

INITIAL STATEMENT OF REASONS

Section 1859.2. Definitions.

Specific Purpose of the Regulation

To provide the meaning of specific words and terms that are essential to these regulations.

Need for the Regulation

It was necessary to change the revision date of Form SAB 50-04 to "09/12" for the purpose of continuity of the School Facility Program (SFP) Regulations and so that applicants can properly identify and file the most current State Allocation Board (SAB) Forms.

It was necessary to add the following three definitions for the following reasons:

- "Applications Received Beyond Bond Authority List" means an informational list of applications submitted to the Office of Public School Construction (OPSC) and presented to the Board. Funding applications placed on this list contain the preliminary grant amounts requested by a district. The OPSC has not determined that the Approved Application(s) are Ready for Apportionment.

It was necessary to define the "Applications Received Beyond Bond Authority List" for the purpose of accepting and tracking SFP eligibility and funding applications once bond authority is no longer available. The SAB's purpose is that when school bond authority is no longer available, it will begin using this new List and stop using the existing "Unfunded List." Instead of fully processing applications and presenting them to the SAB for approval, the OPSC will only keep a listing of requested funding which will be acknowledged by the SAB. The SAB found this change to be necessary because it cannot fund SFP applications after there is Insufficient Bond Authority.

- "Bond Authority" means the authority of the Board to Apportion bond funds pursuant to Education Code Section 17070.40.

Bond Authority is the SAB's authority to formally approve and make apportionments for new construction and modernization projects, pursuant to Education Code Section 17070.40. It was necessary to define "Bond Authority" because the SAB finds itself engaging in two different scenarios with respect to SFP funding applications: 1) applications for which there is sufficient bond authority to provide State funding; and 2) applications that are being accepted by the OPSC but there is insufficient bond authority to fund.

- "Insufficient Bond Authority" means the total funding requested on the Approved Application received by the OPSC exceeds the Bond Authority.

Insufficient Bond Authority means that the authority pursuant to Education Code Section 17070.40 has been exhausted. It was necessary to define "Insufficient Bond Authority" for the purpose of clarifying that SFP projects cannot have commitments of school bond funding after there is Insufficient Bond Authority.

It was necessary to amend the definition of "Approved Application(s)" by deleting the Form titles and revision dates as redundant because they are already listed further down in this Section in the definition of each individual Form. In addition, it was necessary to delete an obsolete

reference to the statement that “the OPSC has completed and accepted a preliminary approval review pursuant to Education Code Section 17072.25(a)” because this section applies to State bond funding approved by the voters prior to January 1, 2002. Such funds were apportioned and are no longer at issue. These are non-substantive changes for improved readability.

Section 1859.95. Acceptance of Applications When Funding is Unavailable.

Specific Purpose of the Regulation

To add a new first sentence setting forth that this Section will no longer apply to Approved Applications submitted to the OPSC after the effective date of newly adopted Regulation Section 1859.95.1.

Need for the Regulation

It was necessary to add the following as the first sentence in the Section:

“This Section shall not apply to Approved Applications submitted to the OPSC on or after the effective date of Section 1859.95.1.”

in order to notify applicants that the existing process for handling SFP applications when there is insufficient school bond authority will be superseded by the proposed new process.

Section 1859.95.1. Applications Received When Bond Authority is Unavailable.

Specific Purpose of the Regulation

To state the Programs to which this Section does not apply.

To adopt a new process for accepting and tracking SFP eligibility and funding applications after there is insufficient school bond authority, including the use of a new “Applications Received Beyond Bond Authority List.”

To add Education Code Section 17070.35 as the authority citation, and Education Code Sections 17070.35, 17070.40, 17072.20 and 17073.10 as the reference citations.

Need for the Regulation

Introductory Paragraph: It was necessary to state that this Section will not apply to Approved Applications for:

- Joint-Use funding,
- Career Technical Education Facilities Program project funding,
- Form SAB 50-04 submitted for Critically Overcrowded School Facilities funding,
- Charter School Facilities Program funding, and
- Overcrowding Relief Grant Program.

because the intent of the regulations is to only accept and track SFP New Construction and Modernization applications for placement on the “Applications Received Beyond Bond Authority List.”

