



October 15, 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 AMEND
REGULATION SECTIONS 1859.2, 1859.71.6, 1859.77.4, 1859.81.1 AND 1859.104,
ALONG WITH AN ASSOCIATED FORM, TITLE 2, CALIFORNIA CODE OF REGULATIONS,
RELATING TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

FORM PROPOSED FOR AMENDMENT:

Application for Funding, Form SAB 50-04, (Revised 05/10), 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 an associated form, 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 17072.13, 17075.15 and 17079.30 of the Education Code. The proposals interpret and make specific reference Sections 17070.35, 17070.99, 17072.12, 17072.13, 17072.20, 17072.33, 17074.15, 17074.16, 17076.10, 17079.20, 17079.30 and 101012(a)(8) 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 May 26, 2010 meeting, adopted regulatory amendments to the School Facility Program (SFP) Regulations to stimulate greater participation for high performance incentive (HPI) grants requests by increasing the HPI grant amounts for new construction and

modernization projects. These grants are achieved by using designs and materials in new construction and modernization projects for efficiencies in sustainable sites, energy, water, materials, and indoor environmental quality. Education Code Section 101012(a)(8) authorized \$100 million for HPI grants, but \$70.1 million continues to remain available and increased school district participation is needed.

HPI grants are achieved by using designs and materials in new construction and modernization projects for efficiencies in the following categories:

- Sustainable Sites
- Energy
- Water
- Materials
- Indoor Environmental Quality

The regulatory amendments add 16 additional “points” to the High Performance Rating Criteria (HPRC) categories, which will facilitate projects achieving more “points” and qualifying for HPI grants. The new “points” added are as follows:

- Indoor and outdoor potable water efficiencies . . . 2
- Various specific energy efficiencies 11
- Indoor lighting and acoustical improvements . . . 3

The Division of the State Architect (DSA) reviews construction plans and scores the project if high performance building components are included in the project.

A High Performance Base Incentive Grant (HPBIG) has also been added to encourage participation in acquiring HPI grants and to help offset some of the added costs incurred by districts to design and install high performance building components. There will be one HPBIG allowed per school site.

- New Construction Projects - \$150,000 will be added to the HPI grants meeting the minimum of 27 points on the HPRC point system.
- Modernization and New Construction Addition Projects - \$250,000 will be added to the HPI grants meeting the minimum of 20 points on the HPRC point system.

A summary of the proposed regulatory amendments is as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments add the definition of “High Performance Base Incentive Grant,” equaling \$150,000 State funding for qualifying new construction projects or \$250,000 State funding for qualifying new construction addition projects or modernization projects.

Existing Regulation Section 1859.71.6 sets forth a point system based upon construction industry-recognized High Performance Rating Criteria, for school districts to qualify for a SFP additional grant for including “high performance” designs and materials in their new construction projects. The proposed amendments make the following changes:

Sustainable Sites:

- Code compliance ~~equals~~ is a prerequisite.
- Avoiding Environmentally sensitive land equals one point;
- ~~Greenfields equals one point;~~
- Bicycles / Human-powered transportation equals one point;

- Construction site runoff control ~~equals is a~~ prerequisite;
- Outdoor Surfaces and Spaces:

Water:

- Create water use budget ~~equals is a~~ prerequisite;
- Reduce potable water use for non-recreational landscaping areas, equals one to two points.
- Reduce potable water use for recreational area landscaping equals one point.
- Reduce sewage conveyance from toilets and urinals equals one point;
- Reduce indoor potable water use equals one to ~~two~~ three points.

Energy:

- Minimum energy performance based on 2008 California Energy Code ~~equals is a~~ prerequisite.
- Superior energy performance based on 2008 California Energy Code equals one to 13 points;
- Plug loads monitored by an energy management system equals one point.
- Alternate Energy Sources: Renewable energy equals one to ~~seven~~ 15 points; one point for each five percent of the site's annual power consumption that is produced on site ~~not to exceed 35~~ up to 40 percent and one point for each ten percent above zero 40 percent of the site's annual power consumption that is produced on site up to 90 percent and two points if 95 percent or more of the site's annual power consumption is produced on site.
- Fundamental building systems testing and training ~~equals is a~~ prerequisite.
- Enhanced commissioning equals one to ~~two~~ four points.

Materials:

- Recycling: Storage and collection of recyclables ~~equals is a~~ prerequisite.
- Construction site waste management ~~equals is a~~ prerequisite.
- Construction site waste management at 75 percent or above diverted equals one to two points.
- Reuse of interior ~~partitions~~ non-structural elements equals one point.
- Rapidly renewable materials and organically grown materials equals one point;

Indoor Environmental Quality:

