

September 7, 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 SECTIONS 1859.2 AND 1859.90.2, 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:

Fund Release Authorization, Form SAB 50-05, (Revised 12/14 06/12), 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 Section 17070.35 of the Education Code. The proposal interprets and makes specific reference Sections 17072.12, 17072.30, 17074.16, 17076.10, 17077.40, 17077.42 and 17077.45 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 meeting on June 27, 2012, approved amendments to the SFP Regulations to improve the efficiency of the priority funding process by adjusting the priority funding filing periods and extending the length of time that priority funding requests remain valid. The

proposed changes will allow sufficient review and processing time in advance of SAB meetings to approve State bond apportionments, and extend the validity of participation requests so that additional SAB meetings each year could take funding action upon the requests before they expire.

The starting dates for the 30-calendar day filing period to request participation in the Priority Funding Process will change for 2013 and subsequent years as follows:

<u>Current Regulations</u>	<u>Amended Regulations</u>
January 11, 2012	No change
July 11, 2012	No change
January 9, 2013	No change
2nd Wed. of July each year . . .	2nd Wed. of July <u>May</u> each year
2nd Wed. of Jan. each year . . .	2nd Wed. of Jan. <u>Nov.</u> each year

In addition, requests to participate in the Priority Funding Process will no longer become invalid at the start of the next 30-calendar day filing period. Starting in May 2013, requests to participate in the priority funding period will be valid from July 1 until December 31 of that year, and requests to participate in the November filing period will be valid from January 1 until June 30 in the following year. Further, the date adjustment to the priority funding filing periods (May and November) coincides with the timing of bond sales by the State Treasurer's Office and therefore leads to the successful synchronization of the agencies involved in this process.

Background. The priority funding process re-prioritizes SFP apportionments for school construction projects that are "construction-ready," meaning capable of submitting their fund release requests within a short time (90 days) following approval by the SAB. Applicants must certify that their projects are construction-ready prior to receiving State bond funds. The purpose is to provide available State bond funds from bond sales and other available funding sources to the construction projects that can most readily commence construction, thereby helping to create jobs and stimulate the economy.

There have been four Priority Funding rounds to date:

1. The first Priority Funding Round was established by the SAB through emergency regulations at its May 26, 2010 meeting, and allowed the SAB to fund **\$408.14 million** of "construction-ready" school construction projects at its August 4, 2010 meeting. The SAB then adopted emergency regulations establishing future priority funding rounds, each to commence with a 30-calendar day application filing period. All school districts and charter schools with approved projects on the Unfunded List had the opportunity to apply each time the SAB established a 30-calendar day application filing period.
2. For the second Priority Funding Round, the SAB approved 488 project apportionments from December 2010 through February 2011. All but one participant requested and/or received their project funding, for a success rate of 99.92 percent and total release of **\$1.630 billion**.
3. The third Priority Funding Round followed the State Treasurer's Office successful sale of General Obligation Bonds on October 19, 2011, providing nearly \$1 billion of bond funding for the SFP. In turn, the SAB approved **\$923.8 million** of apportionments to 154 school districts for 377 "shovel-ready" construction projects.
4. The most recent Priority Funding Round approved by the SAB, at its meeting on June 27, 2012, totaled **\$637.6 million** for construction-ready projects - - 61 new construction projects, 97 modernization projects, and 40 projects from additional programs.

The efficiencies of the proposed regulatory amendments will help the Office of Public School Construction (OPSC), on behalf of the SAB, to continue to comply with the Department of Finance (DOF) Budget Letter #10-09, which stipulates that cash need estimates will be submitted to the DOF and the State Treasurer's Office twice a year prior to each spring and fall bond sale period. The Budget Letter also stipulates that State bond funds previously received should be expended prior to the sale of additional bonds. This means that the OPSC must effectively and efficiently manage available bond proceeds by expediting SAB apportionment approvals.

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 50-05, *Fund Release Authorization*, to reflect a revision date of "06/12."

Existing Regulation Section 1859.90.2 is described in the following five paragraphs:

1. It authorizes the SAB to establish 30-calendar day application filing periods for school districts and charter schools to apply for apportionments of available State school bond funds. Projects under the Charter School Facilities Program (CSFP) may apply for advance release of design funds from a Preliminary Charter School Apportionment. Projects under the Critically Overcrowded School (COS) Facilities Program may apply for advance release of environmental hardship site acquisition funds.

