

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

**REGULAR**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

NOTICE FILE NUMBER <b>Z-2014-0819-01</b>	REGULATORY ACTION NUMBER <b>2014-1103-025</b>	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

2014 NOV -3 PM 3:07

OFFICE OF ADMINISTRATIVE LAW

ENDORSED FILED  
IN THE OFFICE OF

2014 DEC 18 PM 2:29

*Debra Bowen*  
DEBRA BOWEN  
SECRETARY OF STATE

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY  
State Allocation Board

AGENCY FILE NUMBER (if any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
<b>OAL USE ONLY</b> <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER <b>2014 352</b>	PUBLICATION DATE <b>8/29/2014</b>	

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Leroy F. Greene Sch. Facs. Act of 1998; CSFP Rehab Supplementl Grants	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT Regulation Sections 1859.167.1, 1859.167.2, and 1859.167.3
AMEND Regulation Sections 1859.2, 1859.77.4, 1859.106.1, 1859.160, and please refer to the Attachment.
REPEAL
TITLE(S) 2

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

12/18/14 per agency request

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))

Effective on filing with Secretary of State

§100 Changes Without Regulatory Effect

Effective other (Specify) **January 1, 2015**

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)

Fair Political Practices Commission

State Fire Marshal

Other (Specify)

7. CONTACT PERSON Lisa Jones	TELEPHONE NUMBER (916) 376-1753	FAX NUMBER (Optional) (916) 375-6721	E-MAIL ADDRESS (Optional) lisa.jones@dgs.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Lisa Silverman</i>	DATE November 3, 2014
TYPED NAME AND TITLE OF SIGNATORY Lisa Silverman, Executive Officer, State Allocation Board	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 18 2014

Office of Administrative Law

## Amend Regulation Section 1859.2

### Section 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

....

["Charter School Facilities Program Rehabilitation Grant" means the amount provided pursuant to Section 1859.167.1\(a\).](#)

....

"Financially Sound" shall have the meaning set forth in Education Code Section 17078.52(~~ec~~)(4) and [California Code of Regulations](#), Title 4, ~~California Business Regulations~~ commencing with Section 10151, et seq.

....

"Form SAB 50-04" means the *Application For Funding*, Form SAB 50-04 (Revised ~~05/13~~05/14), which is incorporated by reference.

....

"Form SAB 50-09" means the *Application for Charter School Preliminary Apportionment*, Form SAB 50-09 (Revised ~~12/11~~05/14), which is incorporated by reference.

....

"Preliminary Charter School Application" means a district filing on behalf of a ~~e~~Charter ~~s~~School or the ~~e~~Charter ~~s~~School submitting directly on Form SAB 50-09, including all supporting documents as identified in the General Instructions Section of that Form submitted to the OPSC and the OPSC has accepted the application for processing.

"Preliminary Charter School Apportionment" means an apportionment made pursuant to Education Code Section 17078.52(~~ec~~)(3).

....

"Total Projected Bond Apportionment" means the total State bond funds to be apportioned for the project, including any Financial Hardship apportionment pursuant to Section 1859.81, any funds authorized by the Authority pursuant to Section 1859.168, and any funds provided pursuant to Section 1859.194, but excluding the prevailing wage monitoring and enforcement costs grant amount provided pursuant to Section 1859.71.4(c), ~~or~~ 1859.78.1(b) or 1859.167.2(b).

....

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.75, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17073.25, 17074.10, 17074.30, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17078.72(k), 17079, 17079.10, 17280, 56026, and 101012(a)(8), Education Code; Section 53311, Government Code; and Sections 1771.3 and 1771.5, Labor Code.

## Amend Regulation Section 1859.77.4

### Section 1859.77.4. Addition to a Site and Modernization Grant for High Performance Incentive.

- (a) In addition to any other funding authorized by these Regulations, the Board shall provide the grant amounts identified in Subsections (b) or (c), as applicable, if all the following are met:
- (1) The project meets the mandatory measures of the California Green Building Standards, California Code of Regulations Title 24, Part 11, as applicable.
  - (2) The project includes all the prerequisites in each of the five HPRC to include Sustainable Sites, Water, Energy, Materials and Indoor Environmental Quality that are within the scope of the project, and related subcategory credits.
  - (3) Once the prerequisites in (a)(1) and (a)(2) have been met, the district may select the criteria and credits it wishes to pursue to determine point award. The category, criteria and associated points are as indicated in Section 1859.71.6(a), with the exception of (a)(3)(C) 2., Alternate Energy Sources, that has an amended point allowance that equals three to nine points; three points for the first five percent plus one point for each additional five percent thereafter of the site's annual power consumption that is produced on site not to exceed 35 percent; and the exception of (a)(3)(E)(2)f., Low emitting materials, that has an amended point allowance equal to one to four points.

