

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF SELF-INSURANCE PLANS**

NOTICE OF PROPOSED RULEMAKING

Workers' Compensation – Self-Insurance Plans

(Title 8, California Code of Regulations, Sections 15203.2, 15203.11, 15251, and 15430)

NOTICE IS HEREBY GIVEN that the Acting Director (“Director”) of the Department of Industrial Relations (“Department”) proposes to add a new section 15203.11 and to amend sections 15203.2 and 15251 of Title 8 of the California Code of Regulations, for purposes of implementing recent amendments to Labor Code Section 3702.2(a). Those amendments require the Director to obtain detailed information needed to evaluate the administrative costs, expenditures, solvency, and performance of public self-insured employer workers’ compensation programs. The Director also proposes to make nonsubstantive changes to section 15430 to bring that section into conformity with other recent statutory and regulatory amendments.

PUBLIC HEARING

The Department will hold a public hearing at **10:00 a.m. on January 23, 2019**, at **1515 Clay Street, Conference Room 11 (2nd Floor), Oakland, California 94612**. The hearing room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on **January 23, 2019**. The Department will only consider comments received at the Office of Self Insurance Plans (“OSIP”) by that time. Submit comments to:

Lyn Asio Booz, Chief
Office of Self Insurance Plans
11050 Olson Drive, Suite 230
Rancho Cordova, CA 95670

Comments may also be submitted prior to the close of the written comment period by e-mail to OSIPRulemaking@dir.ca.gov or by fax, to the attention of Lyn Asio Booz, at (916) 464-7007.

AGENCY CONTACTS

Inquiries concerning the proposals may be directed to:

Primary Contact:
Lyn Asio Booz, Chief
Office of Self-Insurance Plans
Department of Industrial Relations
(916) 464-7000

Back-up Contact:
John Cumming, Special Counsel
Office of the Director
Department of Industrial Relations
(415) 486-2038

Inquiries about the rulemaking, including nonsubstantive inquiries, may also be directed to the following email address: OSIPRulemaking@dir.ca.gov.

AUTHORITY AND REFERENCE

Labor Code Sections 55 and 3702.10 authorize the Director to adopt, amend, and repeal regulations reasonably necessary to implement and make specific the provisions of Chapter 2 of Division 1 of the California Labor Code and to carry out the purposes of Article 1 (commencing with Section 3700) of Chapter 4 of Division 4 of the California Labor Code. The proposed regulations implement, interpret and make specific the provisions of subdivision (a) of Section 3702.2 of the Labor Code, as amended by Section 18 of Statutes of 2012, Chapter 363 (SB 863).

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Labor Code section 3700 requires every employer in California other than the State to secure the payment of workers' compensation for injured workers by either (1) being insured against liability to pay compensation by one or more insurers duly authorized to write workers' compensation insurance in this state, or (2) by securing from the Director a certificate of consent to self-insure. A certificate of consent to self-insure may be secured either as an individual employer or as one employer in a group of employers, and is contingent upon furnishing proof satisfactory to the Director of the employer's ability to self-insure and pay any compensation that may become due to its employees. Subdivision (c) of Section 3700 expressly extends the opportunity to self-insure to "any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise of powers agreement[.]"

Labor Code Sections 3700.1 through 3705 establish criteria for securing, maintaining, and revoking certificates to self-insure, as well as requirements for administrative oversight by the Director. The Self-Insurance Plan regulations at sections 15201 through 15499.5 of Title 8, set forth these criteria, requirements, and related procedures in detail, and delegate much of the Director's authority to manage self-insurance programs to the Department's Office of Self-Insurance Plans ("OSIP), headed by a Chief.

The statutes and regulations treat private self-insured employers and public self-insured employers differently in certain respects. The most significant distinction is that private self-insured are required to post collateral to secure their potential liability for administering and paying workers' compensation claims, while public self-insured employers are not subject to this requirement. In addition, the Self-Insurers' Security Fund (SISF), established pursuant to Labor Code Sections 3740 – 3747, is available to assume the liabilities of private self-insured employers who default on their workers' compensation obligations or become insolvent.

