

FINAL STATEMENT OF REASONS

Title 2. Administration
Division 2. Financial Operations
Chapter 3. Department of General Services
Subchapter 4. Office of Public School Construction
Group 1. State Allocation Board
Subgroup 5.5. Regulations relating to the Leroy F. Greene School Facilities Act of 1998

Section 1859.2. Definitions.

Specific Purpose of the Regulation

To define that a "Resolution of Necessity," which is needed by a school district to qualify for funding for eminent domain site acquisition under these regulatory amendments, must comply with the California Code of Civil Procedure (CCP) Section 1245.230.

In addition, to change the latest revision date to Form SAB 50-03 in both the definition of that Form, as well as in the definition of "Approved Application(s)."

In addition, to change the latest revision date to Form SAB 50-05 in the definition of that Form.

Need for the Regulation

It was necessary that the school board's Resolution of Necessity comply with the applicable CCP Section 1245.230 provisions because State bond funds may only be apportioned for site acquisition upon evidence of a right by the applicant school district to ownership of the intended school site. This legal compliance helps ensure that districts obtain a secure title to eminent domain properties.

Definition of "Form SAB 50-03" and definition of "Approved Application(s)": It was necessary to correct the revision date for the Form SAB 50-03 from "09/06" to "06/08" because the "06/08" revision date for the Form was approved by the Office of Administrative Law in a previous rulemaking file (OAL File No. 2008-0924-02S) and filed with the Secretary of State, effective October 21, 2008. This is a non-substantive change and necessary for ensuring consistency throughout the State Allocation Board's regulations.

Definition of "Form SAB 50-05": It was necessary to change the revision date for Form SAB 50-05 to "06/08" in the Definitions section because the Form was amended by this regulatory action. This is a non-substantive change and necessary for ensuring consistency throughout the State Allocation Board's regulations.

Section 1859.103. Savings.

Specific Purpose of Regulation

To specify that grants for Overcrowding Relief Grant (ORG) Program projects are limited to eligible expenditures up to the State apportionment amount. It was necessary to add an exception to this language in order to incorporate the provisions set forth in new Regulation Section 1859.184.1.

Need for the Regulation

The proposed amendment was necessary because new Regulation Section 1859.184.1 sets forth the additional limitation that an ORG apportionment for site acquisition purposes cannot later be applied as "project savings" toward eligible construction related costs.

Section 1859.184. Overcrowding Relief Grant Application Submittals and Apportionments.

Specific Purpose of the Regulation

To specify the submittal and apportionment process for school districts applying for funding under the ORG Program. The proposed amendments add additional application submittal dates (July 31, 2009 and January 29, 2010) for future funding cycles, and clarify the requirement to demonstrate that the project will relieve overcrowding by increasing useable outdoor space for uses such as play areas, green space, or outdoor lunch areas.

Need for the Regulation

It was necessary to add additional application submittal dates for future funding cycles for the orderly processing of State school bonds allocated for the ORG Program.

In addition, it was necessary to clarify the requirement to demonstrate that the project will relieve overcrowding by increasing useable outdoor space for uses such as play areas, green space, or outdoor lunch areas, in order to implement the provisions for the ORG Program set forth in Assembly Bill 127, Chapter 35, Statutes of 2006 (Perata/Nunez).

Section 1859.184.1. Application Process for Districts with Financial Hardship Approval.

Specific Purpose of Regulation

To set forth the application process for school districts with financial hardship approval under the ORG Program. It includes the criteria for a complete application, determination of site acquisition funding for condemnation actions, and the limitation that no over-apportionment of site acquisition funds may be transferred over and applied as "savings" to construction related costs for purposes of Regulation Section 1859.103.

Need for the Regulation

Currently under the ORG Program there are no provisions for separate site apportionments or for advance fund releases for site acquisition for financial hardship districts. Financial hardship districts have stated that this prevents equal participation in the Program, as financial hardship districts cannot make the required deposit with the courts to obtain the necessary court orders for condemnation which serve to demonstrate ownership of the site for purposes of the School Facility Program (SFP). The proposed regulatory amendments relieve this disparity by allowing a financial hardship district to receive an advance fund release for site acquisition when the proposed project involves condemnation proceedings.

Subsections (a)(1) through (a)(5): It was necessary to specify that a "complete application" must include: the district's approved financial hardship status; California Department of Education approval letter with acreage, and Division of the State Architect approval, plans and specifications; school board Resolution of Necessity; ownership documents for any non-condemnation parcels of land in the project; and appraisal(s) for the value(s) of all properties being acquired. These criteria are necessary to ensure the apportionment of State school bond funds are consistent and in conformance with law and the SFP regulations.

