



June 12, 2009

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 AND
ADOPT THE FOLLOWING REGULATION SECTIONS, ALONG WITH
ASSOCIATED FORMS, TITLE 2, CALIFORNIA CODE OF
REGULATIONS, RELATING TO SCHOOL FACILITIES NEEDS
ASSESSMENT AND EMERGENCY REPAIR PROGRAM

REGULATION SECTIONS PROPOSED FOR AMENDMENT: 1859.302, 1859.324.1 AND 1859.330.

REGULATION SECTION PROPOSED FOR ADOPTION: 1859.324.2.

FORMS PROPOSED FOR AMENDMENT:

Grant Request, Form SAB 61-03 (Revised 12/08), referenced in Regulation Section 1859.302.

Expenditure Report, Form SAB 61-04 (Revised 12/08), referenced in Regulation Section 1859.302.

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend and adopt the above-referenced regulation sections, and associated forms, and incorporate by reference an associated worksheet, 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 regulation sections and adopt the associated worksheet under the authority provided by Sections 17592.72 and 17592.73 of the Education Code. The proposals interpret and make specific reference Sections 17592.70, 17592.71, 17592.72 and 17592.73 of the Education Code.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Emergency Repair Program (ERP) was established through Senate Bill (SB) 6, Chapter 899, Statutes of 2004 (Alpert), to provide funding to local educational agencies (LEAs) to identify and repair conditions which threaten the health and safety of pupils and staff on eligible California school sites. SB 6 was enacted as a part of the settlement agreement in the case of *Williams v. State of California* (Superior Court, San Francisco, No. CGC-00-312236). The SAB adopted regulations to

implement the ERP which were approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on May 31, 2005. Criteria are provided for program eligibility, apportionment of funds, program reporting requirements, authorized expenditures, and audits of program compliance and expenditures.

Additional regulatory amendments to the ERP were adopted by the SAB to implement Assembly Bill 607, Chapter 704, Statutes of 2006. They established a grant application process to award funds in addition to allowing reimbursement of funds already expended, and permitted limited funding for applicants' costs to prepare and submit application documents. These amendments were approved by the OAL and filed with the Secretary of State on July 2, 2007.

The SAB, at its December 10, 2008 meeting, adopted proposed regulatory amendments to the ERP to extend the time limit to complete an emergency repair or replacement project by three months. Upon project completion, LEAs must submit their completed *Expenditure Report* accompanied by any project savings and/or interest earned on State funds. This will expedite the return of these funds to the State, which are then available to fund future ERP projects.

The proposed regulatory amendments, adoption of a new section, and incorporation by reference of a new worksheet are summarized as follows:

Existing Regulation Section 1859.302 defines words and terms that are essential to these regulations. The proposed amendments change the revision date of Forms SAB 61-03 and SAB 61-04 to "Rev 12/08."

Existing Regulation Section 1859.324.1 specifies the process for an LEA to return to the State any part of the grant apportionment that exceeded allowable project expenditures ("project savings") plus interest earned on State funds. Currently, after ERP project completion, the return to the State of such project savings and interest earned first requires a grant adjustment to be presented to the SAB, followed by a 60-day period for the LEA to return the funds. The proposed amendments specify that the return to the State of these funds must accompany the LEA's submittal of the Form SAB 61-04 to the OPSC, and eliminates the delay in returning these funds to the State until up to 60 days following approval of a grant adjustment by the SAB.

Proposed adoption of Regulation Section 1859.324.2 clarifies that all interest earned on ERP grant funds must either be applied to eligible project costs as approved by the SAB and pursuant to Section 1859.323, or returned to the State.

Existing Regulation Section 1859.330 specifies time limits for LEAs that receive ERP grants to complete the project and submit the Form SAB 61-04, *Expenditure Report*, to the OPSC. The time limit is 12 months from the grant apportionment, but is 18 months from the grant apportionment if review and approval from the Division of the State Architect is required. The proposed amendments extend these time limits to 15 months and 21 months, respectively.

Existing Form SAB 61-03, *Grant Request*, is required to be submitted by LEAs to apply for ERP funding for emergency repair and replacement costs. The proposed amendments clarify the LEA requirements for submittal and retention of supporting documents, reporting the "Project Cost" for completed projects, and determining the "Total Grant Request." In addition, references to regulation sections are specified as "ERP" regulation sections.

Existing Form SAB 61-04, *Expenditure Report*, is submitted by LEAs to report expenditures under the ERP that support the State grant they received. The proposed amendments advise LEAs of the requirement to remit to the OPSC, along with the completed Form, any project savings and/or

interest earned on State funds remaining after completion of ERP projects. In addition, the proposed amendments clarify the LEA requirements for submittal and retention of supporting

documents, and the reporting of project costs, total grant amount, interest earned, grant adjustment, and payment instructions for amounts due back to the State. LEAs are instructed to use the new *Emergency Repair Program Detailed Listing of Warrants Worksheet (New 12/08)*, or an equivalent alternative, to report required categories of project data and expenses. In addition, references to numbered regulation sections are specified as “ERP” regulation sections.

Proposed adoption to incorporate by reference the *Emergency Repair Program Detailed Listing of Warrants Worksheet* facilitates LEAs reporting each warrant issued for project expenses as corresponds to each type of project reported on Forms SAB 61-03 and SAB 61-04. The worksheet contains instructions and data fields to report the following information: “LEA Name, County, Application No., Project Detail Line Number, Date, Payee, Fund Source, Warrant No., Planning, Construction, Application Documentation Preparation and Submittal Costs, and Description of Work.”

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/local educational agencies for purposes of funding emergency repair projects under the ERP.

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 July 27, 2009, 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, Regulations Coordinator

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

E-mail Address: 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.