However, neither the SISF nor any other entity is responsible for the workers' compensation claim obligations of a public self-insured employer who becomes insolvent.

Labor Code Section 3702.2(a) requires all self-insured employers to “file a self-insurer’s annual report in a form prescribed by the [D]irector.” Historically, the information in these reports has been used, among other things, to help determine the amount of security (*i.e.* collateral) that should be posted by private self-insured employers, and to prepare aggregate summaries of all self-insured employer liabilities, including separate summaries for public and private self-insured employers. SB 863, a landmark workers’ compensation reform measure adopted by the Legislature in 2012, added the following language to Labor Code Section 3702.2(a).

“Public self-insured employers shall provide detailed information as the director determines necessary to evaluate the costs of administration, workers' compensation benefit expenditures, and solvency and performance of the public self-insured employer workers' compensation programs, on a schedule established by the director. The director may grant deferrals to public self-insured employers that are not yet capable of accurately reporting the information required, giving priority to bringing larger programs into compliance with the more detailed reporting.”

SB 863 also required the Department’s Commission on Health and Safety and Workers’ Compensation to examine the public self-insured program in 2013 and publish a report and recommendations addressing the costs, solvency and performance of public self-insured workers’ compensation programs, and provisions in the event of insolvencies. (§ 19 of SB 863, adopting Labor Code Section 3702.4, with an automatic repealer effective January 1, 2015.)¹ The resulting report, *Examination of the California Public Sector Self-Insured Workers’ Compensation Program* (Bickmore Group, October 2014) (“Bickmore Report”), posted online at https://www.dir.ca.gov/chswc/Reports/2014/Public_Sector_Self_Insured_WC.pdf, included findings and recommendations used in the development of these proposals. A subsequent report *Proposed Workers’ Compensation Data Elements for Submission by California Self-Insured Public Entities and Self-Insurance Joint Powers Authorities* (Bickmore Group, June 2016) (“Bickmore Data Element Report”), posted at <https://www.dir.ca.gov/osip/pubandforms.htm>, followed by public forums and a pilot study (noted below under “Public Discussion of Proposals”) provided more specific input on the reporting requirements addressed in these proposals and their cost impacts.

Proposed Amendments to OSIP regulations:

In order to implement the 2012 amendment to Labor Code Section 3702.2(a), the Director proposes to amend section 15203.2, add a new section 15203.11, and amend section 15251 of Title 8 in the following respects. The Director also is proposing nonsubstantive changes to section 15430 as set forth below.

¹ SB 863 addressed several aspects of the workers’ compensation system, most notably creating Independent Medical Review and Independent Bill Review to greatly curtail litigation costs and delays, while at the same time increasing benefit amounts paid to injured workers.

Section 15203.2: This section, entitled “Continuing Financial Capacity for Individual Private Self-Insurers,” will be amended by deleting subsection (b), pertaining to joint powers authorities (“JPAs”), and incorporating the provisions of that subsection into a new section 15203.11, as outlined below. Existing subsections (c) and (d) will be redesignated as subsections (b) and (c) respectively.

Section 15203.11 [new]: This proposed new section is entitled “Continuing Financial Capacity for Public Self-Insurers.” Subsection (a) will require each public self-insurer holding an active or revoked Certificate of Consent to Self-Insure to file an annual report on demographic data and a summary of the financial condition of its workers compensation program on a new Form P-1 or in a similar format that includes Form P-1’s data elements.

Subsection (b) is a revised version of the current language of subsection (b) of section 15203.2. This new subsection will require JPAs holding an active or revoked Certificate of Consent to Self-Insure to file an annual report on a new Form J-1 or in a similar format that includes Form J-1’s data elements. This subsection will require JPAs to report demographic data and identify whether they provide primary or excess workers’ compensation coverage for their members, both of which are new requirements for JPAs. It will also carry over the existing requirement for JPAs to submit a current, certified, independently audited financial statement, complete with all notes and schedules, if available.

