

September 23, 2011

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 AND 1859.82, 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 and 17075.15 of the Education Code. The proposals interpret and make specific reference Sections 17074.56, 17075.10, 17075.15 and 101012(a)(1) 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 Seismic Mitigation Program (SMP) was established by Assembly Bill 127, Chapter 35, Statutes of 2006 (Perata/Nunez), which became law on May 20, 2006. It was funded in the amount of \$199.5 million for the seismic repair, reconstruction, or replacement of the "most vulnerable Category 2" school facilities by Proposition 1D approved by the voters at the November 7, 2006 General Election. The SAB adopted regulations to implement the Program, which were approved by the OAL and filed with the Secretary of State on April 30, 2008.

The SAB, at its meeting on August 26, 2009, adopted emergency regulatory amendments to add four additional building component types to the definition of "Most Vulnerable Category 2" school buildings for the purpose of eligibility for the SMP. In addition, the SAB reduced the ground shaking criteria for project eligibility from "1.70 g" to "1.68 g." The OAL approved the emergency regulations and filed them with the Secretary of State on November 24, 2009.

The SAB, at its meeting on June 22, 2011, adopted emergency regulatory amendments to facilitate the SAB apportioning the remaining SMP funding to eligible school building structural projects. The SAB deleted an eligibility criterion that required “a short period spectral Acceleration” (ground shaking) of at least 1.68 g, expanded the list of eligible structural types from eight to 14, made non-substantive wording corrections to five existing eligible building structure types, and clarified that eligible structures must have “structural deficiencies that pose an unacceptable risk of injury to its occupants in a seismic event.” The emergency amendments stated the criteria for the structural engineer’s report which must be submitted in support of an application for SMP funding and specified that the Division of the State Architect (DSA) must review and approve structural engineer reports that conform to the DSA guidelines.

In addition, the emergency amendments specified that “Unacceptable risk of injury” from faulting, liquefaction, or landslide must be documented by an engineering geologist’s hazard report in accordance with the California Building Code, Part 2, Chapter 18, section 1803A and concurrence of the California Geological Survey. Finally, the emergency amendments state the order for funding approved SMP applications, the process if there is insufficient funding for all approved applications, and the \$199.5 million maximum funding authority for the SMP.

These emergency amendments to the SMP received an emergency effective date from the Office of Administrative Law upon being filed with the Secretary of State on September 8, 2011 (OAL File No. 2011-0830-03E).

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 change the definition of “Most Vulnerable Category 2 Buildings” by:

- Deleting that this term is “as defined by the DSA;”
- Deleting the criterion of a ground shaking threshold (short period spectral acceleration) of 1.68 g based on U.S. Geological Survey maps;
- Deleting that a structural engineer report must be provided regarding the lateral force resisting system, collapse prevention performance objectives, and potential for catastrophic collapse;
- Deleting that the building is designed for occupancy by students and staff; and
- Clarifying and expanding eligible structure types from eight to 14, and making non-substantive wording corrections to five existing building structure types, as shown below:

C1 - Concrete Moment Frame,

C1B - Reinforced Concrete Cantilever Columns with ~~Wood Roofs~~ Flexible Diaphragms,

C2A - Concrete Shear Wall with Flexible Diaphragms.

C3A - Concrete Frame with Infill Masonry Shear Walls and Flexible ~~Floor and Roof~~ Diaphragms,

PC1 - Precast/Tilt-up Concrete Shear Wall with ~~Concrete Floor and Roof~~ Flexible Diaphragms,

PC1A - Precast/Tilt-up Concrete Shear Wall with ~~Flexible Roof~~ Rigid Diaphragms,

PC2A - Precast Concrete Frame without Concrete Shear Walls and with Rigid ~~Floor and Roof~~ Diaphragms,

PC2 - Precast Concrete Frame and Roofs with Concrete Shear Walls,

URM - Unreinforced Masonry Bearing Wall Buildings,

RM1 - Reinforced Masonry Bearing Wall with Flexible Diaphragms.

URMA - Unreinforced Masonry Bearing Wall with Rigid Diaphragms.

S1B - Steel Cantilever Columns with Flexible Diaphragm.

S3 - Steel Light Frame Metal Siding and/or Rod Bracing, or

M - Mixed construction containing at least one of the above structures types.

Existing Regulation Section 1859.82 establishes the criteria a district must meet to be eligible for facility hardship funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. "Seismic mitigation of the Most Vulnerable Category 2 Buildings as verified by the DSA" is included in this Section and is a factor the SAB can consider when funding SMP project applications.

The proposed emergency amendments add five new subsections described as follows:

New Subsection (a)(1)(C) sets forth four requirements for seismic mitigation funding:

- The construction contract was executed on or after May 20, 2006 (the effective date of AB 127) (relocated from within this section and re-stated here);
- The project funding shall be for the minimum work necessary to obtain DSA approval (relocated from within this section and re-stated here);
- The building is designed for occupancy by students and staff (removed from Regulation Section 1859.2. Definitions, and re-stated here);
- The DSA concurs with a report by a structural engineer, which identifies structural deficiencies that pose an unacceptable risk of injury to its occupants in a seismic event. If the unacceptable risk of injury is due to the presence of faulting, liquefaction or landslide, these hazards must be documented by a geologic hazards report prepared by an engineering geologist in accordance with California Building Code, Part 2, Chapter 18, Section 1803A and with the concurrence of the California Geological Survey.

New paragraph following Subsection (a)(1)(C) requires that the structural engineer's report shall conform to the guidelines prepared by the DSA, in accordance with Education Code Section 17310.

New Subsection (a)(1)(D) requires that notwithstanding Regulation Sections 1859.93 (Modernization Project Funding Order) and 1859.93.1 (New Construction Project Funding Order), all applications for the seismic mitigation of the Most Vulnerable Category 2 Buildings shall be funded in the order of receipt of an approved application for funding.

New Subsection (a)(1)(E) specifies that if eligible seismic mitigation funding applications cannot be fully apportioned or approved for placement on the Unfunded List (Lack of AB 55 Loans) because insufficient funding is available, the applicant may accept the remaining funding amount or refuse funding entirely. If partial funding is accepted, the applicant will remain eligible for the additional amount of seismic funds, up to the initial funding request, if funds become available within the SMP authority amount of \$199.5 million. If funding is refused, the Board shall consider funding the next project eligible for funding pursuant to this Section.

New paragraph following Subsection (a)(1)(E) requires that for any seismic mitigation funding application not apportioned or approved for placement on the Unfunded List (Lack of AB 55 Loans), the application shall be returned to the applicant.

### 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. The 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 7, 2011, 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](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 regulations should be addressed to the agency's regulations 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 regulation 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.