

July 1, 2011

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS OF SCHOOLS, CHARTER SCHOOLS, AND OTHER INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED EMERGENCY REGULATORY ACTION

In accordance with Assembly Bill 1302, Chapter 713, Statutes of 2006, enclosed are proposed emergency regulations adopted by the State Allocation Board (SAB) at its meeting on May 25, 2011. These emergency amendments to the School Facility Program (SFP) Regulations provide for:

- the continued use of the priority funding process to apportion the proceeds from on-hand and future successful school bond sales to those school district and charter school projects that are “construction-ready.” The next priority funding process application period will begin July 13, 2011 or as soon thereafter as the emergency regulations go into effect, and thereafter be held annually commencing the second Wednesday every January and July.
- the resumption of Financial Hardship (FH) re-reviews for approved SFP projects that have been on the Unfunded List for over 180 days. There is currently an SAB-approved waiver of the re-review requirement for FH determinations, but that waiver will become inoperative on July 1, 2011. The FH re-review process will be based only on school district financial records on or after July 1, 2011.

Attached to this Notice is the specific regulatory language of the proposed emergency action and the Finding of Emergency. You may also review the proposed regulatory language and Finding of Emergency on the Office of Public School Construction (OPSC) Web site at www.dgs.ca.gov/opsc. The proposed emergency regulations would amend the SFP Regulations under the California Code of Regulations, Title 2, Chapter 3, Subchapter 4, Group 1, State Allocation Board, Subgroup 5.5, Regulations relating to the Leroy F. Greene School Facilities Act of 1998.

The OPSC, on behalf of the SAB, will be submitting these emergency regulations to the Office of Administrative Law (OAL) during the month of July 2011. The following is an overview of the proposed emergency regulatory amendments.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established the SFP through Senate Bill 50, Chapter 407, Statutes of 1998. 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 OAL and filed with the Secretary of State on October 8, 1999.

I. Priority Funding Process

The first “Priority Funding Round” was established by the SAB through emergency regulations at its May 26, 2010 meeting, and authorized the SAB to fund \$408.14 million of “construction-

ready” school construction projects at its August 4, 2010 meeting. School districts with projects on the Unfunded List received apportionments from remaining State bond funds (actual cash from remaining bond funds and/or from successful bond sales).

The second Priorities in Funding Round funded 487 SAB-approved project apportionments from December 2010 through February 2011 for a total release of \$1.630 billion.

II. Financial Hardship Re-Reviews

The FH Program was established (Education Code Section 17075.15) to assist school districts that could not fund their portion of an SFP project. A school district benefits by meeting the FH criteria (Regulation Section 1859.81) because the State will then pay up to 100 percent of the district’s share of new construction or modernization project costs. (Without FH status, districts must contribute 50 percent of new construction project costs or 40 percent of modernization project costs.) Districts are required under Education Code Section 17075.10(b) to make all reasonable efforts to fund their share of their project’s cost.

The SFP Regulations state that the SAB-approved FH status of an SFP project on the Unfunded List for over 180 days must have a re-review of the district’s financial records to determine if additional district funds are available to fund the district’s matching share of the school construction project costs. However, the SAB adopted emergency regulatory amendments at its May 26, 2010 meeting to waive this requirement for FH re-reviews due to the State’s inability to provide AB 55 loans from the Pooled Money Investment Account. This waiver expires on July 1, 2011.

The SAB emergency amendments will allow FH re-reviews to resume on or after July 1, 2011 for approved, unfunded SFP projects that have been on the Unfunded List for over 180 days. The FH re-reviews will be based only on school district financial records on or after July 1, 2011.

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

Existing Regulation Section 1859.81 permits school districts to qualify for FH status in order to receive additional State funding for school facility projects, upon meeting specific financial criteria. FH reviews remain valid for 180 days. If a district submits its funding application and has been on an unfunded list for over 180 calendar days, then its financial records must be re-reviewed and its FH status re-determined. An exception until July 1, 2011 waives the requirement for FH re-reviews if the project has been on the “Unfunded List (Lack of AB 55 Loans)” for more than 180 calendar days. This waiver becomes inoperative on July 1, 2011.

The proposed emergency amendments resume FH re-reviews on or after July 1, 2011 for approved, unfunded SFP projects which have been on the Unfunded List for over 180 days. The FH re-reviews will be based only on school district financial records on or after July 1, 2011. Four existing unnumbered paragraphs are numbered as “(e),” “(1),” “(2),” and “(3)” sequentially.