Subsection (c) specifies that the reports must be submitted through an online portal on the OSIP website by October 1 of each year, and that the reports shall cover the preceding July 1 to June 30 fiscal year.

Subsection (d) specifies that the financial information in these reports must be based on the most recent certified, independently audited financial statement, if available. However, if the most recent report is over three years old or no such report is available, then the information must be based on the entity’s most recent financial report by an independent Certified Public Accountant. If that type of report also is unavailable, then the entity will be required to specify the source of information for the report, including the name and contact information for the preparer or custodian of the source document.

The proposed new Form P-1 is divided into four sections: Part A. “General” requests four pieces of identifying information. Part B. “Employer Profile” requests Operating Expenditures, Location and Population, type of Workers’ Compensation claims administration, employee demographics, additional breakdowns for educational employers, wages and salaries and benefit information. Part C “Annual Financial Summary Report” requests information about the employer’s most recent audited statement, its workers’ compensation liabilities, and its estimated future liabilities; and Part D “Balance Sheet and Statement of Revenues and Expenses for Workers’ Compensation Program” covers assets, liabilities, fund balances, income, expenses, and other related information, including the employer’s net positions at the beginning and end of the reporting period. Finally, the form must be signed and identify by name and title the person who completed the form plus the person attesting to its accuracy.

The proposed new Form J-1 covers the same topics and questions as Form P-1, except that Part B is entitled JPA Profile and includes additional questions regarding Joint Powers Authority members who may be excluded from the financial statement while omitting questions on how workers' compensation activities are budgeted and accounted for.

Section 15251: This section governs self-insurer annual reports. In subsection (c), which sets forth requirements for public self-insurer annual reports, a new paragraph (4) will be added, requiring the inclusion of Aggregate Claims Information in or with these reports. The new subsection specifies that claims information is to be provided for the current fiscal year, for each of past five fiscal years, and for all older claims. The required information includes the numbers of claims, costs broken down into three categories (disability benefits, medical costs, and legal and loss adjustment expenses paid), plus estimated future liabilities. The new subsection also specifies that the claims information may be submitted electronically or by hard copy that includes the same data elements required by annual report Form AR-2.

Section 15430: This section authorizes the Director to initiate an investigation or hold a hearing on enumerated types of disputes or appeals. Three nonsubstantive amendments are proposed for this section. In subsection (a), the reference to Labor Code Section 3701.5(g) will be changed to Labor Code Section 3701.5(f), to conform with a 2012 statutory amendment which redesignated former subdivision (g) as subdivision (f). In subsections (b) and (c), the title "Manager" will be changed to "Chief" to conform with the current title of the head of OSIP.

Anticipated Benefits:

These regulatory amendments are designed to carry out Labor Code Section 3702.2(a)'s objective of enabling the Director "to evaluate the costs of administration, workers' compensation benefit expenditures, and solvency and performance of the public self-insured employer workers' compensation programs[.]" In particular, the proposals are designed to make public self-insurer workers' compensation programs more transparent as to their financial solvency and their claims benefits and loss adjustment expenses. Ideally, the availability of this information will result in the Director and the state being better prepared to forestall or ameliorate situations in which the continuing availability of workers' compensation benefits is jeopardized by the insolvency of a self-insured public employer. This is especially important because, unlike insolvent insured employers and insolvent self-insured private employers, whose claims are covered by the California Insurance Guarantee Association or Self-Insurer's Security Fund respectively, there is no backstop to pay claims when a public self-insured employer becomes insolvent. The proposals will benefit the health and welfare of California residents and workers by promoting openness and transparency in government, thereby helping to ensure the viability and integrity of public self-insured workers' compensation programs and the Department's oversight, so that eligible public employers continue to have the option to self-insure for workers' compensation, and their injured workers are covered for their claims.

