to submit a whole range of things. We would need a lot of stakeholder input to even determine what specific documents you are seeking to require if going down the rulemaking path. We've already been meeting for many meetings and we still don't have the documents.

- Deanna Ping
 - When you submit a proposed rulemaking with OAL, you have 1 year. That sets the 1-year clock to submit a final rule to OAL.
- Andrew Gross Gaitan
 - This could possibly be at least a 2-hearing process right? Proposal, and then possible modification? Concern that we create a cottage industry that is not going to deliver the intent/spirit of the legislation. Wanted to create a meaningful filter mechanism that ensures the entities who deliver the training are going to deliver what was in the spirit of the years of campaign that created this law. If we can't prescribe what are the acceptable documents, then on what basis do you reject something that is not acceptable?
- Sandra Henriquez
 - What about emergency rulemaking?
- Kumani Armstrong
 - This would not apply. Emergency rulemaking is narrowly-defined. There has to be a declaration of emergency such as the case with COVID-19.
- Dave Gurley
 - If we're receiving a packet of documents, and we're not prescribing exactly what they need to be, don't we still have the authority to say this doesn't meet the intent of the legislation? Is there an alternative that we can just reject documents based on what we know? What would be the problem with us seeing a package and saying this does not meet the standard without having a regulation or statute?
- Kumani Armstrong
 - I think there is an inherent deliberative process that's in this for the LCO as the ultimate decision maker to determine who gets in and who doesn't. If it went down the path of regulations to only accept specific documents, then only these documents can be submitted. There is still a discretion ultimately that lies with LCO on the decision itself.
- Dave Gurley
 - If we reject someone based on their documents, there is a fear of getting sued for having a non-transparent process or something that is not equal to every applicant.
- Sulma Guzman
 - The role of the committee is to recommend someone based on X, Y, and Z. There's some inherent power that LCO recommends based on what the committee thinks meets the statute.
- Deanna Ping
 - The role of the committee is to make a recommendation based on what the applicant provides. If there requirement were prescriptive, it may be challenging for the some of the other provisions such as the cultural competency one because there may be multiple ways that cultural competency could be demonstrated.

- Tony Ruiz
 - Reading from the provision, the training advisory committee shall recommend the qualified organizations to the director. That puts some discretion in the hands of the JAC. It's mandatory, in a sense, that the JAC must approve anybody.
- Dave Gurley
 - 1429.5(f) states that the Training Advisory Committee shall recommend the qualified organizations to the director, so there has to be a recommendation from the committee. We need to speak to our client, the Labor Commissioner, about having the committee review the documents. Is this something that the committee is interested in that could satisfy the concerns and alleviate going through the regulatory process?
- Sandra Henriquez
 - If an applicant did not provide some information, can they provide additional info or are they completely denied? How do we determine that they are in fact qualified?
- Dave Gurley
 - The LCO always anticipated that we would be working with applicants through the documentary process. We could ask them to provide more information. At someone point, we'll take the package as complete and make a determination whether or not they are satisfactory, and whether or not we would recommend them to be a QO with the committee's guidance.
- Deanna Ping
 - LCO could provide a high-level review/summary and then ask the committee to review. We don't know what kind of documents will be submitted by the applications. They may have personal information on them. Any documents shared with the committee must be publicly posted.
- Andrew Gross Gaitan
 - How can the committee make a recommendation if they do not see the application?
- Sandra Diaz
 - What is the review process going to look like, and the role of the committee? What documents are the committee able to assess? What I'm hearing is that there may be some privacy concerns if too much of the information is shared with the committee. The concern on the committee's side is how do we make a recommendation with these limitations?
- Discussion – QOAF: High-level review of QOAF for improvements
 - Andrew Gross Gaitan
 - Pg. 2, under the section that says "Please complete the following questions regarding peer trainer qualifications," the first question is just a yes or no without any documentation or any reference to documentation. Most of the other questions will state, "If yes, please provide documentation," but this one does not.
 - At the top of the form, on QO vs. training partner – It doesn't differentiate what a QO needs to provide and what the training partner needs to provide. Need to include.
 - Some applicants could only provide services in certain limited set of counties, and there is a reference early on in the application to which counties do you

think you can cover. The organizations applying might expand the capacity over time. As the statute reads, there is only a 3-year window for review and renewal.