Existing Regulation Section 1859.90.2 is described as follows:

1. It authorizes the SAB to establish 30-calendar day application filing periods for school districts and charter schools to apply for apportionments of available State school bond funds. Projects under the Charter School Facilities Program (CSFP) may apply for advance release of design funds from a Preliminary Charter School Apportionment. Projects under the Critically Overcrowded School (COS) Facilities Program may apply for advance release of environmental hardship site acquisition funds.

2. School districts and charter schools 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/charter schools 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/charter school is waiving its right to a standard 18-month timeline for fund release submittal.

3. Projects under the CSFP may apply for advance release of site acquisition funds from a Preliminary Charter School Apportionment, subject to a timeline of 180 calendar days for school districts/charter schools to file their request for fund release, Form SAB 50-05, with the specific requirements to provide a written statement signed by an authorized representative within the 30-calendar day filing period that contains all of the following:
 - Requests to convert the advance release of funds to an approved advance release of funds,
 - Concurs with the 180 calendar day timeline to submit the fund release request,
 - Acknowledges the participant's requirement to submit a valid, signed Form SAB 50-05 to be physically received by the OPSC within the 180 calendar day time limit, and failure to do so will result in the rescission of the approved advance release of funds request without further Board action, and
 - Acknowledges that the participant must provide evidence of entering into the Charter School Agreements within 90 calendar days of the approval of the advance release of funds request, and failure to do so will result in the rescission of the approval without further Board action.

4. School districts and charter schools must be given advance public notice of a SAB meeting by which a priority funding round would be established.

5. All requests to participate in the priority funding process must be physically received by the OPSC by the 30th calendar day to be valid. All submittals of fund release requests, Form SAB 50-05, must be physically received by the OPSC within the applicable 90 or 180 calendar day time periods.

6. For the purposes of this section, the word "rescinded" or "rescission" means that the apportionment or approved advance release of funds request 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/charter school will not be required to re-submit the application and no further application review will be required.

The proposed emergency regulatory amendments are as follows:

1. Change Priority Funding "Round" to Priority Funding "Process."

2. Change the setting of individual priority funding rounds by the SAB to the regular scheduling of priority funding periods that begin on July 13, 2011 or as soon thereafter as the emergency regulations go into effect, and thereafter to be held annually beginning on the second Wednesday of every January and July.
3. Add "Certifications are valid until the next filing period begins."
4. Remove language that priority funding rounds are established at monthly SAB meetings upon advance public notice and announcement.
5. Remove language that priority funding rounds require advance notice to all school districts and charter schools with projects on the Unfunded List.
6. Remove language that 30-calendar day application filing periods begin on the next business day following the SAB meeting that establishes a priority funding round.
7. Remove language that any funds not apportioned in a specified priority funding round remain available for other SFP apportionments by the SAB.
8. Clarify that school district/charter school participants must submit the Form SAB 50-05 fund release request only if they are approved for an apportionment.
9. Clarify that application submittals for CSFP design and COS Facilities Program environmental hardship within the 30-calendar day filing periods must specify in writing each of the project application numbers and type of apportionment being requested.
10. Provide criteria for the sequence of apportioning projects if the total amount requested for a specific period exceeds the funds available.
11. Clarify that applicants requesting to participate but for which an apportionment cannot be provided retain their date order position on the Unfunded List.
12. Clarify that request letters will not be returned to applicants or maintained by the OPSC if the projects are not approved for apportionments.
13. For purposes of "rescinded" or "rescission," changes the new unfunded approval date from a date determined by the SAB at its meeting establishing the priority funding period, to "90 calendar days after the apportionment date."

SUBMISSION OF COMMENTS

Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the OAL, the adopting agency provide a Notice of the Proposed Emergency Action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulations to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6.

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 OAL within five days after the SAB submits the emergency regulations to the OAL for review.

Please reference submitted comments as regarding “State Allocation Board – Priority Funding Process and Financial Hardship Re-Reviews,” addressed to:

Reference Attorney

Mailing Address: Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

E-mail Address: staff@oal.ca.gov

Fax No.: (916) 323-6826

For the status of the SAB submittal to the OAL for review, and the end of the five-day written submittal period, please consult the Web site of 1) the OAL at www.oal.ca.gov under the heading “Emergency Regulations,” and 2) the OPSC at www.dgs.ca.gov/opsc under the Tab “Resources,” then click on “Laws and Regulations,” then click on “SFP Pending Regulatory Changes.”

Pursuant to Title I, Section 55, please send a copy of written comments regarding the proposed regulatory action, as well as requests for a copy of the proposed regulatory action, and questions concerning the substance of the proposed regulatory action, 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, Ms. Lisa Jones, Supervisor, Regulations Team, at (916) 376-1753.