

## FINAL STATEMENT OF REASONS

Title 2. Administration  
Division 2. Financial Operations  
Chapter 3. Department of General Services  
Subchapter 4. Office of Public School Construction  
Group 1. State Allocation Board  
Subgroup 5.5. Regulations relating to the Leroy F. Greene School Facilities Act of 1998

### Section 1859.90.2. Priority Funding Round Process.

#### Specific Purpose of the Regulation

To change priority funding "rounds" to priority funding "process." To provide for the continuing 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." To delete procedures for setting up individual priority funding periods to apportion school bond funds, and to pre-set priority funding application periods to begin July 27, 2011 and be held annually thereafter to begin on the second Wednesday of every January and second Wednesday of every July. To set forth criteria for the orderly processing of applications and approval of apportionments.

#### Need for the Regulation

It was necessary to continue the priority funding process because of its success in apportioning school bond funding to "construction-ready" school facility projects, thereby creating jobs and stimulating the economy, which is in alignment with the Governor's directive. The first and second priority funding rounds were individually established by the State Allocation Board (SAB) and successfully apportioned over \$2 billion to "construction-ready" school construction projects from May 2010 through February 2011. Setting up a continuing priority funding "process" with dates set in advance permits the deletion of the current practice of announcements, public notices, and date-setting for individual "rounds." Applicants will have advance awareness of the priority funding periods and opportunity to plan ahead to participate.

Without the priority funding process, school districts with SAB approval for their school construction projects are permitted to wait for up to 18 months to submit their fund release requests, thus keeping bond funds idle, delaying building starts, and forestalling needed jobs to stimulate the economy.

Section Title: It was necessary to change "Round" to "Process" in order to change from individually established periods to a continuing process with pre-established dates to apportion school bonds to projects that are "construction-ready."

First paragraph, line 1: It was necessary to change "A priority funding round" to "The priority funding process" in order to change from individually established periods to a continuing process with pre-established dates to apportion school bonds to projects that are "construction-ready."

First paragraph, line 3: It was necessary to remove the word "a" as a non-substantive grammatical change.

First paragraph, lines 3 to 5: It was necessary to add dates for continuing priority funding process 30-calendar day application periods. July 27, 2011 was the date for the first period to begin because that was the date these emergency regulations were approved by the Office of Administrative Law (File No. 2011-0719-04E) and filed with the Secretary of State.

The dates for the following 30-calendar day application periods - - the second Wednesday of January and second Wednesday of July each calendar year - - were chosen for convenience of processing and to approximate the interval of the first and second priority funding rounds.

First paragraph, line 5: It was necessary to add the sentence "Certifications are valid until the next filing period begins" so that the SAB can continue to apportion to school districts and/or charter schools additional bond funds that may become available or returned to the program before the next filing period begins.

First paragraph, lines 5 to 10: It was necessary to delete language that priority funding rounds are established at monthly SAB meetings upon advance public notice and announcement, and to delete advance notice to all school districts and charter schools with projects on the Unfunded List, and to delete the setting of dates for the filing period, in order to change from individually established periods to a continuing process with pre-established dates 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."

First paragraph, lines 11 to 12: It was necessary to remove the sentence "Any funds not apportioned as part of a specified priority funding round shall remain available for any other applicable School Facilities Program project apportionments by the Board" because it is an unneeded restatement of authority already possessed by the SAB under law and regulation.

First paragraph, line 13: It was necessary to change "round" to "process" in order to change from individually established periods to a continuing process with pre-established dates to apportion school bonds to projects that are "construction-ready."

First paragraph, line 15: It was necessary to change "that apply for any specific" to "receiving an apportionment as part of" because it is not the act of applying but the further occurrence of receiving an apportionment that triggers the requirement for a district or charter school to submit the Form SAB 50-05 fund release request.

First paragraph, line 15: It was necessary to add the word "the" as a non-substantive grammatical change.

First paragraph, line 16: It was necessary to change "round" to "process" in order to change from individually established periods to a continuing process with pre-established dates to apportion school bonds to projects that are "construction-ready."

Section (a): It was necessary to add that the district or charter school's written statement signed by an authorized representative must include each of the application numbers and type of apportionment being requested, for the purpose of orderly processing of applications and assuring that approvals are for the correct types of apportionments.

Subsection (a)(4): It was necessary to change "round" to "process" in order to change from individually established periods to a continuing process with pre-established dates to apportion school bonds to projects that are "construction-ready."

New Unnumbered Paragraph: It was necessary to provide for the event that the amount of funding requests received during a specific 30-day filing period could exceed the funds available. Because the SAB has traditionally apportioned in date received order, it was decided that the Board shall apportion based on the unfunded approval date and the application received date up to the available cash from each bond source. To assure no adversity to applicants for whom an Apportionment cannot be provided, it is specified that they shall retain their date order position on the Unfunded List. Finally, it was decided that request letters of projects not converted to apportionments will not be returned to the district or kept by the Office of Public School Construction, for the purpose of orderly processing of applications and reduction of OPSC workload and mailing costs.

