



August 28, 2009

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

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO AMEND
THREE REGULATION SECTIONS, ALONG WITH THREE
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, 1859.35 AND 1859.51.

FORMS PROPOSED FOR AMENDMENT:

Existing School Building Capacity, Form SAB 50-02, (Revised 03/09), referenced in Regulation Section 1859.2

Eligibility Determination, Form SAB 50-03, (Revised 03/09), referenced in Regulation Section 1859.2

Application for Funding, Form SAB 50-04, (Revised 03/09), referenced in Regulation Section 1859.2

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-referenced regulation sections, including three 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 amend the above-referenced regulation sections under the authority provided by Sections 17070.35 and 42270 of the Education Code. The proposals interpret and make specific reference Sections 17052, 17070.51, 17071.10, 17071.25, 17071.33, 17071.35, 17071.40, 17071.75, 17071.76, 17072.20, 17077.40, 17078.72, 17079.20, 42268 and 42270 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 State Allocation Board (SAB), at its March 25, 2009 meeting, adopted amendments to implement Senate Bill (SB) 658, Chapter 271, Statutes of 2008 (Romero). SB 658 phases out Multi-Track Year-Round Education (MTYRE) Operational Grants funding over four years and reallocates the funds to the Charter School Facility Grant Program. Pursuant to SB 658, the amendments delete the regulatory references to MTYRE Operational Grants as a factor in determining school building capacity and new construction eligibility under the SFP.

A summary of the proposed regulatory amendments follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments change the latest revision dates to "03/09" for the Forms SAB 50-02, 50-03, and 50-04.

Existing Regulation Section 1859.35 sets forth the criteria to determine a school district's existing school building capacity. The calculation may include subsection (c) involving the number of pupils provided MTYRE Operational Grants. The proposed amendments delete subsection (c) and add Education Code Section 42270 as a reference.

Existing Regulation Section 1859.51 sets forth factors which require adjustments to the SFP New Construction baseline eligibility, including subsection (j)(2) involving the number of pupils provided MTYRE Operational Grants for Small School Districts. The proposed amendments delete subsection (j)(2) and add Education Code Section 42270 as a reference.

Existing Form SAB 50-02, *Existing School Building Capacity*, is submitted by applicant school districts to determine the total number of pupils that may be housed in the district's gross classroom inventory. The proposed amendments delete the references to the number of pupils provided MTYRE Operational Grants in the Specific Instructions, Part III, and in the form field headings, Part III. To facilitate communications, school districts are asked to print or type their name after signing, plus provide e-mail address and telephone number.

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 correct the Specific Instructions, Part II, and the form field headings, Part II, in referring to a line on Form SAB 50-02, which has been renumbered by these regulatory amendments.

Existing Form SAB 50-04, *Application for Funding*, is submitted by school districts to apply for State funding for new construction or modernization projects. The proposed amendments delete Specific Instruction 13.b. and form field 13.b., which refer to the number of pupils provided MTYRE Operational Grants.

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 October 12, 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.