Determination of Inconsistency or Incompatibility with Existing State Regulations:

The Director has determined that the proposals are not inconsistent or incompatible with existing regulations. Certain public entities are required to file financial statements annually with other

entities such as the State Controller's Office, the Department of Education, or county auditors. However, as noted in the *Bickmore Report*, accounting and reporting methodologies are inconsistent, often do not segregate workers' compensation claims benefits and claims administration data from other lines of liability or insurance coverage, and overall do not provide information needed to evaluate the solvency of public self-insured programs. These proposals, including the proposed reporting forms, were developed in consultation with stakeholders to provide the Director with the data needed to evaluate these programs, as mandated by SB 863's amendments to Labor Code Section 3702.2(a).

Comparable Federal Statutes and Regulations:

None.

Technical, Theoretical or Empirical Studies, Reports or Documents:

The Department relied upon the following studies in proposing this regulatory action.

1. *Examination of the California Public Sector Self-Insured Workers' Compensation Program* (Bickmore Group, October 2014) ("Bickmore Report"), posted online at https://www.dir.ca.gov/chswc/Reports/2014/Public_Sector_Self_Insured_WC.pdf.
2. *Proposed Workers' Compensation Data Elements for Submission by California Self-Insured Public Entities and Self-Insurance Joint Powers Authorities* (Bickmore Group, June 2016) ("Bickmore Data Element Report"), posted online at <https://www.dir.ca.gov/osip/pubandforms.htm>.
3. A pilot study conducted by OSIP in the spring of 2017 in which four public self-insured employers with stand-alone programs and six JPAs submitted data on draft versions of the reporting forms contemplated by these proposals.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Director has made the following initial determinations:

Costs or Savings to State Agencies:

The Department has and will continue to incur costs for the development, implementation, and administration of the new reporting requirements. These are part of the overall cost of administering the public self-insured program and are borne by the Workers' Compensation Administration Revolving Fund, pursuant to Labor Code Section 3702.5.

These proposals also impose costs on three self-insured state-level agencies, the Regents of the University of California, Hastings College of Law, and the California State University, insofar as they will be required to provide data to their private third party administrators to fulfill the added reporting responsibilities. These costs are estimated at \$200 each (\$600 aggregate) in the first year, and \$100 each (\$300 aggregate) in subsequent years, based on the analysis below under the

section “Other Nondiscretionary Costs or Savings Imposed on Local Agencies or School Districts” and specifically its subsection on “Public Employers Using TPAs”.

No costs or savings to other state agencies will result as a consequence of the proposed action inasmuch as state agencies are not subject to the insurance requirements of Labor Code Section 3700 (in effect making them permissibly uninsured), and no other state agencies participate in the public self-insured program.

Mandates on Local Agencies or School Districts:

The proposals impose no mandates on local agencies or school districts, since they apply only to public agencies who self-insure their workers’ compensation obligations, and no public agency is required to self-insure.

Cost or Savings to Local Agencies or School Districts Required to be Reimbursed:

None.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies or School Districts:

Public employers who choose to self-insure will incur costs complying with the proposed new reporting requirements, which include providing financial and demographic information about the agencies or districts themselves as well as more specific workers’ compensation claims and administration information. The nature and extent of these costs depends on how the agency administers its workers’ compensation program.

Self-insured public agencies may have their own program (referred to here as a “stand-alone” employer or program), or they may band together with other agencies to operate their program through a Joint Powers Authority (“JPA”). In addition, existing law requires each program to use separately certified claims administrators to handle their workers’ compensation claims. An agency or JPA with its own properly certified personnel and system may operate an in-house or “self-administered” program. More frequently, however, an agency or JPA contracts with an approved Third Party Administrator (“TPA”) to operate its program. Program administrators will have direct responsibility for submitting the required reports to OSIP. Agencies and JPAs that contract with TPAs to administer their programs, and members of JPAs will not have direct reporting responsibilities. However, they will have to provide data about their agencies that is needed for the reports.