- (4) A minimum of four points must come from either Section 1859.71.6(a)(3)(C)1.b. and/or 2.
- (5) The project, which includes a complete set of plans, must be submitted to and accepted by the DSA on or after May 20, 2006.
- (6) The DSA has reviewed the proposed project and concurs with the points specified in the HPRC.
- (7) The project will not receive funding from the Energy Efficiency Account.
- (8) For those projects accepted by the DSA prior to October 1, 2007, districts may utilize the *2002 CA-CHPS Criteria*, and the point standard will be in the range of 23 to 72 points. All prerequisites, credits and points obtained must be based on the *2002 Edition* requirements. Criteria and associated prerequisite or points as indicated in Section 1859.71.6(a)(3)(D)2.a. and 4.c. and f. and (E)1.c. and 2.b. and district resolutions are ineligible, and (a)(4) is optional.
- (b) Excluding Career Technical Education Facilities Projects, to determine the High Performance Incentive grant, multiply the appropriate grant listed in (1), (2), (3), (4), ~~(5)~~, or (6) below by the percentage allowance in accordance with the eligible high performance points in ~~(6)~~, (7), ~~(8)~~, or (9):
  - (1) New Construction Grant
  - (2) Modernization Grant
  - (3) Facility Hardship Square Footage Grant
  - (4) Seismic Rehabilitation Grant
  - (5) Modernization Excessive Cost Hardship Grant pursuant to Section 1859.83(e), excluding additional grants.
  - (6) Charter School Facilities Program Rehabilitation Grant
- ~~(6)~~ For those projects accepted by the DSA prior to October 1, 2007, pursuant to (a)(8), in which the level of high performance attained, as concurred by the DSA, is a minimum of 23 points, the New Construction or Modernization Grant, as appropriate, will be multiplied by:
  - (A) Two percent at 23 points plus 0.03 percent for each point attained from 24 through 33 points; or
  - (B) 2.35 percent at 34 points plus 0.24 percent for each point attained from 35 through 40 points; or
  - (C) Four percent at 41 points plus 0.36 percent for each point attained from 42 through 54 points; or
  - (D) 9.05 percent at 55 points plus 0.060 percent for each point attained from 56 through 72 points.
- ~~(7)~~ For those projects accepted by the DSA utilizing the *2006 CA-CHPS Criteria*, in which the level of high performance attained as concurred by the DSA is a minimum of 20 points, the New Construction or Modernization Grant, as appropriate, will be multiplied by:
  - (A) Two percent at 20 points plus 0.025 percent for each point attained from 21 through 33 points; or
  - (B) 2.35 percent at 34 points plus 0.24 percent for each point attained from 35 through 40 points; or
  - (C) Four percent at 41 points plus 0.36 percent for each point attained from 42 through 54 points; or
  - (D) 9.05 percent at 55 points plus 0.060 percent for each point attained from 56 through 77 points.
- ~~(8)~~ For those projects accepted by the DSA utilizing the *2009 CA-CHPS Criteria*, in which the level of high performance attained as concurred by the DSA is a minimum of 20 points, the Board shall provide \$250,000 one time per school site as a High Performance Base Incentive Grant. In addition, the New Construction or Modernization Grant, as appropriate will be multiplied by:
  - (A) 2.18 percent at 20 points plus 0.025 percent for each point attained from 21 through 26 points; or
  - (B) 2.35 percent at 27 points plus 0.24 percent for each point attained from 28 through 33 points; or
  - (C) Four percent at 34 points plus 0.36 percent for each point attained from 35 through 47 points; or
  - (D) 9.05 percent at 48 points plus 0.060 percent for each point attained from 49 through 84.
- (c) For Career Technical Education Facilities Projects accepted by the DSA utilizing the 2009 CA-CHPS Criteria, in which the level of high performance attained as concurred by the DSA is a minimum of 20 points, the Board shall provide \$250,000 one time per school site as a High Performance Base Incentive Grant.

If there are no funds remaining in the High Performance School Account or the funds remaining are insufficient to fully fund the additional grant authorized in Subsections (b) or (c), the district may either withdraw its application and resubmit it should additional funds be made available in the High Performance School Account or continue with the addition to an existing site/modernization project and accept a full and final apportionment without the additional grant authorized by Subsections (b) or (c).

Any funds apportioned pursuant to this Section shall be expended only on high performance related costs (and components as approved by the OPSC).

Note: Authority cited: Section 17070.35 and 17078.72(l), Education Code.

Reference: Section 101012(a)(8), Education Code.

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## Amend Regulation Section 1859.106.1

### Section 1859.106.1. Repayment of State Funds.

Upon adoption of the audit findings by the Board and in lieu of the collection procedures outlined in Education Code Section 17076.10(c)(1), a school district, county office of education, or ~~e~~Charter ~~s~~School may request a repayment schedule of up to five years, in equal annual installments, if the total repayment of State funds within 60 days of the Board action would cause the school district, county office of education, or ~~e~~Charter ~~s~~School to fall into fiscal distress. School districts, county offices of education, or ~~e~~Charter ~~s~~Schools requesting a repayment schedule must be in a severe hardship condition as evidenced by at least one of the following criteria:

- (a) For a school district or county office of education, the district or county office of education is listed on the current CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education.
- (b) For a school district or county office of education, the amount due to the State for one or more projects would cause the district or county office of education to be listed on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education report. Where the financial condition of a school district is involved, the county office of education must submit a letter to the OPSC on behalf of its representative school districts for consideration substantiating that the repayment will place the district on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education. Where the financial condition of a county office of education is involved, the CDE must submit a letter to the OPSC on behalf of the county office of education for consideration substantiating that the repayment will place the county office of education on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education.
- (c) For a ~~e~~Charter ~~s~~School, the amount due to the State for one or more projects would cause the ~~e~~Charter ~~s~~School severe financial hardship. The ~~e~~Charter ~~s~~School's authorizing agency must submit a letter to the OPSC on behalf of the ~~e~~Charter ~~s~~School for consideration substantiating that the repayment may result in the ~~e~~Charter ~~s~~School being unable to meet its financial obligations for the current or subsequent two fiscal years.

The repayment schedule shall include interest at the same rate as that earned on the State's Pooled Money Investment Account on the date a repayment schedule is approved by the Board.

The repayment schedule will commence on July 1 of the fiscal year following the repayment schedule approval date.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35, 17076.10(c), and 17078.52, Education Code.

....

## Amend Regulation Section 1859.160

### Section 1859.160. General.

An ~~Charter School~~applicant seeking a Preliminary Charter School Apportionment pursuant to the provisions of Education Code Sections 17078.52 through 17078.66 for new construction or rehabilitation shall complete and file a Form SAB 50-09. In addition the ~~charter school~~applicant must provide all required documents necessary for a financial soundness determination.

Once the Board has approved a Preliminary Charter School Apportionment for a Preliminary Charter School Application submitted pursuant to this Section after July 2, 2003, an ~~Charter School~~applicant seeking an advance release of funds for site acquisition pursuant to Section 1859.164.2(b), shall be required to submit an additional Form SAB 50-09, to the OPSC, to determine eligible site acquisition costs. An ~~Charter School~~applicant seeking an advance release of funds for

design, engineering, and other pre-construction project costs pursuant to Section 1859.164.2(a), shall not be required to submit an additional Preliminary Charter School Application.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52 and 17078.53, Education Code.

#### Amend Regulation Section 1859.161

##### Section 1859.161. Preliminary Charter School Application Submittals.

An ~~Charter School~~applicant seeking a Preliminary Charter School Apportionment shall complete and submit Form SAB 50-09 between February 2003 and March 31, 2003, or during a period of 120 calendar days beginning 90 calendar days after an election authorizing additional funding.

The Board may establish additional application filing periods as needed.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.53, Education Code.

