



December 3, 2010

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 RENUMBER REGULATION SECTION 1859.90.2 AS 1859.90.3, ADOPT NEW REGULATION SECTION 1859.90.2, AND AMEND REGULATION SECTIONS 1859.129 AND 1859.197, TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to renumber, 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 renumber, adopt and amend the above-referenced regulation sections under the authority provided by Sections 17070.35, 17075.15 and 17078.72(k) of the Education Code. The proposals interpret and make specific reference Sections 17072.12, 17072.30, 17074.16, 17076.10, 17077.40, 17077.42, 17077.45 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 August 25, 2010 meeting, adopted emergency regulatory amendments to the SFP Regulations to allow future "priority funding rounds" in order to re-prioritize apportionments for school construction projects with the capability of submitting fund release requests within a specified period of time. The purpose is to provide available State bond funds to those projects that are construction-ready, thereby helping to create jobs and stimulate the economy.

Applicant school districts submitted their requests from October 7 through November 8, 2010 to convert unfunded approvals to State apportionments, on the condition that they can request their project funds within 90 calendar days of their State apportionment. An applicant approved in the

priority funding round which fails to submit a signed Form SAB 50-05 requesting release of its project funds, to be physically in the possession of the OPSC within 90 days of the SAB's approval of the apportionment, shall have its project rescinded without further Board action.

A summary of the proposed emergency regulatory amendments is as follows:

Existing Regulation Section 1859.90.2, "Local Bond Reimbursement Fund Releases," will be renumbered as Section 1859.90.3.

Proposed adoption of Regulation Section 1859.90.2, "Priority Funding Round Process," allows the SAB the flexibility to establish future 30-calendar day application filing periods to distribute available State school bond funding to school districts that request an apportionment. School districts must submit the Form SAB 50-05, "Fund Release Authorization," with an original signature, within 90 calendar days of the Board's approval of the apportionment; failure to make this submittal and have it physically received by the OPSC within 90 calendar days will result in rescission of the project without further Board action. School districts wishing to participate must provide a written statement signed by the authorized district representative within the 30-calendar day filing period that contains all of the following:

- Request to convert the unfunded approval to an apportionment;
- Concurrence with the 90-calendar day time limit on fund release;
- Acknowledgement that failure to submit a valid Form SAB 50-05, with an original signature, to be physically received by the OPSC within the 90-calendar day time limit will result in the rescission of the apportionment without further Board action; and
- Acknowledgement that by participating in the priority funding round, the district is waiving its right to a standard 18-month timeline for fund release submittal.

For the purposes of this section, the word "rescinded" or "rescission" means that the apportionment returns to unfunded approval status with a new unfunded approval date. The new unfunded approval date will be determined by the Board at the time each priority funding round is approved. The district will not be required to re-submit the application and no further application review will be required.

Existing Regulation Section 1859.129 sets forth time limits on apportionments under the SFP Joint-Use Program for Type I and Type II Joint-Use projects. For Type II Joint-Use projects that are not part of a qualifying SFP Modernization project, the school district has 18 months from the date the Division of the State Architect (DSA) and California Department of Education (CDE)-approved plans were submitted to the OPSC to submit a completed Form SAB 50-05 or the apportionment will be rescinded without further Board action. The proposed amendment specifies that if the district applies for an apportionment through the priority funding round pursuant to Section 1859.90.1 or 1859.90.2, the 18-month time limit for submittal of the Form SAB 50-05 will be reduced to no more than 90 days from the date the Board approves the apportionment.

Existing Regulation Section 1859.197 sets forth the criteria for fund releases under the Career Technical Education Facilities Program (CTEFP). For CTEFP projects with reserved funds pursuant to Section 1859.193(d), the school district has 18 months from the date the DSA and CDE-approved plans were submitted to the OPSC to submit a completed Form SAB 50-05 or the apportionment will be rescinded without further Board action. The proposed amendment specifies that if the district applies for an apportionment through the priority funding round pursuant to Section 1859.90.1 or 1859.90.2, the 18-month time limit for submittal of the Form SAB 50-05 will be reduced to no more than 90 days from the date the Board approves the apportionment.

#### 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 emergency regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OPSC no later than January 17, 2011, 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  
707 Third Street, Room 1-430  
West Sacramento, CA 95605

E-mail Address: [robert.young@dgs.ca.gov](mailto:robert.young@dgs.ca.gov)

Fax No.: (916) 376-5332

### AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Robert Young at (916) 375-5939. If Mr. Young is unavailable, these questions may be directed to the backup contact person, Lisa Jones, Supervisor, Regulations Team, at (916) 376-1753.

### 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 regulations should be addressed to the agency's regulations 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.dgs.ca.gov/opsc> under "Resources," click on "Laws and Regulations," then click on "SFP Pending Regulatory Changes."

### 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.