Final Unnumbered Paragraph: For purposes of "rescinded" or "rescission," an apportionment or approved advance release of funds receives a new unfunded approval date. These emergency regulations change 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." This change is necessary because the SAB will no longer be establishing individual priority funding periods or new unfunded approval dates at its meetings, but is instead setting up a continuing process with pre-established dates. "Ninety calendar days after the apportionment date" was decided to be a reasonable time period for assigning a new unfunded approval date for an apportionment or advance fund release, and this period is consistent with the criteria applied in the first and second priority funding "rounds."

## **Section 1859.81. Financial Hardship.**

### **Specific Purpose of the Regulation**

To allow Financial Hardship (FH) re-reviews by the Office of Public School Construction (OPSC) to resume on or after July 1, 2011 for approved, unfunded SFP projects that have been on the "Unfunded List (Lack of AB 55 Loans)" for over 180 days due to the State's inability to provide AB 55 loans from the Pooled Money Investment Account. The FH re-reviews will be based only on school district financial records on or after July 1, 2011.

### **Need for the Regulation**

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.)

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.

The SAB had 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, but this waiver expired on July 1, 2011. Without this waiver, FH reviews and funding determinations remain valid for 180 days under the SFP Regulations, during which time the FH district must fund its project and move it forward.

Subsection (e): It was necessary to number three unnumbered paragraphs following "(e)" as "(1), (2), and (3)" because they help to clarify (e) and this improves the sequence and understanding of the SFP regulations.

New Subsection (g): It was necessary to add this new subsection to provide guidance for FH re-reviews to be conducted by the OPSC following the expiration of Subsection (f) on July 1, 2011. The criteria for the FH re-review process is referenced as being in subsection (e)(3).

The following sentence is added in new subsection (g): "For projects added to an unfunded list between February 25, 2009 and June 30, 2011, only the district's financial records on or after July 1, 2011 will be considered in calculating any adjustment to the district's matching share." The purpose was to avoid considering past school district financial records, before the FH re-review process was reinstated, that could increase or decrease the local financial contribution to total project costs, but instead to prospectively consider only the district's financial records on or after July 1, 2011. This gives local school districts fair notice of the resumption of FH re-reviews and the implications of their local financial decision-making.

## SUMMARY OF PUBLIC COMMENTS AT THE MAY 25, 2011 MEETING AND RESPONSE

### **Ms. Moira Topp, representing the California Charter Schools Association \***

Ms. Topp expressed support for the SAB Sub-Committee's action regarding the Charter School Facilities Program (CSFP). She indicated she would like to work with the Board and staff to find a way to place CSFP projects higher on the Unfunded List rather than at the end of the Unfunded List. Finally, she asked whether \$73.5 million for advance fund releases for inactive preliminary charter school apportionments would come not only from the next bond sale, but from rescissions of any CSFP projects funded from Proposition 55 that could not be perfected.

The Board: 1) approved reserving approximately \$73.5 million from the next bond sale to provide advance fund releases for site and design for the remaining inactive preliminary charter school apportionments; and 2) approved extending Regulation Section 1859.166.2 until July 1, 2012 and asked that Ms. Topp's funding question be brought back to a future SAB meeting.

### **Mr. Jim Bush, representing School Site Solutions \***

Mr. Bush supported the suggestion by Board Member Kathleen Moore that Proposition 55 CSFP projects be reviewed to determine whether they are moving forward to construction. He further stated that Proposition 55 funds coming back into the CSFP could then be used for the construction phase of CSFP projects, and that this could be limited to the CSFP projects funded by Proposition 55.

The Board: 1) approved reserving approximately \$73.5 million from the next bond sale to provide advance fund releases for site and design for the remaining inactive preliminary charter school apportionments; and 2) approved extending Regulation Section 1859.166.2 until July 1, 2012.

\* These comments pertained to the SAB regulations in OAL File No. 2011-0907-04S which were approved and filed with the Secretary of State on October 18, 2011.

### **Mr. David Walrath, representing the Small School Districts Association**

Mr. Walrath addressed the Board in support of Board Member Lyn Greene's motion to continue until July 1, 2012 the waiver on performing FH re-reviews for approved SFP projects that have been on the Unfunded List for over 180 days, rather than resuming such FH re-reviews on and after July 1, 2011. He stated that this would provide certainty to school districts by knowing their share of total project costs rather than having a re-review which could change the district's share of the total project costs.

