



June 5, 2009

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS OF SCHOOLS, CHARTER 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, TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

REGULATION SECTIONS PROPOSED FOR ADOPTION: 1859.148.2 AND 1859.166.2.

REGULATION SECTIONS PROPOSED FOR AMENDMENT: 1859.2, 1859.121, 1859.164.2 AND 1859.197.

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to adopt and amend the above-referenced regulation sections 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, 17075.15, 17078.64 and 17078.72(k) of the Education Code. The proposals interpret and make specific reference Sections 17076.10, 17077.40, 17077.42, 17077.45, 17078.25, 17078.52, 17078.53, 17078.58 and 17078.72 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 January 28, 2009 meeting, adopted proposed emergency regulatory amendments to the SFP to help prevent school bond apportionments from expiring during the State's current fiscal crisis. The proposed amendments respond to the Pooled Money Investment Board's (PMIB's) action on December 17, 2008, to temporarily halt disbursements for capital projects, including the construction of public schools. The SAB will be authorized to find preliminary apportionments "inactive" under the:

- Critically Overcrowded School Facilities Program (COS Program), and
- Charter School Facilities Program (CSFP).

This will temporarily suspend the time period for conversion to final apportionments, and help prevent those preliminary apportionments from being rescinded due to the time limit expiring to convert to final apportionments. This period is four years from the date of the preliminary apportionment plus a possible one time one-year extension. When the SAB finds that State financing is available for bond-funded projects, the time period will resume as it existed on December 17, 2008, and school districts can move forward toward converting to final apportionments.

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 "Inactive Preliminary Apportionment" (pertaining to the COS Program) and "Inactive Preliminary Charter School Apportionment" (pertaining to the CSFP). Each definition requires SAB approval, and applies to preliminary apportionments:

- approved prior to December 17, 2008, and
- for which a complete request to convert to a Final Apportionment has not been made, and
- for which the time limit to apply for Final Apportionment will expire on or after December 17, 2008.

Existing Regulation Section 1859.121 describes the time periods for SAB acceptance and approval of applications for SFP Joint-Use project funding. The proposed amendment clarifies that apportionments are subject to the availability of financing provided by the PMIB for bond-funded projects.

Proposed adoption of Regulation Section 1859.148.2 authorizes the SAB to determine a State fiscal emergency or crisis exists for the purpose of finding Preliminary Apportionments under the COS Program to be "Inactive," as defined in Section 1859.2. This finding would suspend, as of December 17, 2008, the time period for an applicant to convert to a Final Apportionment. This period to convert is four years from the date of the Preliminary Apportionment plus a possible one-year extension, as set forth in Education Code Section 17078.25(a) and (b). Once the SAB finds that State bond funds are available for the project, the balance of this time period to convert to a Final Apportionment shall resume, as it existed on December 17, 2008. This regulation section will sunset on January 1, 2010.

Existing Regulation Section 1859.164.2 describes criteria for charter schools with Preliminary Charter School Apportionments under the CSFP to request the separate advance release of funds for either design costs or site acquisition for their project. The proposed amendment clarifies that apportionments are subject to the availability of financing provided by the PMIB for bond-funded projects.

Proposed adoption of Regulation Section 1859.166.2 authorizes the SAB to determine a State fiscal emergency or crisis exists for the purpose of finding Preliminary Charter School

Apportionments under the CSFP to be “Inactive,” as defined in Section 1859.2. This finding would suspend, as of December 17, 2008, the time period for an applicant to convert to a Final Charter School Apportionment. This period to convert is four years from the date of the Preliminary Charter School Apportionment plus a possible one-year extension, as set forth in Education Code Section 17078.25(a) and (b). Once the SAB finds that State bond funds are available for the project, the balance of this time period to convert to a Final Charter School Apportionment shall resume, as it existed on December 17, 2008. This regulation section will sunset on January 1, 2010.

Existing Regulation Section 1859.197 sets forth the criteria for fund releases under the Career Technical Education Facilities Program. The proposed amendment clarifies that for applicants requiring a loan for their entire matching share of project costs, the early release of ten percent of the grant amount to the applicant is subject to the availability of financing provided by the PMIB for bond-funded projects.

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 July 20, 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.