#### Amend Regulation Section 1859.162

##### Section 1859.162. General Preliminary Charter School Apportionment Eligibility Criteria.

An ~~Charter School~~applicant may apply for a Preliminary Charter School Apportionment by submittal of Form SAB 50-09 if all of the following requirements are met:

- (a) Prior to submission of the Preliminary Charter School Application the requirements of EC Sections 17078.53(c) and (e) are met.
- (b) Prior to submission of the Preliminary Charter School Application, a Charter School applying on its own behalf must notify the school district where the project will be physically located of its intent to apply. This notification must occur at least 30 days prior to the application submittal. As part of the Preliminary Charter School Application, the Charter School must submit evidence of the date the notification was received by the school district.
- (c) The Preliminary Charter School Application shall include a description of the proposed project including, but not limited to, the identification of the number of classrooms, the grade level of the pupils to be served, the intended opening date of the project, the Charter School General Location, and whether the project will be permanent or portable construction.

If a ~~e~~Charter ~~s~~School project has already received a Preliminary Charter School Apportionment under the CSFP but would like to re-apply under a future funding cycle, the original Preliminary Charter School Apportionment must be withdrawn by the ~~charter school~~applicant and rescinded by the Board prior to the submittal of a subsequent application.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17071.75, 17078.52 and 17078.53, Education Code.

....

#### Amend Regulation Section 1859.163

##### Section 1859.163. Approval of Applications for Preliminary Charter School Apportionments.

Prior to approving a Preliminary Charter School Apportionment, the Board will require a certification from the Authority that the ~~Charter School~~applicant is Financially Sound. In providing a Preliminary Charter School Apportionment, the Board shall use the funding criteria established in Section 1859.164. The apportionment provided by the Board may be 100 percent of the total project cost dependent upon the method of ~~Charter School~~the applicant's contribution as determined by the Authority.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52 and 17078.53, Education Code.

## Amend Regulation Section 1859.163.1

### Section 1859.163.1. Preliminary Charter School New Construction Apportionment Determination.

The Preliminary Charter School New Construction Apportionment shall be determined as follows:

(a) The Preliminary Charter School Apportionment for construction costs shall be equal to the sum of (1) through (8) below:

- (1) The amounts shown below for each pupil, based on the project capacity, included in a Preliminary Charter School Application:
  - (A) \$5,227 for each elementary school pupil.
  - (B) \$5,534 for each middle school pupil.
  - (C) \$7,226 for each high school pupil.
  - (D) \$16,653 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
  - (E) \$11,137 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (2) An amount equal to 12 percent of the amount determined in (1) for multilevel construction, if requested by the ~~Charter School~~[applicant](#).
- (3) An amount for site development cost determined, at the option of the ~~Charter School~~[applicant](#), by one of the following:
  - (A) One-half of the site development cost for the specific site as authorized by Section 1859.76.
  - (B) One-half of the site development cost as authorized by Section 1859.76 using historical information in the Charter School General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the Charter School General Location.
  - (C) \$70,000 multiplied by the proposed acres requested on the Form SAB 50-09.
- (4) General Site Development costs within school property lines for an addition to an existing school site project wherein additional acreage is acquired or a new school project, determined as follows:
  - (A) \$9,600 per proposed acre requested on the Form SAB 50-09. This sum may be increased pursuant to the provisions in Section 1859.83(b). The per acre amount shown above shall be adjusted annually in the manner prescribed in Section 1859.71.
  - (B) 6 percent for Elementary School Pupils and Middle School Pupils and 3.75 percent for High School Pupils of the funding provided by Sections 1859.163.1(a)(1) multiplied by two. For purposes of this calculation, the percentage amount for Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupils shall be based on the type of project selected by the ~~Charter School~~[applicant](#) on the Form SAB 50-09.
  - (B) 6 percent for Elementary School Pupils and Middle School Pupils and 3.75 percent for High School Pupils of the funding provided by Sections 1859.163.1(a)(2) and (5) multiplied by two.
- (5) If the Preliminary Application request is for a small project that will house no more than 200 pupils, an amount pursuant to the following:
  - (A) If the project will house less than 101 pupils, the ~~district~~[applicant](#) is eligible for an amount equal to 12 percent of the funding provided by (a)(1).
  - (B) If the project will house between 101 and 200 pupils, the ~~district~~[applicant](#) is eligible for an amount equal to four percent of the funding provided by (a)(1).
- (6) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (1) and (5), plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent when the following criteria are met:
  - (A) The ~~Charter School~~[applicant](#) has requested an increase for multilevel construction pursuant to (2) above.
  - (B) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size.
  - (C) The value of the property as determined in Section 1859.163.2(a) is at least \$750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing school site.

- (7) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (1), (2), (3)(C), (4)(A) and (B), (5) and (6) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).
- (8) For all Preliminary Apportionments received after February 23, 2005, an amount equal to the sum of the amounts determined in (1) through (6) multiplied by a factor determined as follows:
  - (A) Divide the January Class B Construction Cost Index in effect at the time of the Preliminary Apportionment by the January Class B Construction Cost Index in effect four years prior to the Preliminary Apportionment. Round to four decimal places.
  - (B) Subtract 1 from the quotient in (A). Round to two decimal places.
- (9) If the ~~Charter School~~applicant is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority attributable to the items in (1) through (8) above.
  - (b) The Preliminary Charter School Apportionment for site acquisition costs shall be:
    - (1) Equal to one-half of the site acquisition value determined in Section 1859.163.2(a) and (c).
    - (2) If the ~~Charter School~~applicant is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority attributable to (1) above.
  - (c) The Preliminary Charter School Apportionment to initiate and enforce a LCP or to provide for the prevailing wage monitoring and enforcement costs shall be:
    - (1) 50 percent of the amount to initiate and enforce a LCP as prescribed in Section 1859.71.4(a), if required by the Labor Code, or
    - (2) 50 percent of the amount of the prevailing wage monitoring and enforcement costs as prescribed in Section 1859.71.4(c), if required by the Labor Code, and
    - (3) If the ~~Charter School~~applicant is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority attributable to either (1) or (2) above, as applicable.
  - (d) The total amount calculated in (a) above will be added to any amount calculated in (b) and (c) above, which will provide the Preliminary Charter School Apportionment amount.