Employers and JPAs with self-administered programs: The 32 public employers and 8 JPAs operating self-administered programs have direct reporting responsibilities under the proposals, and will incur start-up costs for software coding changes and internal systems changes to facilitate the reporting of required data.² Based on a projected cost of \$100 per hour (either for internal personnel costs or for a third-party vendor), the Director estimates that each of these

² OSIP records provided a precise count of the numbers of public employers, JPAs, JPA members, and TPAs listed in these estimates.

programs will incur anywhere from five to 24 hours in start-up costs (*i.e.* \$500 to \$2400), depending on the systems used. Because all of the information being reported should be readily available from existing sources, no agency should have to create a new system to obtain and report the required information.

The Director estimates that in the first year of operation under these proposals, the 32 stand-alone employer programs will incur an additional \$400-700 in costs for collecting and reporting claims data (2-5 hours @ \$100), demographic data (1 hour @ \$100), and financial data (1 hour @ \$100). The 8 JPAs will incur those same costs, but will also need to collect demographic data from each member agency that belongs to the JPA at an estimated cost of \$100 (= 1 hour) per member agency. Collectively, these 8 JPAs represent 384 member agencies, which makes the *average* cost for these JPAs to collect and report demographic data from their members \$4800 (= 384 x \$100 ÷ 8).

Once software and system changes are made, the programs will be able to generate report data from their own records automatically. The responsibility to collect and report data will continue in subsequent years, but the Director estimates that the process will be more routine and the time requirements cut in half, *i.e.* \$1-250 (= 1 – 2.5 hours) for claims data, \$50 (= .5 hour) per entity for demographic data, and \$50 (= .5 hour) for financial data. For the 32 stand-alone employers, this projects to an annual cost of \$200 - \$350, and for the 8 JPAs, an average annual cost of \$2550 - \$2700 (\$1-250 + \$50 + \$2400).

Based on the foregoing estimates, the overall costs for employers and JPAs with self-administered programs are as follows:

First year:	<u>Individual</u>		<u>Aggregate</u>
Standalone employers --	\$ 900 - \$3,100	(x 32)	\$28,800 - \$99,200
Standalone JPAs --	\$5,600 - \$7,800	(x 8)	<u>\$44,500 - \$62,400</u>
Total			\$73,300 - \$161,600
 Subsequent years:	 <u>Individual</u>		 <u>Aggregate</u>
Standalone employers --	\$ 200 - \$350	(x 32)	\$ 6,400 - \$11,200
Standalone JPAs --	\$2,550 - \$2,700	(x 8)	<u>\$20,400 - \$21,600</u>
Total			\$26,800 - \$32,600

Public Employers Using TPAs: The 586 self-insured public employers and JPAs³ who contract with TPAs to administer their workers' compensation programs will not have direct reporting responsibilities under these proposals, but will still incur costs in providing general financial and demographic data about themselves to the TPAs. In addition, the 4,442 agencies that participate in JPAs will have to provide the same data about themselves to their JPAs, so that the JPA in turn can either forward that data to the TPA, if the JPA contracts with a TPA, or include it in the JPA's report to OSIP, if the JPA self-administers its workers' compensation program.

³ These entities consist of 342 active stand-alone public employers, 165 stand-alone public employers with revoked certificates but ongoing claim responsibilities, and 82 JPAs.

The same projected time and cost estimates for gathering and reporting data apply to these agencies, but only with respect to general financial data and demographic data. In the first year, the projected cost for each of these agencies is \$100 (= 1 hour) for financial data and \$100 (= 1 hour) for demographic data, or a total of \$200. The Director again estimates that in subsequent years, this time commitment will be cut in half, *i.e.* \$50 (= .5 hour) for financial data and \$50 (= .5 hour) for demographic data, or a total of \$100.

