

September 9, 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 AMEND  
REGULATION SECTIONS 1859.90.2 AND 1859.81, 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 the above-referenced regulation sections 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, 17075.15, 17078.72 and 17592.73 of the Education Code. The proposals interpret and make specific reference Sections 17071.75, 17072.12, 17072.30, 17074.16, 17075.10, 17075.15, 17076.10, 17077.40, 17077.42, 17077.45 and 17079.20 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.

The proposed emergency regulations were adopted by the SAB at its meeting on May 25, 2011. These emergency amendments to the 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 began July 27, 2011 and thereafter will be held annually commencing the second Wednesday of every January and every 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 became 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.

These emergency regulations were approved by the OAL (File No. 2011-0719-04E) and filed with the Secretary of State on July 27, 2011.

## **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 expired 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 regulations is as follows:

Existing Regulation Section 1859.90.2 is described in the following six paragraphs:

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 described in the following 13 paragraphs:

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

2. Changes the setting of individual priority funding rounds by the SAB to the regular scheduling of priority funding periods that begin on July 27, 2011 and thereafter to be held annually beginning on the second Wednesday of every January and every July.
3. Adds "Certifications are valid until the next filing period begins."
4. Removes language that priority funding rounds are established at monthly SAB meetings upon advance public notice and announcement.
5. Removes language that priority funding rounds require advance notice to all school districts and charter schools with projects on the Unfunded List.
6. Removes 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. Removes language that any funds not apportioned in a specified priority funding round remain available for other SFP apportionments by the SAB.
8. Clarifies 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. Clarifies 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. Provides criteria for the sequence of apportioning projects if the total amount requested for a specific period exceeds the funds available.
11. Clarifies that applicants requesting to participate but for which an apportionment cannot be provided retain their date order position on the Unfunded List.
12. Clarifies 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."

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 became 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.

## 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 proposed amendments to 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 October 24, 2011, at 5:00 p.m. The express terms of the proposed emergency 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

E-mail Address: West Sacramento, CA 95605  
[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 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 "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.