The amounts shown in (a)(1) shall be adjusted annually in the manner prescribed in Section 1859.71.

Subsection (a)(4) of this section shall be suspended no later than January 1, 2008, unless otherwise extended by amendments as adopted by the Board.

- (e) Pursuant to Labor Code Section 1771.3, any public works project paid in whole or in part from public funds that are derived from bonds issued by the State and for which the construction contract is awarded after January 1, 2012, is subject to DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless the project is exempt from this requirement pursuant to Labor Code Section 1771.3(b).
- (f) Any ~~school district~~applicant failing to meet these requirements shall return to the State any State funding for the project, including interest, at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of State general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater. Interest to be returned shall be calculated from the date at which funds were received by the ~~school district~~applicant until the date of the Board's finding.
- (g) If the DIR revokes the ~~district~~applicant's internal LCP's approval and the ~~district~~applicant fails to provide appropriate prevailing wage monitoring through the DIR or other exemptions as specified in Labor Code Section 1771.3, the ~~school district~~applicant shall return to the State any State funding received for the project, including interest, as calculated in subsection (f) above for any construction projects for which the violations occurred.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52, 17078.58, and 17250.30, Education Code, and Section 1771.3, Labor Code.

....

Amend Regulation Section 1859.163.4

Section 1859.163.4. Preliminary Charter School Rehabilitation Apportionment Eligibility Criteria.

A Charter School or School District may apply for a Preliminary Charter School Rehabilitation Apportionment by submittal of Form SAB 50-09 if all of the following requirements are met:

- (a) The application includes existing school buildings made available by a school district; and,
- (b) The application includes classrooms that are at least 15 years of age at the time of submittal; and,
- (c) The facilities included in the application were not previously built or modernized with SFP funds; and,
- (d) For a Charter School applying on its own behalf, the application must include an agreement between the school district and the eCharter sSchool for the use of the facilities to be rehabilitated. The agreement must have been approved prior to submittal of application and must have been discussed and approved at the school district board meeting.

The age of the facilities shall begin 12 months after the plans for the building were approved by the DSA; or in the case of facilities that were previously modernized under the LPP, the 15 year old period shall begin on the date of its previous modernization apportionment.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.54, and 17078.58, Education Code.

### Amend Regulation Section 1859.163.5

#### Section 1859.163.5. Preliminary Charter School Rehabilitation Apportionment Determination.

The Preliminary Charter School Rehabilitation Apportionment will be determined based on the eligible square footage included in the project. For purposes of the Preliminary Charter School Rehabilitation Apportionment, eligible square footage is defined as the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

The amount of funding for each Preliminary Charter School Rehabilitation Apportionment will be equal to the sum of the amounts determined in (a)(1) through (a)(6) and (b) below:

(a)(1) The lesser of the amount determined in (A) or (B) below:

(A) The dollar value calculated using a per square foot amount and the total eligible square footage for the site as follows:

1. Determine the total square footage for each classroom included in the project (limited by the Charter School's projected enrollment).
2. Determine the total square footage for any multi-purpose room included in the project.
3. Determine the total square footage for any gymnasium included in the project.
4. Determine the total square footage for any library included in the project.
5. Determine the total square footage for any administration building included in the project.
6. Add the total square footage in 1. through 5. above to obtain the total square footage for the project.
7. From the total determined in 6., determine the total square footage for toilet facilities and the total square footage for other facilities. Multiply the toilet facilities square footage by \$173.30 and the other facilities square footage by \$96.30. The sum of these figures is the square footage dollar value for the project.

(B) The dollar value calculated using the new construction grant amount and the project capacity based on the State loading standards as follows:

1. Determine the proposed grade level usage of each classroom in the project (limited by the Charter School's projected enrollment).
2. Multiply the number of classrooms at the K-6 grade level by 25, the number of classrooms at the 7-12 grade level by 27, the number of non-severe classrooms by 13, and the number of severe classrooms by 9.
3. Multiply the number of pupils calculated pursuant to 2. by the appropriate dollar value determined in Section 1859.163.1(a)(1).

(2) If the Preliminary Application request is for a small project that will house no more than 200 pupils, an amount pursuant to the following:

- (A) If the project will house less than 101 pupils, as determined by the project's classroom capacity, calculated pursuant to Education Code Section 17071.25(a)(2)(A), the ~~district~~applicant is eligible for an amount equal to 12 percent of the funding provided by (a)(1).

- (B) If the project will house between 101 and 200 pupils, as determined by the project's classroom capacity, calculated pursuant to Education Code Section 17071.25(a)(2)(A), the ~~district~~ applicant is eligible for an amount equal to four percent of the funding provided by (a)(1).
- (3) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a)(1) and (a)(2), plus for a project with a site that is 60 percent or less of the CDE recommended site size plus 0.333 percent for each percentage decrease in the CDE recommended site size below 60 percent.
- (4) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a)(1), (a)(2), (a)(3), and (a)(5) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).
- (5) ~~\$60,000~~\$84,082 for each new two-stop elevator required to be included in the project by the DSA, and ~~\$10,800~~\$15,133 for each additional stop.
- (6) For all Preliminary Apportionments received after February 23, 2005, an amount equal to the sum of the amounts determined in (a)(1) through (a)(5) multiplied by a factor determined as follows:
- (A) Divide the January Class B Construction Cost Index in effect at the time of the Preliminary Apportionment by the January Class B Construction Cost Index in effect four years prior to the Preliminary Apportionment. Round to four decimal places.
- (B) Subtract 1 from the quotient in (A). Round to two decimal places.
- (7) If the ~~Charter School~~ applicant is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority attributable to the items in (a)(1) through (a)(6) above.
- (b) The Preliminary Charter School Rehabilitation Apportionment to initiate and enforce a LCP or to provide for the prevailing wage enforcement costs shall be determined according to (1) or (2) below, as applicable:
- (1) ~~50 percent of the amount to initiate and enforce a LCP as prescribed in Section 1859.71.4(a), if required by the Labor Code, or~~ After determining all other funding authorized by these Regulations, for any project funded in whole or in part from Proposition 47 or Proposition 55 for which the construction contract is awarded prior to January 1, 2012, and for which the applicant is required under Labor Code Section 1771.7(a) and (b) to initiate and enforce a LCP, the Board shall increase the Preliminary Charter School Rehabilitation Apportionment by 50 percent of the following calculation:
- (A) Using the chart in Section 1859.71.4(b), determine the total amount of funding to be provided for the increased costs of a Charter School Facilities Program Rehabilitation project due to the initiation and enforcement of a LCP.
- (B) If the applicant is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority shall be included in the calculation of (A) above.
- (2) ~~50 percent of the amount of the prevailing wage monitoring and enforcement costs as prescribed in Section 1859.71.4(c), if required by the Labor Code, and~~ After determining all other funding authorized by these Regulations, the Board shall increase the grant by 50 percent of one-fourth of one percent of the Total Projected Bond Apportionment for any project for which the construction contract is awarded on or after January 1, 2012.
- (A) If the applicant is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority shall be included in the calculation of (2) above.
- ~~(3) If the Charter School is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority attributable to either (1) or (2) above, as applicable.~~