- Dave Gurley
 - We can call meetings on a more frequent basis than every 3 years. If there was a QO, who wanted to expand their service area, it shouldn't be a problem.
- Anabella Aguirre
 - As a victim of sexual aggression, I am frustrated that there are no rules or that many requirements to provide this training. It is better to move the process in the direction of rulemaking. Otherwise, it would allow anyone to become a QO. We are ready to give these trainings to these workplaces.
- Veronica Lagunas
 - The members of this committee have the capacity to do the rulemaking even if it takes 1 year. We want to clean up this industry. We need something concrete. An appendix would not help.
- Dave Gurley
 - Maybe there is an alternative where we put up an application and we have documents that people are submitting. Our suggestion is that we open up the application process that closes March 8th. We don't know how many people will submit application.
- Sandra Diaz
 - This process will bring some anxiety and new challenges. We need to take some risks. We can't foresee everything or solve every wrinkle along the way.
 - Did we land on a distinction between QOs and training partners, and how those would be in relation to one another? A QO may apply, get awarded authority to do the training, and possibly develop partners to expand reach. How do we capture that on application process and notification in the future?
- Dave Gurley
 - There is very little about a training partner in the statute. Doesn't really expand.
- Sandra Diaz
 - The qualifications will be stringent for the QOs. The QOs will be, in some ways, entrusted to be able to uphold the spirit of the law. There is some discretion on the training partners. There are ways to figure out how the State should know that the QOs are entering into partnerships with QOs that cover which regions at the bare minimum. The partners are attached to the QOs, who ultimately have the highest bar.
- Patricia Salazar
 - One of the ways the QO and the training partner would connect would be through a written partnership agreement, which we are requiring as one of the documents that an applicant would submit.
- Andrew Gross Gaitan
 - There's nothing in the form required for the training partner to document the 2 years after the statement at the top of the form. This would need to be inserted.
- Patricia Salazar
 - Any suggestions for a training partner to prove the 2 years of demonstrated experience?
- Tony Ruiz
 - With labor organizations, you can ask for LM-2s, copy of their constitutions or

bylaws. With regard to worker centers, you could ask for what rules they have, and where they operate. For non-profits, we do ask for that information in terms of the 501(c). We could also ask for the same thing in connection with the training partner.

- Sandra Diaz
 - The statute is written in a way where a QO is required to fulfill specific criteria, but not for training partners. There is no way of ensuring that the training partners have peer trainers. How to ensure that QOs live up to the highest standard? Who are they subbing it out to? How do we close that gap?
- Dave Gurley
 - If the training partners are going to provide peer trainers, we would suspect that those peer trainers must also meet the requirements of peer trainers in the statute. If we're going to insert more specific language as to what the training partner requirements are, that might take us down the regulatory process.

IV. Committee Review of Applicants List Process

- We had a plan of what the timeline would look like if we moved forward with posting a revised application on the website, or an appendix, or some sort of measure/guide with a list of supporting documents
- What LCO envisioned was some sort of hybrid between the first deadline and then accepting applications on a rolling basis (March 10, 2023, and then on a rolling basis through September 8, 2023)
- PII/confidentiality
 - This is a public process and any info shared with the committee would become part of that process. This would also become part of the public record. As a state agency, we have a legal obligation to protect the person's right to privacy.
 - We don't know what we don't know. No way to determine what type of info that might be included on the application or any of the supporting documents.
 - Our vision would be to move forward with the receipt of the applications, review the applications, see what information is included, and taking into account PII or confidential information if it's included. We'd then consider whether to what extent we could provide copies of the applications or the supporting documents.
 - Solutions:
 - Redaction – could be a solution to provide copies
 - High-level summary for a combination of documents
 - Subcommittee to review applications and documents
- Discussion – Applications process
 - Andrew Gross Gaitan
 - The application process is going to lead to some questions about enforcement. When does the clock start tick on employers' obligation to start delivering the peer training that there's a QO.
 - Tony Ruiz
 - The role of the JAC is much more enhanced than what is outlined in the statute. Not consistent with what is outlined in the process by LCO (slide 7)
 - Sulma Guzman
 - What do you see in the statute?
 - Tony Ruiz
 - The agency has the information and the JAC makes a recommendation, but not

provided with all of the information. There is no way to make an effective informed decision without seeing the application information.

