



November 16, 2007

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS OF SCHOOLS AND  
OTHER INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO AMEND  
REGULATION SECTIONS 1866.4.3 AND 1866.13, ALONG WITH  
FORM SAB 40-22, TITLE 2, CALIFORNIA CODE OF REGULATIONS,  
RELATING TO THE STATE SCHOOL DEFERRED MAINTENANCE PROGRAM

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend Regulation Sections 1866.4.3 and 1866.13, along with Form SAB 40-22, contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend and adopt the above-referenced regulation sections under the authority provided by Section 15503 of the Government Code. The proposals interpret and make specific reference to Sections 17070.75, 17582, 17584, 17587 and 17591 of the Education Code.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The State School Deferred Maintenance Program (DMP) provides State matching funds, on a dollar-for-dollar basis, to assist school districts with expenditures for major repair or replacement of existing school building components. The SAB adopted regulations to implement the DMP, which were approved by the Office of Administrative Law and filed with the Secretary of State on January 13, 2003.

Regulation Section 1866.4.3 is being amended for greater consistency with the language of Education Code Section 17582 regarding the source of funds from which districts can deposit their matching share into the District Deferred Maintenance Fund. The current regulations indicate that the contribution must be from "any non-restricted fund," while the law reads that the district contribution into the Fund may be "from any source whatsoever,..." Therefore, the SAB amended that term in the DMP Regulations to "any source not otherwise prohibited by law or regulation."

A minor amendment to the DMP Regulations was approved by the SAB as a result of Assembly Bill 127, Chapter 35, Statutes of 2006 (Perata/Nunez) to address the circumstances when a DMP extreme hardship project is encompassed within the work of a Charter School Facilities Program (CSFP) Rehabilitation project. Language was added to DMP Regulation Section 1866.13 and the *Extreme Hardship Funding Application*, Form SAB 40-22, to avoid duplication of DMP extreme hardship project work in the CSFP Rehabilitation project.

The proposed regulatory amendments are as follows:

Existing Regulation Section 1866.4.3 requires school districts to deposit a matching share into their District Deferred Maintenance Fund in order to receive the DMP "Basic Grant" amount as set forth in Section 1866.4.2. The district's deposit must be a cash contribution from "any non-restricted fund" or other specified sources. The proposed amendment deletes the term "any non-restricted fund" and substitutes the term "any source not otherwise prohibited by law or regulation" for improved clarity and consistency with Education Code Section 17582.

Existing Regulation Section 1866.13 requires that if a school district's application for a DMP extreme hardship grant involves proposed work also included in a SFP Modernization project which is pending funding, the district must reduce the work to be funded in the extreme hardship grant project from the SFP Modernization project for certain cost and eligibility determinations for the SFP Modernization project. The proposed amendments add CSFP Rehabilitation projects for the same district requirement to reduce the work to be funded in an extreme hardship grant project from the CSFP Rehabilitation project.

Existing Form SAB 40-22, *Extreme Hardship Funding Application*, is submitted to apply for DMP Extreme Hardship Grant funding for a "critical" project, meaning a project that must be completed within one year for health and safety reasons, or to prevent further damage to the facility. The proposed amendments add specific instructions, data fields, and certification language to require that work to be funded in a DMP extreme hardship grant project will be reduced from an accompanying CSFP Rehabilitation project for certain cost and eligibility determinations for that CSFP Rehabilitation project. In addition, reference to Form SAB 40-1 (no longer current) is corrected to the form that superseded it -- Form SAB 40-20 (Rev. 01/05).

#### IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulations.

#### ECONOMIC IMPACT

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact on businesses or private persons that might result from the proposed regulatory action and the following determinations have been made relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- There will be no impact in the creation or elimination of jobs within the State, the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California.

- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- There are no costs or savings to any State agency.
- The SAB has made an initial determination that there will be no impact on housing costs.

#### EFFECT ON SMALL BUSINESSES

It has been determined that the adoption of the regulation sections will not affect small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. These regulations only apply to school districts for purposes of funding under the State School Deferred Maintenance Program.

#### SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OPSC no later than December 31, 2007, at 5:00 p.m. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Robert Young, Regulation Coordinator

Mailing Address: Office of Public School Construction  
1130 K Street, Suite 400  
Sacramento, CA 95814

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

Fax No.: (916) 445-5526

#### AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Robert Young at (916) 445-0083. If Mr. Young is unavailable, these questions may be directed to the backup contact person, Lisa Jones, Supervisor, Regulations Team, at (916) 322-1043.

#### ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulations substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulation should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

### SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

### RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in ~~strikeout~~/underline.
2. A copy of this notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received, they will be added to the rulemaking file. The file is available for public inspection at the OPSC during normal working hours. Items 1 through 3 are also available on the OPSC Internet Web site at: <http://www.opsc.dgs.ca.gov> under "Regulations," then click on "Proposed Regulations."

### ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SAB would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the Web site listed above.