The amounts determined in (a)(1) and (a)(5) shall be adjusted annually in the manner prescribed in Section 1859.71.

- (c) Pursuant to Labor Code Section 1771.3, any public works project paid in whole or in part from public funds that are derived from bonds issued by the state and for which the construction contract is awarded on or after January 1, 2012, is subject to DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless the project is exempt from this requirement pursuant to Labor Code Section 1771.3(b).
- (d) Any ~~school district~~ applicant failing to meet these requirements shall return to the State any State funding for the project, including interest, at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of State general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code,

whichever is greater. Interest to be returned shall be calculated from the date at which funds were received by the ~~school-district~~applicant until the date of the Board's finding.

- (e) If the DIR revokes the ~~district~~applicant's internal LCP's approval and the ~~district~~applicant fails to provide appropriate prevailing wage monitoring through the DIR or other exemptions as specified in Labor Code Section 1771.3, the ~~school-district~~applicant shall return to the State any State funding received for the project, including interest, as calculated in subsection (d) above for any construction projects for which the violations occurred.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17071.25, 17078.52, 17078.54, 17078.56, 17078.58 and 17250.30, Education Code, and Section 1771.3, Labor Code.

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## Amend Regulation Section 1859.164

### Section 1859.164. Application Funding Criteria.

If the estimated total apportionments of all Financially Sound Preliminary Charter School Applications received in either filing period specified in Section 1859.161 exceed the funds available, the applications shall be identified in each of the following four categories:

- (a) Geographical Region One, Two, Three, or Four.
- (b) Urban, Rural, or Suburban areas.
- (c) Large, Medium, or Small Charter Schools.
- (d) K-6, 7-8, or 9-12 grade levels.

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All Preliminary Charter School Applications received from an ~~an~~ ~~Charter-School~~applicant will be processed in the date order received by the OPSC. If more than one Preliminary Charter School Application is received on the same day from the same entity for a Charter School project located within the geographical jurisdiction of same district, those applications will be processed by the OPSC based on the priority order assigned to those applications by the applicant on Form SAB 50-09.

If two or more Preliminary Charter School Applications have the same preference points, the Board shall first apportion that Preliminary Charter School Application that was received first by the OPSC. In the event that the applications were received on the same day, applications will be funded in the following order:

- (a) Projects submitted by entities that have not previously received funding under the SFP, the CSFP or the State Charter School Facilities Grants Incentives Program will be funded before those that have received said funding;
- (b) Projects proposing to utilize existing facilities will be funded before projects that propose to build new facilities;
- (c) As applicable, projects that provide more seats to relieve overcrowding will be funded over those that provide fewer seats (as determined by dividing the number of unhoused pupils pursuant to Section 1859.50 that the project will house by the remaining new construction eligibility in the district);

In the event that a tie remains after the previous criteria have been applied, a lottery system will be used to select the project that is funded.

Any applications the SAB is unable to provide a Preliminary Charter School Apportionment to will be returned to the ~~Charter-School~~applicant.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.56, Education Code.

## Amend Regulation Section 1859.164.1

### Section 1859.164.1. Calculation of Preference Points.

Preference points will be calculated for all Preliminary Charter School Applications. An application shall receive preference points based on the total of (a), (b), (c) and (d), up to a maximum of 160 points, as follows:

- (a) Low Income: Up to 40 points based on the percentage of pupils at either the Charter School or school district where the Charter School is or will be located, or any public school within the Charter School General Location meeting the definition of Low-income. The ~~Charter School~~applicant may report the highest percentage of the three. Use the following sliding scale to determine the number of preference points:

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Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.53 and 17078.56, Education Code.

#### Amend Regulation Section 1859.164.2

##### Section 1859.164.2. Preliminary Charter School Apportionment Fund Release.

An ~~Charter School~~applicant receiving a Preliminary Charter School Apportionment from the Board after July 2, 2003 may request an advance release of funds for either of the following:

- (a) A separate advance release of funds for design equal to 20 percent of the amount determined in Section 1859.163.1(a)(1) through (9) or Section 1859.163.5(a) through (g).
- (b) A separate advance release of funds for site acquisition once the requirements in Section 1859.81.1(a)(2) and (3) are met for an amount not to exceed the Preliminary Charter School Apportionment for site acquisition. The Board shall release to the ~~Charter School~~applicant an amount up to the Preliminary Charter School Apportionment determined in Section 1859.163.1(b).

Qualified ~~Charter Schools~~applicants may request a separate advance release of funds for the design and for the site acquisition for the same project. An ~~Charter School~~applicant seeking an advance release of funds pursuant to (a) and/or (b) must have been deemed and maintained financial soundness status from the Authority. Subject to the availability of financing provided by the Pooled Money Investment Board for bond-funded projects, the OPSC will release State funds included in a Preliminary Charter School Apportionment pursuant to (a) or (b) to the ~~Charter School~~applicant after submittal of the Form SAB 50-05. The OPSC shall not release funds in excess of the Preliminary Charter School Apportionment. State funds released from a Preliminary Charter School Apportionment pursuant to this Section shall be subject to the provisions in Section 1859.166. Once the Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment pursuant to Section 1859.167, the ~~Charter School~~applicant may request a release of the remaining funds as prescribed in Section 1859.90 or 1859.90.2. Prior to the release of any funds, the Charter School Agreements must be executed.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.53 and 17078.58, Education Code.