Based on these estimates, the overall costs for this set of agencies (586 agencies providing information to TPAs and 4,422 JPA members providing information to JPAs) are as follows:

	<u>Individual</u>		<u>Aggregate</u>
First year:	\$ 200	(x 5008)	\$1,101,600
Subsequent years:	\$ 100	(x 5008)	\$ 500,800

Costs or Savings in Federal Funding to the State:

None.

Impact on Business or Directly Affecting Business, including Ability to Compete:

The Director has made an initial determination that the proposals will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California business to compete with businesses in other states. While these proposals will result in minor cost increases for self-insured public employers, the option of obtaining private workers’ compensation on the open market is generally far more costly than self-insurance.

Cost Impact on Representative Private Persons or Businesses:

The private sector impact of these proposals is limited to the 31 private third party administrators (“TPAs”) who contract with self-insured public employers, including JPAs, to administer their claims. Existing law requires self-insured employers to use separately certified claims administrators to handle their workers’ compensation claims, and most public self-insured employers contract with private TPAs for this service. The TPAs will have most of the required financial data about the employer’s workers’ compensation claims and liabilities, and will do the actual reporting of information required by these regulations, with possibly some of the costs being passed on to their contracting client public entities.

These TPAs will incur the same start-up and continuing costs that are projected above for self-administered employers and JPAs. Start-up costs for software coding changes and internal systems changes to facilitate the reporting of required data are again estimated at \$100 per hour (for internal personnel or third-party vendor), with each TPA incurring anywhere from five to 24 hours in costs (*i.e.* \$500 to \$2400), depending on the systems used. The TPAs will also incur first year costs of \$200-500 (= 2 to 5 hours) *per represented entity* for identifying and reporting separate claim data for each of those entities, \$100 (= 1 hour) per entity for collecting additional financial data from those entities, plus \$100 (= 1 hour) per employer to collect demographic data

for each of the 4,422 constituent employers in those entities.⁴ The estimated total aggregate costs in the first year for the 31 TPAs is from \$634,400 to \$870,000, which averages out to a range of \$20,464.52 to \$28,064.52 per TPA, although an individual TPA’s costs may be higher or lower depending on the number of public employers represented.⁵

Once software and system changes have been made, TPAs will be able to generate report data from their own records automatically. However, they will continue to incur costs associated with collecting financial, claims, and demographic data for or from the represented entities and constituent employers. The Director estimates that the collection of this data will become more routine and require only half as much time. Using the specific estimates of \$50 (= .5 hour) for financial data and \$100-250 (= 1 to 2.5 hours) for claims data for each of the 589 represented entities, plus \$50 (= .5 hour) for demographic data for each of the 4,422 constituent employers, the estimated aggregate annual cost for the 31 TPAs ranges from \$309,450 to \$397,800, or an average individual cost of \$9,982.26 to \$12,832.26.⁶

Results of the Economic Impact Assessment:

The Director has made initial determinations that these proposals will not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California. As noted more fully in the section entitled “Anticipated Benefits” above (at page 5), these proposals should benefit the health and welfare of California residents by requiring greater transparency for public self-insured employers, allowing regulators and the public to better assess the solvency of these employers and potential risk for defaulting on their responsibilities to injured workers.

Business Reporting Requirements:

The proposals revise and expand reporting requirements for self-insured public employers and for private businesses that may administer their workers’ compensation programs. These

⁴ This figure consists of the estimated 3,915 JPA member employers, plus the 507 stand-alone employers identified in footnote 3 above.

