

August 3, 2012

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

REGULATION SECTIONS PROPOSED FOR AMENDMENT: 1859.2, 1859.71.6, 1859.77.4,
1859.107, 1859.193, 1859.194 AND 1859.197.

FORM PROPOSED FOR AMENDMENT:

Application for Career Technical Education Facilities Funding, Form SAB 50-10, (Revised 12/44
04/12), referenced in Regulation Section 1859.2

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-referenced Regulation Sections, and to amend 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 sections under the authority provided by Sections 17070.35, 17078.72(k), and 17078.72(l) of the Education Code. The proposal interprets and makes specific reference Sections 17070.35, 17070.63, 17074.15, 17074.16, 17074.56, 17076.10, 17078.72, 17250.30, and 101012(a)(8) of the Education Code, and Section 1771.3 of the Labor 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 April 25, 2012 meeting, adopted amendments to the SFP Regulations to allow Career Technical Education Facilities Program (CTEFP) projects to request High Performance Incentive (HPI) Grants, in accordance with Senate Bill (SB) 128, Chapter 622, Statutes of 2011 (Lowenthal). The CTEFP allows school districts/local educational agencies to apply for 50 percent State funding for constructing new facilities, or reconfiguring existing ones, needed for high school pupils to learn the skills and knowledge for “the high-demand technical careers of today and tomorrow” [Education Code Sections 17078.72(a) and 101012(a)(4)]. CTEFP projects were authorized by Assembly Bill (AB) 127, Chapter 35, Statutes of 2006 (Perata/Nunez).

HPI Grants were authorized by AB 127 [Education Code Sections 17070.96 and 101012(a)(8)] and implemented into the SFP Regulations for school districts using designs and materials in new construction and modernization projects for efficiencies in the following categories:

- Sustainable Sites
- Energy
- Water
- Materials
- Indoor Environmental Quality

The existing SFP regulations list all qualifying high performance components with assigned “points” and a threshold of total points to qualify for High Performance Base Incentive Grants (HP BIGs) in the amount of:

- \$150,000 for new construction projects on new sites, and
- \$250,000 for new construction projects on existing sites and for modernization projects.

The proposed regulations make CTEFP projects eligible for the first time for the \$150,000 or \$250,000 HP BIG if they meet the high performance qualifying criteria. As with the existing CTEFP funding process, the proposed regulations clarify that applicants receiving the HP BIG must match that sum on a dollar-for-dollar basis.

Funding Source. Proposition 1D was approved by voters in the November 2006 General Election, which included \$100 million for HPI grants. This is the only funding source for the HPI grants, and \$57.5 million still remains in this account as of June 27, 2012.

Economic/Fiscal Impact. The regulatory amendments would allow CTEFP projects which have not received apportionments to re-submit their applications requesting the HP BIG additional grant. There are 73 approved CTEFP projects on the Unfunded List (Lack of AB 55 Loans) that have not received apportionments - 34 are new construction projects and 39 are modernization projects. It is not known if their high performance components are eligible to qualify for HP BIG additional grants. The maximum economic/fiscal impact would reduce the HPI school bond account by \$18,250,000 [73 projects X \$250,000 = \$18,250,000].

There are another 74 CTEFP applications that have been submitted but have not been approved by the SAB due to insufficient CTEFP bond authority. It is not known if any applications would qualify for HP BIG additional grants. Therefore, the economic/fiscal impact is unknown for these projects.

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

The proposed regulatory amendments, including an associated form, 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 50-10, *Application for Career Technical Education Facilities Funding*, to reflect a revision date of "04/12."

Existing Regulation Section 1859.71.6 sets forth a point system based upon construction industry-recognized High Performance Rating Criteria, for school districts to qualify for a SFP additional grant, including a \$150,000 HP BIG for projects evaluated using the 2009 CA-CHPS criteria, by including "high performance" designs and materials in their new construction projects on new sites. The proposed amendments add a subsection that provides the \$150,000 HP BIG to CTEFP new construction projects on new sites with levels of high performance as verified by the Division of the State Architect (DSA) with a minimum of 27 points. Education Code Section 17078.72(l) is added to the list of Authority citations because this new section was added by statute (SB 128).