#### Amend Regulation Section 1859.165

##### Section 1859.165. Conversion of Preliminary Charter School Apportionment.

When a Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment, all the following criteria must be met:

- (a) The Final Charter School Apportionment request must meet all criteria on the Form SAB 50-04.
- (b) An ~~Charter School~~applicant seeking to convert a Preliminary Charter School Apportionment to a Final Charter School Apportionment shall complete and file Form SAB 50-04. The number of pupils being requested cannot exceed the amount the ~~Charter School~~applicant originally requested and received at the Preliminary Charter School Apportionment.

If the ~~Charter School~~applicant is unable to meet the criteria in this Section, the Preliminary Charter School Apportionment shall be rescinded pursuant to the provisions of Section 1859.166.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.52, Education Code.

Amend Regulation Section 1859.166

Section 1859.166. Time Limit on Preliminary Charter School Apportionment.

- (a) A complete request to convert a Preliminary Charter School Apportionment to a Final Charter School Apportionment pursuant to Section 1859.165 shall be made within four years of the date of the Preliminary Charter School Apportionment unless the ~~Charter School~~applicant received approval of an extension pursuant to Section 1859.166.1.
- (b) If (a) is not met, and the ~~Charter School~~applicant has not received an advance release of funds as provided in Section 1859.164.2, the following will occur:
  - (1) the Preliminary Charter School Apportionment shall be rescinded and any remaining Preliminary Charter School Apportionment, not released to the ~~Charter School~~applicant, shall be transferred to the Unrestricted Charter School Fund within the appropriate Charter School Facility Account, and;
  - (2) the SFP New Construction Eligibility will be increased by the number of unhoused pupils pursuant to Section 1859.162.2 for the school district that physically contains the Charter School within its geographical boundaries.
- (c) If (a) is not met, and the ~~Charter School~~applicant has received an advance release of funds as provided in Section 1859.164.2, the following will occur:
  - (1) The Preliminary Charter School Apportionment shall be rescinded and any remaining Preliminary Charter School Apportionment, not released to the ~~Charter School~~applicant, shall be transferred to the Unrestricted Charter School Fund within the appropriate Charter School Facility Account, and;
  - (2) Funds released pursuant to Section 1859.164.2(a) shall be reduced to cost incurred and closed-out pursuant to Section 1859.106 with a corresponding SFP new construction baseline eligibility adjustment for the pupils assigned to the Preliminary Charter School Application. The adjustment to the baseline eligibility shall be based on the ratio of the number of unhoused pupils pursuant to Section 1859.162.2 and the project capacity which generated the project funding to the eligible expenditures. Any funds released are subject to the fifty percent local matching share requirement as required by EC 17078.54(d). Funds returned pursuant to Section 1859.106 shall be transferred to the Unrestricted Charter School Fund within the appropriate Charter School Facility Account, and;
  - (3) Funds released pursuant to Section 1859.164.2(b) shall be subject to the provisions of Section 1859.171.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52 and 17078.53, Education Code.

Amend Regulation Section 1859.166.1

Section 1859.166.1. Preliminary Charter School Apportionment Time Limit Extension.

An ~~Charter School~~applicant that has received a Preliminary Charter School Apportionment may request a single one-year extension of the time limit prescribed in Section 1859.166(a). The Board shall approve the request provided the criteria in (a) or (b) are met:

- (a) The ~~Charter School~~applicant has provided evidence of both of the following:
  - (1) The CDE has made a contingent or final approval of the proposed site; and,
  - (2) The DSA has confirmed that the final plans for the project have been submitted to the DSA for review and approval.
- (b) Other evidence satisfactory to the Board justifying the extension.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.52, Education Code.

....

Amend Regulation Section 1859.167

Section 1859.167. Final Charter School Apportionment.

(a) With the exception of Charter School Preliminary Apportionments provided by the Board on February 23, 2005, the amount of the Final Charter School Apportionment will be based on the provisions of any amended or new regulations that are effective at the time the Form SAB 50-04, for the Final Charter School Apportionment is submitted and accepted for processing by the OPSC. Prior to the Board providing a Final Charter School Apportionment, the ~~Charter School~~applicant will need to have a current Financial Soundness certification from the Authority. The Board shall convert the amounts determined below from the Preliminary Charter School Apportionment to the Final Charter School Apportionment:

....

(b) For Preliminary Charter School Apportionments provided by the Board on February 23, 2005:

- (1) the Final Charter School Apportionment will be subject to the provisions of any amended or new regulations that are effective at the time the Form SAB 50-04 is submitted and accepted for processing by the OPSC for the Final Charter School Apportionment; and,
- (2) The Final Charter School Apportionment shall not contain additional pupil grants beyond that which the ~~Charter School~~applicant may have requested at the time of the Preliminary Charter School Application; and,
- (3) Prior to the Board providing a Final Charter School Apportionment the ~~Charter School~~applicant will need to have a current Financial Soundness certification from the Authority; and,
- (4) The amount of the Final Charter School Apportionment shall not exceed the Preliminary Charter School Apportionment with the exception of amounts available pursuant to Section 1859.167.24 and 1859.167.35. The additional amount of funds available to an individual project may include amounts from both the Conversion Increase Fund and Unrestricted Charter School Fund. The sum of the Preliminary Apportionment, the additional funds from the Conversion Increase Fund, and the additional amounts from the Unrestricted Charter School Fund shall not exceed the amount necessary to bring the total eligible project costs current to the grant amounts in place at the time of conversion. The Board shall convert the Preliminary Charter School Apportionment to the Final Charter School Apportionment as outlined below:

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Note: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Sections 17078.52 and 17078.56, Education Code.

