

April 22, 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 1859.2, 1859.81, 1859.148.2 AND 1859.166.2, 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, 17078.64, 17078.72 and 17592.73 of the Education Code. The proposals interpret and make specific reference Sections 17071.75, 17075.10, 17075.15, 17078.25, 17078.52, 17078.53 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.

Financial Hardship Re-Reviews.

The Financial Hardship (FH) Program implements Education Code Section 17075.15 to assist those districts that cannot afford to fund their portion of the SFP project. A school district meeting the FH criteria (Regulation Section 1859.81) is eligible for the State to 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 SAB, at its May 26, 2010 meeting, adopted emergency regulatory amendments to the SFP Regulations to waive the requirement for the OPSC to re-review the FH determinations of approved SFP projects which have remained on the Unfunded List for over 180 days due to the State's inability to provide AB 55 loans. The emergency amendments were approved by the OAL (OAL File No. 2010-0922-03E) and filed with the Secretary of State on October 4, 2010. The proposed emergency amendments became inoperative on January 1, 2011.

The SAB, at its December 15, 2010 meeting, adopted emergency regulatory amendments to extend the sunset date until "July 1, 2011." Extending this section until July 1, 2011 will allow the waiver of re-reviews to continue for financial hardship projects.

There are currently 56 approved but unfunded school district projects with FH status. These emergency amendments would extend until "July 1, 2011" the waiver of the requirement to re-review FH determinations, allowing these districts to continue to rely upon the State and local project funding amounts already approved by the SAB, rather than undergo a re-review. Re-reviews involve an evaluation of local school district finances which could increase or decrease the district's financial contribution to total project costs. Without this extension, FH determinations for these projects must be re-reviewed after the projects have been on the Unfunded List (Lack of AB 55 Loans) for six months. These school districts, with financial difficulties and still without their State apportionments, jeopardize these school projects if the FH re-review is triggered and changes the amount of what the district could provide towards the project.

"Inactive" Status for Preliminary Apportionments and Preliminary Charter School Apportionments.

The SAB, at its January 28, 2009 meeting, adopted proposed emergency regulatory amendments to the SFP to help prevent school bond apportionments from expiring during the State's ongoing fiscal crisis. The proposed amendments responded to the Pooled Money Investment Board's (PMIB's) action on December 17, 2008, to temporarily halt disbursements for capital projects, including the construction of public schools. The SAB was authorized by the emergency regulations to find preliminary apportionments "inactive" under the:

- Critically Overcrowded School Facilities Program (COS Program), and
- Charter School Facilities Program (CSFP).

The members of the PMIB were forced by fiduciary responsibility to temporarily freeze infrastructure bond funds for public works projects. However, school districts with previously approved preliminary apportionments (reservations of bond funding) were still required to move their projects forward and convert to final apportionments within time limits as set forth in Education Code Section 17078.25(a) and (b).

The PMIB cessation of school bond funding left many school districts financially unable to move forward with their projects, thus risking the rescission of the preliminary apportionments and preliminary charter school apportionments for failure to convert to final apportionments. The SAB approving "inactive" status for the preliminary apportionments suspended the time period for converting to final apportionments. (This period is four years from the date of the preliminary apportionment plus an allowable one-year extension upon SAB approval.) The time period will resume as it existed on December 17, 2008 when the SAB finds that State financing is available for bond-funded projects.

The OAL approved the emergency regulations in OAL File No. 2009-0414-03E, and final Certification of Compliance in OAL File No. 2009-0929-03C.

In June and July 2009, the SAB approved “inactive” status for a total of \$1.263 billion of COS Program preliminary apportionments (344 projects), and \$609.1 million of CSFP preliminary charter school apportionments (43 projects), thereby helping to protect the projects from having their preliminary apportionments and preliminary charter school apportionments expire.

At its meeting on September 23, 2009 the SAB extended the sunset date for these regulation sections from January 1, 2010 until January 1, 2011. The OAL approved these emergency regulations in OAL File No. 2009-1216-01E, and final Certification of Compliance in OAL File No. 2010-0309-01C.

The SAB, at its December 15, 2010 meeting, adopted emergency regulatory amendments to the SFP Regulations to extend these sections until “July 1, 2011.” Extending these sections until July 1, 2011 will allow “inactive” status to continue for COS Program and CSFP projects approved with preliminary apportionments during the State of California’s continuing fiscal crisis.

A summary of the proposed emergency regulatory action follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed emergency amendments define an “Unfunded List (Lack of AB 55 Loans),” which means an information list of unfunded projects created due to the State’s inability to provide financing from the Pooled Money Investment Account (AB 55 loans) to fund school construction projects, as declared in the Department of Finance Budget Letter #33 issued on December 18, 2008. In addition, the definition of “Unfunded List” is clarified to exclude “Unfunded List (Lack of AB 55 Loans).”

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. The proposed emergency action amends subsection (f), thereby waiving the requirement for FH determinations to be re-reviewed by the OPSC if the project has been on the “Unfunded List (Lack of AB 55 Loans)” for more than 180 calendar days. Subsection (f) became inoperative on January 1, 2011. The proposed emergency action extends the sunset date until July 1, 2011.

Proposed adoption of Regulation Section 1859.148.2 authorizes the SAB to determine a State fiscal emergency or crisis exists for the purpose of finding Preliminary Apportionments under the COS Program to be “Inactive,” as defined in Section 1859.2. This finding would suspend, as of December 17, 2008, the time period for an applicant to convert to a Final Apportionment. This period to convert is four years from the date of the Preliminary Apportionment plus a possible one-year extension, as set forth in Education Code Section 17078.25(a) and (b). The proposed adoption also authorizes the SAB to find that State bond funds are available for the project, in order to end “inactive” status and reinstate the balance of the time period to convert to a Final Apportionment as it existed on December 17, 2008. This regulation section became inoperative on January 1, 2011. The proposed emergency action extends the sunset date until “July 1, 2011.”

Proposed adoption of Regulation Section 1859.166.2 authorizes the SAB to determine a State fiscal emergency or crisis exists for the purpose of finding Preliminary Charter School Apportionments under the CSFP to be “Inactive,” as defined in Section 1859.2. This finding would suspend, as of December 17, 2008, the time period for an applicant to convert to a Final Charter School Apportionment. This period to convert is four years from the date of the Preliminary Charter School Apportionment plus a possible one-year extension, as set forth in Education Code Section 17078.25(a) and (b). The proposed adoption also authorizes

the SAB to find that State bond funds are available for the project, in order to end “inactive” status and reinstate the balance of the time period to convert to a Final Charter School Apportionment as it existed on December 17, 2008. This regulation section became inoperative on January 1, 2011. The proposed emergency action extends the sunset date until “July 1, 2011.”

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 June 6, 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
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 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 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.