Existing Regulation Section 1859.77.4 sets forth a point system based upon construction industry-recognized High Performance Rating Criteria, for school districts to qualify for a SFP additional grant, including a \$250,000 HP BIG for projects evaluated using the 2009 CA-CHPS criteria, by including "high performance" designs and materials in their new construction projects on existing sites and in modernization projects. The proposed amendments add a subsection that provides the \$250,000 HP BIG to CTEFP new construction projects on existing sites and to CTEFP modernization projects with levels of high performance as verified by the DSA with a minimum of 20 points. Education Code Section 17078.72(l) is added to the list of Authority citations because this new section was added by statute (SB 128).

Existing Regulation Section 1859.107 details how eligibility/funding applications will be processed based upon the date of submittal, specified funding adjustments, and criteria for the amendment, withdrawal, or resubmittal of eligibility/funding applications. The proposed amendments:

- add a new paragraph permitting approved CTEFP projects submitted prior to January 1, 2012 to be resubmitted for the purpose of requesting HP BIGs under Regulation Section 1859.71.6 or 1859.77.4;
- state that the resubmittal must be on an amended Form SAB 50-10;
- require that the amended Form SAB 50-10 be submitted at least 90 days prior to requesting an Apportionment pursuant to Section 1859.90.1 or 1859.90.2 ("Priority Funding Process") or at least 90 days prior to receiving an Apportionment pursuant to Section 1859.195 (CTEFP funding cycles);
- specify that the resubmittal will retain its original OPSC processing date; and
- add Education Code Section 17078.72(l) to the list of Authority citations because this new section was added by statute (SB 128).

Existing Regulation Section 1859.193 specifies that CTEFP projects may be allowed to construct a new facility or modernize or Reconfigure an existing facility. Grant determinations shall not exceed \$3 million for new construction projects or \$1.5 million for modernization/reconfiguration projects. The proposed amendments add new subsection (e) stating that the additional grant for the HP BIG may be added to the CTEFP grant determination regardless of the \$3 million or \$1.5 million per-project maximum CTEFP amounts. Education Code Section 17078.72(l) is added to the list of Authority citations because this new section was added by statute (SB 128).

Existing Regulation Section 1859.194 specifies that CTEFP apportionments shall require an applicant matching share contribution on a dollar-for-dollar basis, and that loans may be requested by districts needing assistance to reach their matching share requirement, if specified criteria are

met. The proposed amendments clarify that HP BIG additional grants are subject to the matching share requirement on a dollar-for-dollar basis for both CTEFP new construction and modernization projects. Education Code Section 17078.72(l) is added to the list of Authority citations because this new section was added by statute (SB 128).

Existing Regulation Section 1859.197 sets forth the criteria for CTEFP fund releases. The proposed amendments:

- add new subsection (d) which requires districts/local educational agencies (LEAs) with approved CTEFP projects on the Unfunded List (Lack of AB 55 Loans) that request an Apportionment pursuant to Regulation Section 1859.90.1 or 1859.90.2 (“Priority Funding Process”) that includes a request for the HP BIG additional grant under Section 1859.71.6 or 1859.77.4, then the district must submit the necessary approvals from the DSA and/or the California Department of Education (CDE) at least 90 days prior to requesting an Apportionment;
- add new subsection (e) which requires districts/LEAs with approved CTEFP projects under Section 1859.197(a) and with approved reservations of funds pursuant to Section 1859.193(d) that request the HP BIG additional grant under Section 1859.71.6 or 1859.77.4, then the district must submit the necessary approvals from the DSA and/or the CDE at least 90 days prior to requesting an Apportionment;
- correct the existing subsections (d) and (e) as “(f)” and “(g)” respectively, due to the two new subsections (d) and (e) above being added,
- correct “1859.197(e)” to “1859.197(g)” in the text of the last sentence of this Section in order to reflect the proper subsection; and
- add Education Code Section 17078.72(l) to the list of Authority citations because this new section was added by statute (SB 128).

