

March 8, 2011

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS OF SCHOOLS, CHARTER SCHOOLS, AND OTHER INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED EMERGENCY REGULATORY ACTION

In accordance with Assembly Bill 1302, Chapter 713, Statutes of 2006, enclosed are proposed emergency regulations adopted by the State Allocation Board (SAB) at its meeting on December 15, 2010. These amendments to the School Facility Program (SFP) Regulations extend for six months three sections that become inoperative on January 1, 2011. Extending these sections until July 1, 2011 will allow "inactive" status to continue for six more months for projects with approved preliminary apportionments in the:

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

The inactive status relieves the school districts/charter schools from certain statutory and regulatory requirements until the State can provide its share of the project funding and allow the projects to move forward toward completion.

The extension also allows a six-month continuation of the waiver of the requirement to re-review approved Financial Hardship (FH) determinations which have been on the "Unfunded List (Lack of AB 55 Loans)" for more than 180 calendar days. These FH determinations would not be subject to re-review until at least July 1, 2011. Without the extension, the waiver expires and the FH determinations for these projects must be re-reviewed.

Attached to this Notice is the specific regulatory language of the proposed emergency action and the Finding of Emergency. You may also review the proposed regulatory language and Finding of Emergency on the Office of Public School Construction (OPSC) Web site at www.dgs.ca.gov/opsc. The proposed emergency regulations would amend the SFP Regulations under the California Code of Regulations, Title 2, Chapter 3, Subchapter 4, Group 1, State Allocation Board, Subgroup 5.5, Regulations relating to the Leroy F. Greene School Facilities Act of 1998.

The OPSC, on behalf of the SAB, will be submitting these emergency regulations to the Office of Administrative Law (OAL) during the month of March 2011. The following is an overview of the proposed regulatory amendments.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established the SFP through Senate Bill 50, Chapter 407, Statutes of 1998. 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 OAL and filed with the Secretary of State on October 8, 1999.

COS Program. The COS Program was established by Assembly Bill 16, Chapter 33, Statutes of 2002, to provide funding to relieve overcrowding on severely impacted sites. At the October 2004 SAB meeting, Proposition 55 COS preliminary apportionments were made for 496 projects. As a result of the State's fiscal crisis, the Board granted "inactive" status to 344 of the projects that had not converted to final apportionments as of December 17, 2008. Of these 344 projects, 311 have since met the requirements to convert to a final apportionment and have been placed on the Unfunded List, leaving 33 inactive COS preliminary apportionments which will be extended by the proposed amendments.

Without the amendments, these inactive COS apportionments will be reactivated and school districts would have approximately ten months to secure other means of financing to convert to Final Apportionments or their preliminary apportionments will be rescinded.

CSFP Program. Three legislative acts and voter approvals have funded the program with a cumulative total of \$900 million in bond funds:

- The CSFP was established by Assembly Bill (AB) 14, Chapter 935, Statutes of 2002, and was funded with \$100 million through the passage of Proposition 47.
- Senate Bill 15, Chapter 587, Statutes of 2004, authorized an additional \$300 million which was funded by the passage of Proposition 55.
- AB 127, Chapter 35, Statutes of 2006, authorized an additional \$500 million which was funded through the passage of Proposition 1D at the November 7, 2006 General Election.

At the February 2005 SAB meeting, Proposition 55 Preliminary Charter School Apportionments were made for 28 projects. At the May 2008 SAB meeting, Proposition 1D Preliminary Charter School Apportionments were made for 29 projects. As a result of the State's fiscal crisis, the Board granted "inactive" status to 41 of the projects that had not yet converted to final apportionments as of December 17, 2008. Currently, 38 inactive preliminary Charter School apportionments remain which will be extended by the proposed amendments.

Without the amendments, the Proposition 55 inactive Preliminary Charter School Apportionments will be re-activated and will have approximately 14 months to secure other means of financing to convert to Final Apportionments, or their preliminary apportionments will be rescinded. The Proposition 1D inactive Preliminary Charter School Apportionments would be reactivated and have approximately three years and five months to convert to Final Apportionments (with a possible one-year extension) or their preliminary apportionments will be rescinded.

Financial Hardship Re-Reviews. 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 FH Program implements Education Code Section 17075.15 to assist those districts that cannot afford to fund their portion of the SFP project. Districts are required under Education Code Section 17075.10(b) to make all reasonable efforts to fund their share of their project's cost. These emergency amendments would allow six more months for school districts with FH determinations to continue to rely upon the State and local project funding amounts already approved by the SAB, rather than undergo a re-review.

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 amendments expire on January 1, 2011 by their own terms. The amendments were approved by the OAL and filed with the Secretary of State on October 4, 2010.

Under the existing SFP Regulations, the FH status of an SFP project on an Unfunded List for over 180 days must have a re-review of the district's finances to determine if additional district funds are available to fund the district's share of the project costs. The extension would allow a six-month continuation of the waiver of the requirement to re-review approved FH determinations which have been on the "Unfunded List (Lack of AB 55 Loans)" for more than 180 calendar days.

A summary of the proposed emergency 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 emergency amendments add the definition of "Unfunded List (Lack of AB 55 Loans)," meaning 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. The definition of "Unfunded List" is amended to clarify that it excludes "Unfunded List (Lack of AB 55 Loans)."

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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. Subsection (f) waives the requirement for FH determinations to be re-reviewed if the project has been on the "Unfunded List (Lack of AB 55 Loans)" for more than 180 calendar days. Subsection (f) becomes inoperative January 1, 2011. The proposed emergency amendments extend the sunset date until July 1, 2011.

Existing 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." This finding suspends 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). This regulation section sunsets on January 1, 2011. The proposed emergency amendments extend the sunset date until July 1, 2011.

Existing 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 to be "inactive." This finding suspends 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). This regulation section sunsets on January 1, 2011. The proposed emergency amendments extend the sunset date until July 1, 2011.

SUBMISSION OF COMMENTS

Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the OAL, the adopting agency provide a Notice of the Proposed Emergency Action to every person who has filed a request for notice of regulatory

action with the agency. After submission of the proposed emergency regulations to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6.

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed emergency regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OAL within five days after the SAB submits the emergency regulations to the OAL for review.

Please reference submitted comments as regarding "State Allocation Board - Six-Month Extensions for Fiscal Crisis Regulations," addressed to:

Reference Attorney

Mailing Address: Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

E-mail Address: staff@oal.ca.gov

Fax No.: (916) 323-6826

For the status of the SAB submittal to the OAL for review, and the end of the five-day written submittal period, please consult the Web site of 1) the OAL at www.oal.ca.gov under the heading "Emergency Regulations," and 2) the OPSC at www.dgs.ca.gov/opsc under the Tab "Resources," then click on "Laws and Regulations," then click on "SFP Pending Regulatory Changes."

Pursuant to Title I, Section 55, please send a copy of written comments regarding the proposed regulatory action, as well as requests for a copy of the proposed regulatory action, and questions concerning the substance of the proposed regulatory action, 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, Ms. Lisa Jones, Supervisor, Regulations Team, at (916) 376-1753.