2. School districts and charter schools must submit the Form SAB 50-05, "Fund Release Authorization," with an original signature, within 90 calendar days of the Board's approval of the apportionment; failure to make this submittal and have it physically received by the OPSC within 90 calendar days will result in rescission of the project without further Board action. School districts/charter schools wishing to participate must provide a written statement signed by the authorized district representative within the 30-calendar day filing period that contains all of the following:

- Request to convert the unfunded approval to an apportionment;
- Concurrence with the 90-calendar day time limit on fund release;
- Acknowledgement that failure to submit a valid Form SAB 50-05, with an original signature, to be physically received by the OPSC within the 90-calendar day time limit will result in the rescission of the apportionment without further Board action; and
- Acknowledgement that by participating in the priority funding round, the school district/charter school is waiving its right to a standard 18-month timeline for fund release submittal.

3. Projects under the CSFP may apply for advance release of site acquisition funds from a Preliminary Charter School Apportionment, subject to a timeline of 180 calendar days, for school districts/charter schools to file their request for fund release, Form SAB 50-05, with the specific requirements to provide a written statement signed by an authorized representative within the 30-calendar day filing period that contains all of the following:

- Requests to convert the advance release of funds to an approved advance release of funds,
- Concurs with the 180-calendar day timeline to submit the fund release request,

- Acknowledges the participant's requirement to submit a valid, signed Form SAB 50-05 to be physically received by the OPSC within the 180-calendar day time limit, and failure to do so will result in the rescission of the approved advance release of funds request without further Board action, and
- Acknowledges that the participant must provide evidence of entering into the Charter School Agreements within 90 calendar days of the approval of the advance release of funds request, and failure to do so will result in the rescission of the approval without further Board action.

4. All requests to participate in the priority funding process must be physically received by the OPSC by the 30th calendar day to be valid. All submittals of fund release requests, Form SAB 50-05, must be physically received by the OPSC within the applicable 90 or 180-calendar day time periods.

5. For the purposes of this section, the word "rescinded" or "rescission" means that the apportionment or approved advance release of funds request returns to unfunded approval status with a new unfunded approval date. The new unfunded approval date will be 90 calendar days after the apportionment date. The school district/charter school will not be required to re-submit the application and no further application review will be required.

The proposed regulatory amendments to Section 1859.90.2 are described in the following nine paragraphs:

1. Requests to participate submitted during 30-calendar day filing periods are called "Requests" and no longer called "Certifications."
2. Starting in May 2013 and annually thereafter, 30-calendar day filing periods will begin on the second Wednesday of May and November and no longer on the second Wednesday of January and July.
3. For the 30-calendar day filing period beginning on January 9, 2013, requests to participate in the priority funding process will be valid until June 30, 2013.
4. For the 30-calendar day filing period commencing on the second Wednesday of May 2013 and all filing periods thereafter, requests to participate in the priority funding process will no longer become invalid at the start of the next 30-calendar day filing period; instead, requests submitted in the May filing period will be valid from July 1 until December 31 of that year, and requests submitted in the November filing period will be valid from January 1 until June 30 of the following year.
5. Words are inserted clarifying that school districts or charter schools request funding and meet time limits pursuant to existing subsections (a) or (b), as applicable.
6. Clarification is added that the existing criteria listed under subsections (a) and (b), respectively, are the required contents of a priority funding request.
7. Two criteria under subsection (a) describing the 90-calendar day time limit on fund release are merged into one criterion, with additional clarifying words.
8. Two criteria under subsection (b) describing the 180-calendar day time limit on fund release are merged into one criterion, with additional clarifying words.

9. Clarification is added that submitted Forms SAB 50-05 must be “valid” as well as bearing original signatures.

Existing Form SAB 50-05, *Fund Release Authorization*, is the Form submitted by school districts and charter schools requesting the State to release their approved funding, provided the project is at least 50 percent under contract and the school district has met other specific criteria. The proposed amendments change “Section 1859.90.1” to “Section 1859.90.3” in one of the Certifications (page 3, sixth bullet) because previously adopted regulatory actions have added new Sections 1859.90.1 and 1859.90.2, causing the referenced Section to be renumbered as “1859.90.3.”

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 charter schools 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 facilitate in expediting the apportionment of school bond funding for construction-ready projects on a more continuous basis, thereby creating or maintaining construction-related jobs that assist in the recovery of the State’s economy.
- 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, projects participating in the Priority Funding Process must comply with the existing SFP Regulation requirements for document reviews and submittals.
- There will be no non-discretionary costs or savings to local agencies.
- The proposed regulations create no costs to school districts and charter schools beyond those required by law, except for the required school district/charter school 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 to the SAB-administered programs by providing available funding on a more accessible, continuous basis for those projects participating in priority funding rounds.

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 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 October 22, 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," 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 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.