- Six existing criteria are set forth in different order.
- Minimum requirements for minimum HVAC and construction indoor environmental quality ~~equals is a~~ prerequisite.
- Minimum requirements for thermal comfort and moisture control is a prerequisite.
- Minimum requirements for minimum filtration is a prerequisite.
- Enhanced filtration equals one point.
- Mercury reduction equals one point.
- Minimum acoustical performance ~~equals is a~~ prerequisite and equals two points.
- ~~American Society of Heating, Refrigerating and Air-Conditioning Engineers 55 code compliance equals prerequisite.~~
- The titles of the applicable California CHPS criteria are clarified as the "2002 CA-CHPS Criteria," "2006 CA-CHPS Criteria," and "2009 CA-CHPS Criteria."
- For those projects accepted by the DSA utilizing the 2009 CA-CHPS Criteria, in which the level of high performance attained as concurred by the DSA is a minimum of 27 points, the Board shall provide \$150,000 one time per school site as a High Performance Base Incentive Grant. In addition, the New Construction Grant will be multiplied by:
- 2.35 percent at 27 points; or

- 2.59 percent at 28 points plus 0.24 percent for each point attained from 29 through 33 points; or
- Four percent at 34 points plus 0.36 percent for each point attained from 35 through 47 points; or
- 9.05 percent at 48 points plus 0.060 percent for each point attained from 49 through 90 points.
- Any funds apportioned pursuant to this Section shall be expended only on high performance related costs (and components as approved by the OPSC).

Existing Regulation Section 1859.77.4 sets forth criteria based upon the High Performance Rating Criteria point system with review/approval by the Division of the State Architect (DSA), to provide qualifying school districts a percentage increase in their new construction addition project or modernization project grants for meeting the point value threshold. The proposed amendments make the following changes:

- The titles of the applicable California CHPS criteria are clarified as the “2002 CA-CHPS Criteria,” “2006 CA-CHPS Criteria,” and “2009 CA-CHPS Criteria.”
- For those projects accepted by the DSA utilizing the 2009 CA-CHPS Criteria, in which the level of high performance attained as concurred by the DSA is a minimum of 20 points, the Board shall provide \$250,000 one time per school site as a High Performance Base Incentive Grant. In addition, the New Construction or Modernization Grant, as appropriate will be multiplied by:
 - 2.18 percent at 20 points plus 0.025 percent for each point attained from 21 through 26 points; or
 - 2.35 percent at 27 points plus 0.24 percent for each point attained from 28 through 33 points; or
 - Four percent at 34 points plus 0.36 percent for each point attained from 35 through 47 points; or
 - 9.05 percent at 48 points plus 0.060 percent for each point attained from 49 through 84.
- Any funds apportioned pursuant to this Section shall be expended only on high performance related costs (and components as approved by the OPSC).

Existing Regulation Section 1859.81.1 specifies that school districts meeting financial hardship criteria are eligible for a separate apportionment for site acquisition and design costs. The proposed amendments will add to this separate apportionment:

- \$150,000 for new school projects and \$250,000 for new construction addition projects that will be pursuing high performance incentive grants as indicated on the school district governing board resolution that shall be submitted to the OPSC as part of a funding request pursuant to this Section; and
- \$250,000 for modernization projects that will be pursuing high performance incentive grants as indicated on the school district governing board resolution that shall be submitted to the OPSC as part of a funding request pursuant to this Section.

In addition, Sections “1859.71.6” and “1859.77.4” are added to other Section numbers in referring to the amount of the district’s New Construction Adjusted Grant or Modernization Adjusted Grant.

Existing Regulation Section 1859.104 sets forth the program reporting requirements for school districts receiving SFP funds, including progress reports and expenditure reports. The proposed amendment requires school districts receiving HPI Grants to submit a Project Information Worksheet (PIW) reporting all expenditures related to the additional design and construction costs of the high performance building components, and to provide information related to resulting

energy savings and efficiency, as well as other resulting benefits. The proposed amendments will require the PIW to be submitted with the Form SAB 50-05, and with the District's first and final Forms SAB 50-06 pursuant to Section 1859.104(a)(1) and (2).

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:

- add project categories of "Design Only – New Construction with High Performance" and "Design Only – Modernization with High Performance;"
- clarify for purposes of Certification No. 22 that the High Performance Base Incentive Grant is not part of the "total grant amount" when determining whether the work in a submitted project is at least 60 percent of the total grant amount;
- clarify for purposes of Certification No. 22 that a New Construction Grant request does not include Overcrowding Relief Grant; and
- add in Certification No. 23 the requirement that the school district governing board must have a resolution on file that demonstrates support for the HPI grant and intent to incorporate HPI features in their projects.

Existing PIW is submitted by school districts to report new construction project costs at the times of requesting SFP fund releases (Form SAB 50-05) and upon submitting their Expenditure Report (Form SAB 50-06) for the purpose of the SAB analyzing the current costs to build schools and making an additional adjustment to the new construction per-unhoused pupil grant amount, not to exceed six percent in a fiscal year, as authorized by Assembly Bill 127, Chapter 35, Statutes of 2006 (Perata/Nunez). The proposed amendments provide direction to school districts for completing specific areas of the form when requests have been submitted for HPI grant funding. The form was amended to collect HPI information in order for the OPSC to ensure that the HPI grant funds are being expended on HPI-related components in SFP new construction 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 November 29, 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 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.dgs.ca.gov/opsc> 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.