

February 3, 2012

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 SECTION 1859.2, ALONG WITH AN ASSOCIATED FORM, TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

FORM PROPOSED FOR AMENDMENT:

Application for Funding, Form SAB 50-04, (Revised 10/11), referenced in Regulation Section 1859.2

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend Regulation Section 1859.2, along with an associated form, 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 proposal substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend the above-referenced regulation section under the authority provided by Sections 17070.35 and 17078.64 of the Education Code. The proposal interprets and makes specific reference Sections 17078.52, 17078.56 and 101012(a)(8) 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 SAB, at its October 26, 2011 meeting, adopted amendments to the SFP to clarify Section 6 on the Form SAB 50-04, *Application for Funding*, where a Charter School Facilities Program (CSFP) rehabilitation project enters its High Performance Incentive (HPI) Grant Program points to request HPI additional grant funding.

In May 2007, the OAL approved SFP Regulation changes that introduced CSFP rehabilitation projects and incorporated this project type into the Form SAB 50-04. When the rehabilitation component of the CSFP was implemented, it was modeled so that the type of work allowable in a CSFP rehabilitation project was substantially identical to SFP modernization work. In October 2007, the OAL approved SFP Regulation changes that introduced the HPI grant and incorporated the grant option into the Form SAB 50-04. It was an inadvertent oversight at that time for the Form SAB 50-04 to omit instructions and data fields for the HPI grant for CSFP rehabilitation projects. The proposed amendments to Form SAB 50-04 remedy that oversight by clarifying the instructions and data fields for the benefit of future CSFP rehabilitation project applicants.

Facilitating charter school rehabilitation projects in applying for SFP funding to incorporate high performance components into California schools will encourage benefits to the health and welfare of California residents and to the State's environment. This will help carry out the intent of AB 127 and Proposition 1D which authorized up to \$100 million for school projects utilizing high performance components [Education Code Section 101012(a)(8)].

CSFP rehabilitation projects were authorized by Assembly Bill (AB) 127, Chapter 35, Statutes of 2006 (Perata/Nunez), and funded in the Proposition 1D school bond measure which was approved by voters at the November 7, 2006 general election. Regulation Section 1859.2 defines "CSFP Rehabilitation" as "work that includes, but will not be limited to, structural changes or other types of work on an existing district facility that extends the useful life of or enhances the physical environment of the school."

AB 127 and Proposition 1D also authorized up to \$100 million for school projects utilizing "high performance" components improving energy, water use, natural lighting, air quality, use of recycled and low-toxin materials, and learning-enhancing acoustics for construction projects.

Education Code Section 101012(a)(8) states, "The amount of one hundred million dollars (\$100,000,000) for incentive grants to promote the use of designs and materials in new construction and modernization projects that include the attributes of high-performance schools, including, but not limited to, the elements set forth in Section 17070.96, pursuant to regulations adopted by the State Allocation Board."

The proposed regulatory amendments are therefore consistent and compatible with State laws and regulations.

Of the initial \$100 million of bond authority to fund HPI components in SFP school projects, approximately \$66.4 million remained after the Board's approval of the Oakland Military Institute project on October 26, 2011.

The proposed amendments are 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 revision date of Form SAB 50-04, *Application for Funding*, to reflect a revision date of "10/11."

Existing Form SAB 50-04, *Application for Funding*, is submitted by school districts to apply for State funding for new construction or modernization projects. The proposed amendments clarify Section 6 of the Specific Instructions and Section 6 of the Form where a CSFP rehabilitation project enters the number of points for its request for HPI Grant funding. It is further clarified that subsections 6.a., 6.c. and 6.e. do not apply to CSFP rehabilitation projects.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulation does 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 regulation.

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.
- 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 is no requirement that a report be made.
- 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.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The results of the SAB's Economic Impact Assessment as required by Government Code Section 11346.3(b) are as follows:

- 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.
- There are benefits to the health and welfare of California residents and to the State's environment from correcting the Form SAB 50-04 to facilitate charter school rehabilitation projects in applying for SFP funding to incorporate high performance components into California school buildings. These benefits are improved energy efficiency and water use, natural lighting and air quality, use of recycled and low-toxin materials, and learning enhancing acoustics.
- There are no benefits to worker safety from the proposed regulatory amendments.

The proposed regulatory amendments are therefore consistent and compatible with State laws and regulations.

There is no fiscal impact to the State, to school districts or charter schools from the proposed regulatory amendments. The proposed amendments do not change the apportionment process, but clarify the section on Form SAB 50-04 where a CSFP rehabilitation project applicant enters the number of points for its HPI funding request.

EFFECT ON SMALL BUSINESSES

It has been determined that the 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. This regulation only applies 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 March 19, 2012, 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

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 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 adopts/repeals/amends 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 regulation 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 adopt the regulation 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), a rulemaking agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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.