

July 22, 2011

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  
RE-ADOPT REGULATION SECTION 1859.166.2, 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 re-adopt the above-referenced regulation section 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 re-adopt the section substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to re-adopt the above-referenced regulation section under the authority provided by Sections 17070.35 and 17078.64 of the Education Code. The proposals interpret and make specific reference Sections 17078.52 and 17078.53 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.

"Inactive" Status for Preliminary Charter School Apportionments.

The SAB, at its January 28, 2009 meeting, adopted SFP Regulation Section 1859.166.2 to help prevent Preliminary Charter School Apportionments from expiring during the State's ongoing fiscal crisis. The proposed amendments responded to the Pooled Money Investment Board's (PMIB) action on December 17, 2008, to temporarily halt disbursements for capital projects, including the construction of public schools. Without these amendments, school districts and charter schools with previously approved preliminary charter school apportionments (reservations of bond funding) were still required to move their projects forward and convert to final apportionments within time limits as set forth in Education Code Section 17078.25(a) and (b). The SAB was

authorized through emergency regulations to find Preliminary Charter School Apportionments “inactive” under the Charter School Facilities Program (CSFP).

The PMIB cessation of school bond funding left many school districts and charter schools financially unable to move forward with their projects, thus risking the rescission of the preliminary charter school apportionments for failure to convert to final apportionments. The SAB approving “inactive” status for the preliminary charter school apportionments suspended the time period for converting to final apportionments. (This period is four years from the date of the preliminary apportionment plus an allowable one-year extension upon SAB approval.) The time period will resume as it existed on December 17, 2008 when the SAB finds that State financing is available for bond-funded projects. The OAL approved the emergency regulations in OAL File No. 2009-0414-03E, and Certification of Compliance in OAL File No. 2009-0929-03C.

In June and July 2009, the SAB approved “inactive” status for a total of \$609.1 million of CSFP preliminary charter school apportionments (43 projects), thereby helping to protect the projects from having their preliminary charter school apportionments expire.

At its meeting on September 23, 2009 the SAB extended the sunset date for this regulation section from January 1, 2010 until January 1, 2011. The OAL approved the emergency regulations in OAL File No. 2009-1216-01E, and Certification of Compliance in OAL File No. 2010-0309-01C.

The SAB, at its December 15, 2010 meeting, adopted emergency regulatory amendments to the SFP Regulations to extend the sunset date for this section until “July 1, 2011.” The OAL approved the emergency regulations in OAL File No. 2011-0329-03E, and Certification of Compliance in OAL File No. 2011-0610-01C.

The SAB, at its May 25, 2011 meeting, adopted a regulatory amendment to extend until July 1, 2012, the SAB’s authority to administer inactive preliminary charter school apportionments. Extending this authority will allow “inactive” status to continue for preliminary charter school apportionments during the State of California’s continuing fiscal crisis. This will help prevent CSFP preliminary apportionments from expiring and allow the SAB to reinstate them when State financing again becomes available for the projects.

A summary of the proposed regulatory action follows:

Proposed Re-adoption of Regulation Section 1859.166.2 authorizes the SAB to determine a State fiscal emergency or crisis exists for the purpose of finding Preliminary Charter School Apportionments under the CSFP to be “Inactive,” as defined in Section 1859.2. This finding suspends, as of December 17, 2008, the time period for an applicant to convert to a Final Charter School Apportionment. This period to convert is four years from the date of the Preliminary Charter School Apportionment plus a possible one-year extension, as set forth in Education Code Section 17078.25(a) and (b). The proposed re-adoption also authorizes the SAB to find that State bond funds are available for the project in order to end “inactive” status and reinstate the balance of the time period to convert to a Final Charter School Apportionment as it existed on December 17, 2008. This regulation section became inoperative on its own terms on July 1, 2011, and it is the SAB’s intention to re-adopt this regulation section and extend the terms of this regulation section until July 1, 2012.

#### 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, school districts, or charter schools 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 proposed re-adoption of the regulation section 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 September 5, 2011, at 5:00 p.m. The express terms of the proposed regulation 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 re-adopt the regulation 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 re-adopts the regulation.

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 regulations coordinator identified above. The SAB will accept written comments on the modified regulation during the 15-day period.

### SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to re-adopt the regulation with modifications not sufficiently related to the original text, the modified text will not be re-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," then 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.