Subsections (b)(1) through (b)(3): It was necessary to set forth the components of an apportionment for site acquisition funding under the ORG Program for financial hardship districts using condemnation proceedings to acquire school site property(ies). It was decided that the advance site acquisition funding should be 1.15 times the appraised value of the condemnation parcel(s), in order to provide a buffer to cover the contingency of the court's valuation of the property exceeding the district's appraisal amount. Districts must return to the State any overage of this apportionment. Non-condemnation parcels in the project, if any, are funded the same as for other eligible SFP projects, which is the lesser of the actual or appraised value. Finally, amounts for hazardous waste removal are funded the same as for other eligible SFP projects. These criteria are necessary to ensure the apportionment of State school bond funds are consistent and in conformance with law and the SFP regulations.

Subsection (c): ORG Program applicants meeting the above criteria may request advance site acquisition funding for condemnation proceedings only if such proceedings are required to obtain the site. The advance fund release shall equal the State share plus the financial hardship grant of only the amount determined in subsection (b). This is necessary to ensure the apportionment of State school bond funds are consistent and in conformance with law and the SFP regulations.

Subsection (d): It was necessary to re-emphasize a sentence from Regulation Section 1859.103 that ORG Program grants are limited to eligible expenditures up to the amount of the State apportionment, but adding the limitation that no over-apportionment of advance site acquisition funds for condemnation proceedings may be transferred over and applied toward eligible construction related costs. This is because it would be an improper use of State bond funds for districts to keep ORG Program funding overages for such site acquisitions.

Last paragraph: It was necessary to specify procedural steps such as assuring that the school district will succeed in acquiring the condemnation parcel(s) before the State releases the funds for the rest of the project costs; and specifying when the advance site acquisition funding may be requested; and that the SFP project timeline requirements remain in effect as stated in Regulation Section 1859.90; and that these advance fund releases are not subject to the separate site acquisition funding criteria of Regulation Section 1859.81.1. These additional guidelines were necessary for the orderly processing of State school bonds allocated for the ORG Program.

SCHOOL FACILITY PROGRAM FORM

Fund Release Authorization, Form SAB 50-05 (Revised 06/08).

Specific Purpose of the Form

Form SAB 50-05, *Fund Release Authorization*, is the application by school districts for the release of SFP apportionments for their projects upon compliance with specified criteria. The proposed amendments permit applications for the advance release of site acquisition funds pursuant to Regulation Section 1859.184.1.

Need for the Form

Page 1, Specific Instructions, 2nd column, new Part IV: It was necessary to add this Instruction to permit financial hardship school districts to apply for advance release of funds pursuant to Regulation Section 1859.184.1.

Page 1, Specific Instructions, 2nd column, Parts IV through IX: It was necessary to renumber these Parts as V through X because of the addition of new Part IV above.

Page 2, 2nd column, new Part IV: It was necessary to add three boxes for applicant financial hardship school districts to check to apply for advance release of funds for acquiring sites through condemnation proceedings. All three boxes must be checked in order to verify the district's need for the advance funds, its contribution of an applicable matching share of costs, and that it will secure the court's order to possess the property.

Page 2, 2nd column, and Page 3, Parts IV through IX: It was necessary to renumber these Parts as V through X because of the addition of new Part IV above.

Office of Administrative Law Regulations, Title 1, Section 20(c)(1)

The State Allocation Board's School Facility Program Form is maintained and readily accessible through our Web site. Therefore, it is not necessary to publish the form in the California Code of Regulations.

Office of Administrative Law Regulations, Title 1, Section 20(c)(2)

The State Allocation Board's School Facility Program Form is made available upon request and through our Web site, and continues to be made available upon request and through our Web site.

DOCUMENTS RELIED UPON AND STATEMENTS REGARDING THE RULEMAKING

Technical Documents Relied Upon

The State Allocation Board's Action item, dated June 25, 2008, entitled "Overcrowding Relief Grant Regulations."

Alternatives to the Proposed Regulatory Action that would be as Effective and Less Burdensome to Private Persons

The SAB finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations.

Alternatives to the Proposed Regulatory Action that would Lessen any Adverse Economic Impact on Small Business

The SAB has determined that the proposed regulations do not affect small businesses.

Finding of Significant Adverse Economic Impact on Businesses

The SAB has determined that the adoption of the regulations will not affect businesses, including small businesses, because they are not required to comply with or enforce the regulations, nor will they benefit from or be disadvantaged by the regulations.

Impact on Local Agencies or School Districts

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.