



June 25, 2010

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 AMEND
REGULATION SECTIONS 1859.162.3 AND 1859.171, AND ADOPT SECTION
1859.172, 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 amend Regulation Sections 1859.162.3 and 1859.171, and adopt Regulation Section 1859.172, 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 proposal substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend and adopt the above-referenced regulation sections under the authority provided by Sections 17070.35, 17078.63 and 17078.64 of the Education Code. The proposal interprets and makes specific reference Sections 17078.53, 17078.54, 17078.62 and 17078.63 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 (OAL) and filed with the Secretary of State on October 8, 1999.

These proposed amendments to the SFP Regulations will implement Senate Bill (SB) 592, Chapter 192, Statutes of 2009 (Romero) which adds local governmental entities and charter schools as authorized entities to hold title to charter school projects receiving funds under the Charter School Facilities Program (CSFP). Prior to SB 592, the school district where a CSFP project was physically located was required to hold title to the project facilities. These regulatory amendments implement SB 592 by setting forth criteria for the three entities that can hold title to charter school project facilities:

- School District
- Local Governmental Entity
- Charter School

The regulatory amendments help ensure the appropriate usage of State bond funds by protecting State interests in the chain of title for charter school facilities, while assuring their continued use for public school purposes, and setting forth specific disposition guidelines pursuant to the Education Code.

In addition, for charter schools that have entered into the Charter School Agreements prior to January 1, 2010, SB 592 authorizes the school district to transfer title at the charter school's request if the district and charter school mutually agree to the terms and conditions of the transfer.

The CSFP was created by Assembly Bill 14, Chapter 935, Statutes of 2002 (Goldberg). The CSFP allows funding for the construction of new charter school facilities or the rehabilitation of existing school district facilities for charter school use. A combined total of \$900 million was made available for the Program through the passage of Propositions 47, 55, and 1D (the Kindergarten-University Public Education Facilities Bond Acts of 2002, 2004, and 2006, respectively).

The proposed amendments and new regulation section are summarized as follows:

Existing Regulation Section 1859.162.3 sets forth documentary requirements when a charter school project will: 1) provide instruction for a combination of grade levels and therefore impact across more than one school district's boundaries, or 2) be located in an area of overlapping district boundaries but house only the grade levels served by just one of the districts. The proposed amendments affect this second situation by deleting a list of district related requirements which are set forth elsewhere within the Article.

Existing Regulation Section 1859.171 sets forth options for a school district to use or dispose of a charter school facility within its boundaries, which facility has received State funding but has failed to meet project timeline requirements or the charter school has ceased to occupy the facility. The proposed amendments implement SB 592 by adding two more uses or disposition options: 1) for use by a qualifying successor charter school pursuant to Education Code (EC) Section 17078.62(b)(2), and 2) a final disposition option by the SAB pursuant to EC Section 17078.62(b)(5)(B), if the school district declines to dispose of the facility. The proposed amendments also add the requirement to complete the review process outlined in EC Section 17078.62(b)(1) if applicable - - charter operating and renewal criteria.

Proposed adoption of Regulation Section 1859.172 sets forth the criteria for entities to hold and/or transfer title to charter school facilities as permissible under AB 14 and SB 592. These entities are: the school district in which the project is physically located, a local governmental entity pursuant to EC Section 17078.63(a)(2), or the charter school pursuant to EC Section 17078.63(a)(3) with certain verifying criteria. The charter school's written request must justify why title will not be vested in the school district or a local governmental entity. A charter school may request that a school district transfer title to project facilities to itself or to a local governmental entity pursuant to specific notification and written agreement criteria.

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 and charter schools 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 and charter schools 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 August 9, 2010, 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

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 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: 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.