Adopt Regulation Section 1859.167.1

[Section 1859.167.1 Final Charter School Apportionment Determination for Charter School Facilities Program Rehabilitation](#)  
[Final Charter School Apportionment Conversion Site Acquisition Guidelines for Projects Apportioned on February 23, 2005. \[Repealed\]](#)

[The Final Charter School Apportionment for Charter School Facilities Program Rehabilitation is the sum of the Charter School Facilities Program Rehabilitation Grant and the applicable grants provided in Sections 1859.77.4, 1859.167.2, and 1859.167.3, and is subject to the adjustments pursuant to Section 1859.163.6 and Section 1859.167.](#)

[\(a\) The Charter School Facilities Program Rehabilitation Grant will be determined based on the square footage included in the project. The Charter School Facilities Program Rehabilitation Grant will be the lesser of the amount determined in \(1\) or \(2\) below:](#)

[\(1\) The dollar value calculated using a per square foot amount and the total eligible square footage for the site as follows:](#)

[\(A\) Determine the total square footage for each classroom included in the project.](#)

[\(B\) Determine the total square footage for any multi-purpose room included in the project.](#)

[\(C\) Determine the total square footage for any gymnasium included in the project.](#)

[\(D\) Determine the total square footage for any library included in the project.](#)

[\(E\) Determine the total square footage for any administration building included in the project.](#)

[\(F\) Add the total square footage in \(A\) through \(E\) above to obtain the total square footage for the project.](#)

[\(G\) From the total determined in \(F\), determine the total square footage for toilet facilities and the total square footage for other facilities, not to exceed the square footage determined pursuant Section 1859.163.5\(a\)\(1\)\(A\)6.. Multiply the toilet facilities square footage by \\$173.30 and the other facilities square footage by \\$96.30. The sum of these figures is the square footage dollar value for the project. The per-square foot amounts for toilet and other facilities shall be adjusted annually in the manner prescribed in Section 1859.71.](#)

[\(2\) The dollar value calculated using the New Construction Grant amount and the project capacity based on the State loading standards as follows in \(A\) through \(C\).:](#)

- (A) Determine the proposed grade level usage of each classroom in the project.
- (B) Multiply the number of classrooms at the K-6 grade level by 25, the number of classrooms at the 7-12 grade level by 27, the number of non-severe classrooms by 13, and the number of severe classrooms by 9.
- (C) Multiply the number of pupils calculated pursuant to (B) by the New Construction Grant per-pupil amounts corresponding to the appropriate grade levels. The per-pupil new construction grant amounts shall be adjusted annually in the manner prescribed in Section 1859.71

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17071.25, 17078.52, 17078.54, ~~17078.56~~, and 17078.58, Education Code.

## Adopt Regulation Section 1859.167.2

### Section 1859.167.2 Charter School Facilities Program Rehabilitation Additional Grant for Labor Compliance Program or Prevailing Wage Monitoring and Enforcement Costs

The additional grant to initiate and enforce a LCP or to provide for the prevailing wage enforcement costs shall be determined according to (a) or (b) below, as applicable:

- (a) After determining all other funding authorized by these Regulations, for any project funded in whole or in part from Proposition 47 or Proposition 55 for which the construction contract is awarded prior to January 1, 2012, and for which the applicant is required under Labor Code Section 1771.7(a) and (b) to initiate and enforce a LCP, the Board shall increase the Charter School Facilities Program Rehabilitation Grant by 50 percent of the following calculation:
  - (1) Using the chart in Section 1859.71.4(b), determine the total amount of funding to be provided for the increased costs of a Charter School Facilities Program Rehabilitation project due to the initiation and enforcement of a LCP.
  - (2) If the applicant is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority shall be included in the calculation of (1) above.
- (b) After determining all other funding authorized by these Regulations, the Board shall increase the grant by 50 percent of one-fourth of one percent of the Total Projected Bond Apportionment for any project for which the construction contract is awarded on or after January 1, 2012.
  - (1) If the applicant is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority shall be included in the calculation of (b) above.
  - (2) Pursuant to Labor Code Section 1771.3, any public works project paid in whole or in part from public funds that are derived from bonds issued by the state and for which the construction contract is awarded on or after January 1, 2012, is subject to DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless the project is exempt from this requirement pursuant to Labor Code Section 1771.3(b).
  - (3) Any applicant failing to meet these requirements shall return to the State any State funding for the project, including interest, at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of State general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater. Interest to be returned shall be calculated from the date at which funds were received by the applicant until the date of the Board's finding.
  - (4) If the DIR revokes the applicant's internal LCP's approval and the applicant fails to provide appropriate prevailing wage monitoring through the DIR or other exemptions as specified in Labor Code Section 1771.3, the applicant shall return to the State any State funding received for the project, including interest, as calculated in subsection (3) above for any construction projects for which the violations occurred.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code and Section 1771.3, Labor Code.

Reference: Sections 17078.58 and 17250.30, Education Code and Section 1771.3, Labor Code.

## Adopt Regulation Section 1859.167.3

### Section 1859.167.3. Excessive Cost Hardship Grant for Charter School Facilities Rehabilitation

In addition to any other funding authorized by these Regulations, the applicant is eligible for funding as a result of unusual circumstances that created excessive project costs beyond the control of the applicant. The Excessive Cost Hardship Grant shall be based on any of the following:

(a) Excessive Cost due to Geographic Location.

An applicant with a project that is located in a geographic area designated in the Geographic Percentage Chart in Section 1859.83(a) is eligible for an Excessive Cost Hardship Grant determined by multiplying the indicated percentage factor shown in the Geographic Percentage Chart by each of the following amounts:

(1) The Charter School Facilities Program Rehabilitation Grant.

(2) The funding provided by Sections 1859.167.3(b), (c), and (d).

(b) Excessive Cost for Projects that House No More than 200 Pupils (Small Size Projects).

(1) If the project will house less than 101 pupils as determined by the project's classroom capacity calculated pursuant to Education Code Section 17071.25(a)(2)(A), the applicant is eligible for an Excessive Cost Hardship Grant equal to 12 percent of the funding provided by the Charter School Facilities Program Rehabilitation Grant.

(2) If the project will house between 101 and 200 pupils as determined by the project's classroom capacity calculated pursuant to Education Code Section 17071.25(a)(2)(A), the applicant is eligible for an Excessive Cost Hardship Grant equal to four percent of the funding provided by the Charter School Facilities Program Rehabilitation Grant.

(c) Excessive Cost Due to Urban Location, Security Requirements and Impacted Site.

(1) The applicant is eligible for an Excessive Cost Hardship Grant if the Useable Acres of the site for the project are 60 percent or less of the CDE recommended site size based on the current CBEDS Report at the site at the time of the CDE final plan approval for the Charter School Facilities Program Rehabilitation project.