Ms. Greene's motion to continue the waiver of FH re-reviews failed to pass, and the Board then voted to resume FH re-reviews on and after July 1, 2011, and that such re-reviews would be based upon district financial records on or after July 1, 2011. The prevailing view of the Board was that significant time was passing without progress on some FH projects, that some districts' financial circumstances may have changed since the initial FH determination, and therefore a FH re-review would bring a more current financial assessment that was fair to both the district and the State, even though the district's share of total project costs might change from the initial determination. This issue was previously discussed at the SAB Priorities in School Construction Funding Sub-Committee and it was their recommendation to resume FH re-reviews on or after July 1, 2011.

### **Ms. Anna Ferrera, representing the County School Facility Consortium**

Ms. Ferrera addressed the Board in support of Board Member Lyn Greene's motion to continue until July 1, 2012 the waiver on performing FH re-reviews for approved SFP projects that have been on the Unfunded List for over 180 days, rather than resuming such FH re-reviews on and after July 1, 2011.

Ms. Greene's motion to continue the waiver of FH re-reviews failed to pass, and the Board then voted to resume FH re-reviews on and after July 1, 2011, and that such re-reviews would be based upon district financial records on or after July 1, 2011. The prevailing view of the Board was that significant time was passing without progress on some FH projects, that some districts' financial circumstances may have changed since the initial FH determination, and therefore a FH re-review would bring a more current financial assessment that was fair to both the district and the State, even though the district's share of total project costs might change from the initial determination. This issue was previously discussed at the SAB Priorities in School Construction Funding Sub-Committee and it was their recommendation to resume FH re-reviews on or after July 1, 2011.

**Mr. Richard Gonzalez, representing Richard Gonzalez and Associates**

Mr. Gonzalez addressed the Board and asked them to consider the following clarification: If a school district has a FH project on the Unfunded List that project is grandfathered in through July 1, 2011, but if that district submitted a FH project after July 1, 2011, that its matching share requirement could not be altered for the earlier filed project, and only the project filed after July 1, 2011 would be impacted.

After discussion by the Board, the Board voted to resume FH re-reviews on and after July 1, 2011, and that such re-reviews would be based upon district financial records on or after July 1, 2011. The prevailing view of the Board was that significant time was passing without progress on some FH projects, that some districts' financial circumstances may have changed since the initial FH determination, and therefore a FH re-review would bring a more current financial assessment that was fair to both the district and the State, even though the district's share of total project costs might change from the initial determination. This issue was previously discussed at the SAB Priorities in School Construction Funding Sub-Committee and it was their recommendation to resume FH re-reviews on or after July 1, 2011.

**Ms. Anna Ferrera, representing the County School Facility Consortium**

Ms. Ferrera addressed the Board regarding a change in the proposed regulatory language on Attachment F, Regulation Section 1859.81(g), from "fund activity" to "financial records," for consistency with the wording in Regulation Section 1859.81(a).

Since Board Member Scott Harvey made a motion to allow the current FH re-review regulations to become inoperative on July 1, 2011, and to approve a process in which FH re-reviews would be based on district information on or after July 1, 2011 for projects added to an unfunded list between February 25, 2009 and June 30, 2011, he agreed to add the wording change into his motion and the Board then voted to approve the resumption of FH re-reviews on and after July 1, 2011, for approved SFP projects that have been on the Unfunded List for over 180 days. The previous waiver of the FH re-review requirement would become inoperative on July 1, 2011. Beginning July 1, 2011 the FH re-review process would be based only on school district "financial records" rather than "fund activity."

**Mr. Lyle Smoot, representing the Los Angeles Unified School District**

Mr. Smoot addressed the Board and requested the elimination of the 30-day certification filing period so that school districts could file certifications for their projects with the Office of Public School Construction (OPSC) anytime after the start of each priority funding period.

Mr. Juan Mireles, representing the OPSC, responded that it was necessary to have a final filing date for the certifications in order to know how many complete applications had been received and to match the applications with the available bond funds. The Board then voted unanimously to approve the priority funding process including the 30-day certification filing period.

### **Technical Documents Relied Upon**

The State Allocation Board's Action Item, dated May 25, 2011, entitled "State Allocation Board Priorities in School Construction Funding/Cash Management."

### **Alternatives to the Proposed Regulatory Action that would be as Effective and Less Burdensome to Private Persons**

The SAB finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations.

### **Alternatives to the Proposed Regulatory Action that would Lessen any Adverse Economic Impact on Small Business**

The SAB has determined that the proposed regulations do not affect small businesses.

### **Finding of Significant Adverse Economic Impact on Businesses**

The SAB has determined that the adoption of the regulations will not affect businesses, including small businesses, because they are not required to comply with or enforce the regulations, nor will they be disadvantaged by the regulations.

### **Impact on Local Agencies or School Districts**

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.