- Deanna Ping
 - We are in the middle of trying to balance these two obligations. We have an obligation to the JAC and the obligation to safeguard PII. We are a little bit in the dark on this because we don't know what applications or documentation we're going to receive.
 - If we receive a roster of 30 people with their names and other PII, we may not be able to provide that because it may interfere with our obligation to safeguard the information. It may need to be redacted.
 - We could also say here's a list of the applicants we received. The applicant provided a roster of 30 names and included X, Y, and Z.
- Andrew Gross Gaitan
 - Couldn't this also be addressed in the application form itself in terms of whether the applicant would agree that the JAC is able to review the full application?
- Kumani Armstrong
 - PII piece cannot be waived
- Sandra Diaz
 - There are very specific types of documents, and then there are a whole range of documents that can be shared. Would it be easier to be explicit of that the limitations are on the front end versus being globally broad and limiting most of it? We can be explicit on the limitations and have an understanding of what could be shared or reviewed.
 - I just want to make sure that we have the information we need to make a meaningful recommendation that upholds the spirit of the law.
- David Hernandez
 - We want to ensure that whomever is providing the training is qualified to provide it within the spirit of the law. We don't necessarily need the list of the 30 names. There just needs to be some manner of supporting documentation. PII may not be that much of an issue for some of the documents being requested.
 - Once we get that documentation, and the JAC sees it as not sufficient, what can we do to ask if they have it or deny them?
- Deanna Ping
 - We are trying to figure out how to best give the information.
- Tony Ruiz
 - There are some people in the industry with some notoriety and knowing the names would be informative. Not even providing the name could possibly limit review.
- Sandra Henriquez
 - Need specific info about the training to ensure they're meeting the requirements. Appendix is more of a guide. Certain areas we need to know to make an informed decision.
- Sandra Diaz
 - As a union, a list of names is really informative. I've seen some employers try to do some really sneaky things. There are folks notorious for gross misconduct, who are recycled within the industry.
 - How do we make this process as strong as possible without another rulemaking

process, while at the same time, there's a clear role for the committee?

- Dave Gurley
 - I would like to make a clear request to my client, Lilia. If we get an application and supporting documents, and there are no issues with PII, we are to provide the application and all the supporting documents to the committee for review. Is this the ask of the Labor Commissioner?
- Sandra Diaz
 - This is two-fold. It's receiving the information and also the shared understanding of authority.
- Dave Gurley
 - Ask of the Labor Commissioner: The committee would like to review all the applications and documents, coupled with the authority to reject or accept in their recommendation.
- Deanna Ping
 - The caveat of full application review would be contingent upon the obligation to safeguard PII.
- David Hernandez
 - We have to make sure that known potential offenders, or people who have complaints should not be trainers. That would be antithetical to the spirit of what we're trying to accomplish.
 - We should wait for the advice back on what is included in PII.
- Yardenna Aaron
 - The set of eyes that we bring to this process, we want to see it through the end because of the topic itself is so sensitive, we're highly vested in stopping this abuse in the workplace. That's one of the reasons for wanted to see it from A to Z.
- Sandra Diaz
 - Hypothetically, once we get an agreement on the role of the committee, when would the application process begin? I see that applications are accepted through March 2023. From there, on a rolling basis for the next 6 months. What does this mean for the review process of the committee? Are there benchmarks within the rolling basis timeframe built in for a review process to the director?
 - Do you anticipate that you're going to have an application process that's open for a set period of time, then closes? Once an organization is eligible, how is that linked to enforcement?

V. Committee Review of Applicants List Process

- We want to post the QOAF by January 13, 2023, so the applicants can start the application process
- Once posted, LCO will announce it on its website.
- From January 13, 2023 through March 10, 2023, applicants can apply.
- March 10, 2023 date through September 8, 2023 – Review the applications on a rolling basis.
- March 10, 2023 through April 6, 2023 – LCO reviews initial batch of QOAFs and supporting documents. LCO to compile list of applicants and forward to the director.
- April 6, 2023 – LCO sends list to DIR; DIR sends list to JAC; we haven't hashed out what documents the JAC will receive.
- Mid to late April 2023 – Schedule QO recommendation meeting
- May 1, 2023 – First set of QOs to be approved and posted on the LCO website

- Vote on extending the stay of enforcement of AB 547 to the date the first QO list is posted by May 1, 2023.
- The expectation of compliance would begin when the list is posted. They will have a grace period, which we will discuss as a committee.
- As we get the additional organizations on board, it would be the same process as how the statute says, in which the director can continue to add QOs to the list. We would continue engaging the JAC in that process.
- For areas of the state where there is no QO peer trainers, the statute provides that you will use a DFEH certified trainer to use the LOHP training.
- What if someone provided the DFEH training prior to May 1, 2023? That's the clean slate issue we talked about in previous meetings. Once the list is posted on May 1, 2023, the clock starts ticking. All employers will be required to comply with AB 547.
- Extension to use the DFEH training expires January 1, 2023. If the committee is not meeting until after January 1, 2023, then there needs to be a vote today to extend the use of the DFEH training until we get the list posted.

Motion: Extension to use the DFEH training until the QO list is posted

Vote: All committee members in attendance voted in favor.

VI. Next Steps

- We are not ready to greenlight the application
- Reconvene sometime after mid-January because of the holidays, and also the posting requirements for public meetings.
- DIR to have some internal dialogue given the feedback from the committee.
- DIR to do some legal research before the next meeting