(2) The Excessive Cost Hardship Grant is equal to 15 percent of the Charter School Facilities Program Rehabilitation Grant and 15 percent of the funding authorized by Section 1859.167.3(b) for a project with a site that is 60 percent of the CDE recommended site size plus 0.333 percent for each percentage decrease of the CDE recommended site size below 60 percent.

(d) Excessive cost due to accessibility and fire code requirements:

(1) The applicant is eligible for an Excessive Cost Hardship Grant equal to three percent of the Charter School Facilities Program Rehabilitation for accessibility and fire code requirements.

(2) In lieu of the three percent funding provided in (1), the applicant has the option of requesting 50 percent of the amount determined in (2)(B), not to exceed 50 percent of the amount determined in (2)(C):

(A) Multiply the project's classroom capacity, calculated pursuant to Education Code Section 17071.25(a)(2)(A), by the Modernization Grant.

(B) Determine the difference of the verified hard construction costs of the minimum accessibility and fire code work necessary to receive approval from the DSA minus seven percent of the amount in (2)(A) and the district matching share of the Modernization Grant, pursuant to Section 1859.79.

(C) Determine the difference of 1. minus 2.:

1. Multiply the project's classroom capacity, as determined in (2)(A), by the New Construction Grant.

2. The sum of the State and district share of the Modernization Grant multiplied by the project's classroom capacity, as determined in (2)(A).

(3) The applicant is eligible for an Excessive Cost Hardship Grant of \$84,082 for each new two-stop elevator required to be included in a Charter School Facilities Program Rehabilitation project by the DSA. This amount shall be adjusted annually in the manner prescribed in Section 1859.78.

(4) The applicant is eligible for an Excessive Cost Hardship Grant of \$15,133 for each additional stop of the new elevator required in (3) above for a Charter School Facilities Program Rehabilitation project. This amount shall be adjusted annually in the manner prescribed in Section 1859.78.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17075.10, 17075.15, 17078.54, and 17078.58, Education Code

Amend Regulation Section 1859.167.2 (renumbered to 1859.167.4)

Section 1859.167.24. Preliminary Apportionment Rescissions.

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(d) The maximum amount available for each individual Final Charter School Apportionment from the 2002 and/or 2004 Conversion Increase Fund shall be equal to the ratio of the project's Preliminary Charter School Apportionment to the total value of ~~p~~Preliminary ~~e~~Charter ~~s~~School ~~a~~Apportionments awarded on February 23, 2005, for those recipients eligible for these Conversion Increase Fund funds, multiplied by the sum of the amount of funds available for the Conversion Increase Fund in both the 2002 and 2004 Charter School Facilities Accounts.

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Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.54, Education Code.

Amend Regulation Section 1859.167.3 (renumbered to 1859.167.5)

Section 1859.167.3~~5~~. Use of the Unrestricted Charter School Funds.

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Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.58, Education Code.

Amend Regulation Section 1859.168

Section 1859.168. Preliminary Charter School Apportionment Matching Share Requirement.

The ~~Charter School~~applicant will be subject to the matching share requirements in Section 1859.77.1 and Education Code Section 17078.54(d) that may be paid through lease payments authorized by the Authority in lieu of the matching share. All lease payments shall be paid to the Board to be redeposited to the Unrestricted Charter School Fund in the appropriate Charter School Facility Account. Any funds deposited in either Account shall be first used to fund remaining site acquisition costs off the Unfunded List pursuant to Section 1859.163.3. Should no projects remain on the Unfunded List the Board may use the funds for purposes of this Article.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.54 and 17078.58, Education Code.

....

Amend Regulation Section 1859.171

Section 1859.171. Use of Facility.

If an ~~Charter School~~applicant that has received funding pursuant to Section 1859.164.2(b) and has not met the timelines established in Section 1859.166 on a Preliminary Charter School Apportionment, or is no longer occupying the facility constructed with funds derived through a Final Charter School Apportionment, and the review process outlined in Education Code Section 17078.62(b)(1) has been completed (if applicable), then the following events shall occur:

- (a) Any qualifying successor ~~e~~Charter ~~s~~School shall be permitted to occupy the facility pursuant to Education Code Section 17078.62(b)(2).
- (b) If no qualifying successor ~~e~~Charter ~~s~~School chooses to occupy the facility, the school district in which the project is physically located may elect to take possession of the facility and pay the balance of the local matching share. The District may qualify for a waiver of repayment if it can meet all the following:

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Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.62, Education Code.

Amend Regulation Section 1859.172

Section 1859.172. Title to Project Facilities.

- (a) Prior to the release of funds for site acquisition or new construction Final Charter School Apportionments, an ~~e~~charter school applicant that has received a Preliminary Charter School Apportionment must provide one of the following:
- (1) Documentary evidence that the school district in which the project is physically located holds title to the project facilities,
  - (2) Documentary evidence that a local governmental entity holds title pursuant to all of the requirements set forth in Education Code Section 17078.63(a)(2), or
  - (3) A written request that the ~~e~~Charter ~~s~~School be authorized to hold fee simple title to the subject property signed by an authorized ~~e~~Charter ~~s~~School representative pursuant to all of requirements set forth in Education Code Section 17078.63(a)(3). The written request must include a statement justifying the reasons why ownership will not be vested with an entity described in (a)(1) and why ownership will not be vested with an entity described in (a)(2). The written request must also include the statement:  
I certify, as the ~~e~~Charter ~~s~~School representative, that the information reported in this document is true and correct.
- (b) A ~~e~~Charter ~~s~~School may request that a school district transfer title to project facilities to a local governmental entity or the ~~e~~Charter ~~s~~School itself if prior to January 1, 2010 the school district entered into an agreement to hold title to the project facilities. The transfer of title shall only take place if the school district and ~~e~~Charter ~~s~~School mutually agree to a title transfer. Prior to the transfer of title, the ~~e~~Charter ~~s~~School must notify the OPSC in writing that a title transfer request is being made, enter into new Charter School Agreements with the State and a local governmental entity if applicable, and demonstrate that all of the necessary conditions for holding title pursuant to Education Code Section 17078.63 will be complied with. For purposes of title transfer pursuant to Education Code Section 17078.63(b)(1) the ~~e~~Charter ~~s~~School shall not be required to provide the written request outlined in section (a)(3) above.

Note: Authority cited: Sections 17070.35 and 17078.63, Education Code.

Reference: Sections 17078.62 and 17078.63, Education Code.