



August 8, 2008

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 ADOPT AND
AMEND VARIOUS REGULATION SECTIONS, ALONG WITH TWO
ASSOCIATED FORMS, TITLE 2, CALIFORNIA CODE OF REGULATIONS,
RELATING TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

REGULATION SECTIONS PROPOSED FOR AMENDMENT: 1859.2, 1859.41, 1859.42,
1859.43, 1859.51 AND 1859.147.

REGULATION SECTIONS PROPOSED FOR ADOPTION: 1859.41.1 AND 1859.42.1.

FORMS PROPOSED FOR AMENDMENT:

Enrollment Certification/Projection, Form SAB 50-01, (Revised 06/08), referenced in
Regulation Section 1859.2

Eligibility Determination, Form SAB 50-03, (Revised 06/08), referenced in Regulation Section
1859.2

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to adopt and amend the above-referenced regulation sections, including two associated forms, 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 adopt and amend the above-referenced regulation sections under the authority provided by Sections 17070.35 and 17075.15 of the Education Code. The proposals interpret and make specific reference to Sections 17052, 17070.35, 17070.51, 17071.25, 17071.75, 17071.76, 17072.20, 17077.40, 17078.27, 17078.72, 17079.20 and 42268 of the Education Code.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law and filed with the Secretary of State on October 8, 1999.

The SAB, at its June 25, 2008 meeting, adopted amendments to the SFP Regulations to implement Assembly Bill (AB) 1014, Chapter 691, Statutes of 2007 (Bass). The proposed amendments were formulated in consultation with the Department of Finance. They add the following components to the enrollment projection calculation method used to establish eligibility for SFP new construction funding:

- Modified weighting mechanisms;
- Birth rate augmentation to kindergarten and first grade enrollment;
- Tenth-year projection; and,
- Utilization of pupil residence for High School Attendance Area (HSAA) reporting.

The existing projection system utilizes the Cohort Survival Enrollment Projection System (Cohort) and four years of historical data to develop an average change, which shows the average change in pupils from one year to the next as students advance through the grade levels. Existing SFP provisions allow for districts to supplement enrollment projections with residential dwelling units to be built in the district and a district-specific student yield factor.

The proposed amendments afford districts multiple options to project their future enrollment. Three modified weighting formulas are proposed for districts' five-year enrollment projections so as to best represent the enrollment trends of the district. Another amendment allows the use of an average birth-attendance rate to supplement the five-year enrollment projection by comparing historical birth numbers to past kindergarten enrollment to determine how many children born will attend that district. It is also proposed that the current calculation process could be extended for the tenth-year projection, utilizing the Cohort method and eight years of past enrollment data. Finally, when districts report school enrollment by HSAA or a combination of HSAA's, they can continue to report based on school attendance or by a proposed new method of reporting based upon pupil residency.

A summary of the proposed regulatory changes follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments add the definitions of the "Linear Regression" mathematical procedure, ZIP Codes, Proposition 1D, and also incorporate by reference the High School Attendance Area Residency Reporting Worksheet to be used with Form SAB 50-01 when utilizing HSAA residency reporting.

Existing Regulation Section 1859.41 specifies criteria for school districts opting to request eligibility determinations for new construction grants based on a HSAA or Super HSAA basis. The proposed amendment deletes a sentence concerning feeder schools' enrollment.

Proposed adoption of Regulation Section 1859.41.1 sets forth pupil reporting options for projecting HSAA or Super HSAA enrollment. Enrollment may be based upon pupils attending schools in the HSAA or Super HSAA, or upon pupils residing within the HSAA or Super HSAA and submittal of a completed High School Attendance Area Residency Reporting Worksheet. Eligibility based upon residency requires a school district to continue reporting upon residency until a final Form SAB 50-06 has been filed for all projects upon which the school district's apportionment was based upon residency reporting.

Existing Regulation Section 1859.42 sets forth the methodology school districts use to calculate their enrollment projections, including augmenting their enrollment projections by utilizing dwelling units in approved and valid subdivision maps. The proposed amendments specify the fifth-year enrollment projection criteria as new subsection (a), the tenth-year enrollment projection criteria as new subsection (b), and delete the former subsection (b) and final sentence of subsection (c) criteria for augmenting enrollment projections.

Proposed adoption of Regulation Section 1859.42.1 sets forth permissible supplements to the fifth-year projection of pupil enrollment for Non-Special Day Class pupils and not for HSAA and Super HSAA enrollment projections based on residency. Factors which can augment the enrollment projection include pupils that will reside in dwelling units in an approved and valid subdivision map; children born that will attend kindergarten in the fifth calendar year following birth; and modified weighting of enrollment projections that best represents the enrollment trends of the district, based upon submittal of 18 consecutive years of enrollment used to calculate three sets of ten historical enrollment projections.

Existing Regulation Section 1859.43 sets forth pupil reporting criteria for projecting Special Day Class enrollment. The proposed amendments specify the criteria for both fifth-year and tenth-year projections.

Existing Regulation Section 1859.51 provides adjustment factors that increase or decrease a school district's baseline eligibility for new construction. The proposed amendment clarifies that the adjustments apply to changes in projected enrollment for both fifth-year and tenth-year projections.

Existing Regulation Section 1859.147 provides the criteria required for school districts, including HSAAs, to convert their Critically Overcrowded School Facilities Preliminary Apportionment to a Final Apportionment by evidencing sufficient new construction eligibility at the time of conversion. The proposed amendment clarifies that this Section applies to eligibility utilizing a fifth-year projection, pursuant to Section 1859.42(a).

Existing Form SAB 50-01, *Enrollment Certification/Projection*, is submitted by applicant school districts to determine initial eligibility for funding under the SFP. The proposed amendments delete the existing three-pages of text and data fields and add new text and data fields comprising five pages to incorporate the new provisions for enrollment projection methodologies.

Proposed High School Attendance Area Residency Reporting Worksheet (incorporated by reference) is to be submitted with Form SAB 50-01 by school districts when utilizing HSAA residency reporting. The data fields facilitate reporting current and up to the seven previous years' enrollment by residence.

Existing Form SAB 50-03, *Eligibility Determination*, is used by school districts to calculate their eligibility for new construction and modernization funding under the SFP. The proposed amendments change “Specific Instructions” to apply to either the fifth-year or tenth-year projected enrollment in accordance with the new Part I of the revised Form SAB 50-01.

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 school facility projects.

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 September 22, 2008, 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.