Existing Form SAB 50-10 is submitted by school districts/LEAs to apply for funding under the CTEFP. The proposed amendments add Specific Instructions, data fields and certifications to allow school districts and LEAs with CTEFP projects to request the HP BIG, or remove the HP BIG request, and to state the number of DSA-approved high performance points. The proposed amendments add new Specific Instruction #14 and new data field #14 for HPI Grant requesters to enter the number of DSA-approved HPI points. Specific Instruction #15 “Certification” is added to advise that the submitter’s representative must complete this section of the Form. Three new certifications are added which must be acknowledged and signed by the district or LEA representative:

- that HP BIG additional grants shall be rescinded if the DSA review of plans and specifications does not confirm the necessary points to qualify under Section 1859.71.6 or 1859.77.4;
- that the district/LEA has considered the feasibility of using designs and materials for its projects that promote the efficient use of high performance, recycled, low toxin, and acoustics conducive components; and
- that if the district/LEA is requesting the HP BIG, the school governing board must have a resolution on file that demonstrates support for the HP BIG and the intent to incorporate high performance components in future projects.

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, school districts, or LEAs to incur additional costs in order to comply with the proposed regulations.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION/RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The Executive Officer of the SAB has made the following initial determinations 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 proposed regulatory amendments will have a minimal 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. Specifically, the proposed amendments would incentivize more school construction projects to add “high performance” components, thereby creating or maintaining “green technology” jobs in the State economy, relating to saving energy, water, materials, and sustainable sites.
- 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.
- The proposed regulations do not require a report to be submitted other than as required by law. However, CTEFP projects applying for the HP BIG must comply with the existing SFP Regulation requirements for document reviews by the DSA and CDE.
- There will be no non-discretionary costs or savings to local agencies.
- The proposed regulations create no costs to school districts and LEAs beyond those required by law, except for the required district/LEA contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- The proposed regulations create no costs or savings to any State agency beyond those required by law.
- The SAB has made an initial determination that there will be no impact on housing costs.
- The proposed regulatory action promotes fairness and social equity by carrying out the intent of SB 128 that CTEFP projects be eligible for HP BIGs so that school districts/LEAs can apply for 50 percent State funding for constructing new facilities, or reconfiguring existing facilities needed for high school pupils to learn the skills and knowledge for technical careers.
- There are benefits to the health and welfare of California residents, and to the State’s environment. Implementing these amendments will enhance public health and safety by incentivizing CTEFP projects to add “high performance” designs and materials to school construction projects, thereby improving energy and water efficiency, indoor environmental quality, natural lighting, low toxin materials, and improved acoustics for pupils, staff and others at participating school sites. There are no benefits to worker safety based on the proposed regulatory amendments.

The SAB finds that the proposed amendments are reasonably necessary to implement SB 128 to allow school districts/LEAs with eligible CTEFP projects to apply for 50 percent State funding for constructing new facilities, or reconfiguring existing facilities needed for high school pupils to learn the skills and knowledge for “the high-demand technical careers of today and tomorrow” [Education Code Sections 17078.72(a) and 101012(a)(4)].

The SAB finds the proposed regulations fully consistent with the stated purposes and benefits of SB 128 as set forth in the Bill’s Legislative Declaration. The SB 128 Legislative Declaration states its intent to help apply the \$100 million set aside in the Kindergarten-University Public Education Facilities

Bond Act of 2006 (Proposition 1D) “to promote the use of designs and materials in new construction and modernization projects that include the attributes of high-performance schools.”

SB 128 expands the allowable purposes for expenditure of modernization apportionments by adding Education Code Section 17074.25(b) that “A modernization apportionment may also be used for the cost of designs and materials that promote the efficient use of energy and water, the maximum use of natural lighting and indoor air quality, the use of recycled materials and materials that emit a minimum of toxic substances, the use of acoustics conducive to teaching and learning, and other characteristics of high-performance schools.”

Further, SB 128 amends Education Code Section 17078.72, which establishes the Career Technical Education Facilities Program (CTEFP), by adding new subsection (l) that permits CTEFP projects to apply for and receive high performance additional grant amounts regardless of exceeding the existing CTEFP maximum grant amounts per project per schoolsite, as set forth in Section 17078.72(e) and (f).

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 and LEAs 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 September 17, 2012, 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

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 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," click on "Laws and Regulations," then click on "SFP Pending Regulatory Changes."

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention 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 regulations coordinator named in this notice or may be accessed on the Web site listed above.