⁵ The calculations used to arrive at these figures are as follows:

\$5-2400 start-up costs per TPA x 31 TPAs	=	\$15,500 - \$74,400
\$2-500 for claim data per represented entity x 589 entities	=	\$117,800 - \$294,500
\$100 for financial data per represented entity x 589 entities	=	\$ 58,900
\$100 for demographic per constituent employer x 4,422	=	\$ 442,200
Total		\$634,400 - \$870,000
Average (= Total ÷ 31)	=	\$20,464.52 - \$28,064.52

⁶ The calculations used to arrive at these figures are as follows:

\$1-250 for claim data per represented entity x 589 entities	=	\$ 58,900 - \$147,250
\$50 for financial data per represented entity x 589 entities	=	\$ 29,450
\$50 for demographic per constituent employer x 4,442	=	\$ 221,100
Total		\$309,450 - \$397,800
Average (= Total ÷ 31)	=	\$9,982.26 - \$12,832.26

proposals are being made pursuant to the directive in Labor Code Section 3702.2(a), as amended by SB 863. Per this statutory directive, the Director believes that these proposals and their applicability to private TPAs that administer workers' compensation programs for self-insured public employers, are necessary for the health, welfare, and safety of the people of the state.

Impact on Housing Costs:

None.

Small Business Impact:

The proposals affect small businesses only insofar as any of the 31 TPAs who contract with public self-insured employers are "small businesses" within the meaning of Government Code Section 11342.610. The proposals impact these businesses by increasing their reporting responsibilities on behalf of client public agencies. The anticipated costs are shown in the section above entitled "Cost Impact on Representative Private Persons or Businesses".

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Director must determine that no reasonable alternative that has been considered by the Department or that has otherwise been identified and brought to the Department's attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Bickmore Report, on which this rulemaking relies, identified potential alternatives to more state oversight for public self-insured employer workers' compensation programs. These alternatives were: (1) maintaining the status quo, (2) requiring public self-insured employers to make security deposits similar to those required for private self-insured employers to cover potential workers' compensation claim liabilities in the event the employer becomes insolvent; and (3) create a public entity security fund supported by assessments and security deposits, similar to the Self-Insurers' Security Fund covering private self-insured employers. None of these alternatives is reasonable or adequate or authorized by existing law. Maintaining the status quo would require the Director to ignore the mandate of Labor Code Section 3702.2(a), which these proposals are designed to implement. The other alternatives would require additional legislation and be far more costly for public self-insurers.

To date, no other reasonable alternative has been brought to the attention of the Director that would be as effective as and less burdensome to affected persons than the proposed action. The Director invites interested persons to present statements or arguments with respect to alternatives to the proposals at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSION OF PROPOSALS

Early drafts of the text of these proposals were made available for public review and comment during public forums held on October 13, 2016, and March 10, 2017. Several public self-insurers and JPAs also participated in a pilot study between April and June 2017. Input from the forums and pilot study assisted the Department in drafting and refining the text of these proposals and the contents of the related forms. The pilot study also assisted the Department in determining the cost impacts of the new reporting requirements

AVAILABILITY OF INFORMATION PERTAINING TO THE PROPOSED ACTION

The Director will have this Notice, the proposed text, the Initial Statement of Reasons, and the complete rulemaking file available for inspection and copying during regular business hours throughout the rulemaking process at the following location:

Office of Self-Insurance Plans
Department of Industrial Relations
11050 Olson Drive, Suite 230
Rancho Cordova, CA 95670

Website:

The principal rulemaking documents, including this Notice, the Initial Statement of Reasons, and the text of the proposed regulations may be accessed through the Department's website at www.dir.ca.gov/Rulemaking/DIRProposed.html.

Availability of Changed or Modified Text:

After holding the hearing and considering all timely and relevant comments received, the Director may adopt the proposed regulations substantially as described in this notice. If modifications are proposed that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be made available to the public for at least 15 days before the regulations are adopted as revised. Any such modifications will also be posted on the Department's website. Requests for copies of any modified regulations may be sent to the attention of either of the contact persons listed above. Written comments on the modified regulations will be accepted for 15 days after the date on which they are made available.

Availability of the Final Statement of Reasons and the Rulemaking File:

Upon completion, the Final Statement of Reasons will be available and the entire rulemaking file may be obtained from the Office of the Self-Insurance Plans at the address indicated above.