Subsection (a)(1): It was necessary to describe that in the new process the OPSC will only be determining that submitted applications have all required documents (Approved Applications), for purposes of receiving acknowledgement by the SAB.

Subsection (a)(2): It was necessary to communicate that once there is Insufficient Bond Authority, school districts will not have to submit all of the documentation accompanying the financial hardship requests until bond authority becomes available. (Current regulations require the financial hardship status be approved prior to submitting funding applications.)

Subsection (b): It was necessary to state the requirement for submittal of a resolution from the governing board of a school district when submitting their SFP application, and to state the five required components of the resolution, or six if applying for financial hardship status. The school board resolution was required in order to assure the SAB that the appropriate school district officials do acknowledge that there can be no reliance upon State bond funding for their construction projects when there is Insufficient Bond Authority.

Subsections (b)(1) through (b)(5): It was necessary to address the following components of the school board resolution in order to prevent expectations of bond funding as well as to avoid potential State liability or responsibility for SFP applications for which there is Insufficient Bond Authority:

- (b)(1) the remaining SFP bond authority has been exhausted for funds requested on the district's application,
- (b)(2) the State is not expected nor obligated to fund the project, and there is no guarantee of State funding,
- (b)(3) any potential future State bond may not provide funds for the district's application,
- (b)(4) the criteria, including but not limited to funding, qualifications, and eligibility in a future State bond may be substantially different from the SFP. The district's Approved Application may be returned to the district,
- (b)(5) the school board elects to commence pre-construction or construction activities at its own discretion and the State is not responsible for those activities.

Subsection (b)(6): It was necessary to state the sixth component required in the school board resolution only if the school district was requesting financial hardship status. If the school district submitted a financial hardship request, the OPSC will perform a financial hardship review for those requests that meet the financial hardship criteria only if bond authority becomes available.

Subsection (c): It was necessary to clarify that the OPSC will continue to receive and process Forms SAB 50-01, 50-02, and 50-03 but only to determine whether all the required supporting documents have been submitted in order to receive SAB acknowledgement. The OPSC will not recommend apportionments. It was further necessary to state that this Section will not constitute notification from the SAB pursuant to Government Code Section 65995.5(b)(1) because Level III developer fees have been suspended through December 2014 and bond authority continues to remain for other SFP programs (i.e., Joint-Use, Career Technical Education Facilities, Charter School Facilities, and Overcrowding Relief Grant). Once the Level III developer fees have sunset, the SAB will make the proper notification due to the exhaustion of all bond funds.

SCHOOL FACILITY PROGRAM FORM

Application for Funding, Form SAB 50-04 (Revised 09/12).

Specific Purpose of the Form

To provide General Information, Specific Instructions, data fields, and certifications for applicants to submit SFP applications after there is Insufficient Bond Authority.

Need for the Form

Heading on All Pages: It was necessary to change the revision date of Form SAB 50-04 to “09/12” for the purpose of continuity in the SFP Regulations and so that applicants can file the most current SAB Form.

Page 1, General Information, Column 1, New First Paragraph: It was necessary to inform applicants of the requirements of new Regulation Section 1859.95.1 so there is acknowledgement from the school districts’ governing board that there is not sufficient bond authority for the funds being requested.

Page 2, General Information, Column 1, First Paragraph: It was necessary to change a comma to a colon at the end of “Prior to acceptance of an application for funding that includes a financial hardship request” for the purpose of improved punctuation. This is a non-substantive grammatical change.

Page 2, General Information, Column 1, First Paragraph, Bullet #1: It was necessary to clarify that financial hardship applications are “submitted pursuant to Section 1859.81” when bond authority is available. It was also necessary to delete “Office of Public School Construction” because the remaining acronym “OPSC” is used consistently throughout the SFP Regulations. This is a non-substantive change for improved readability of this SAB Form.

Page 2, General Information, Column 1, First Paragraph, Bullet #2: It was necessary to inform school districts of this requirement that when there is Insufficient Bond Authority, applicants for financial hardship status must submit a school board resolution meeting the requirements outlined in Regulation Section 1859.95.1(b). This is necessary to ensure that the appropriate school district officials acknowledge that 1) there can be no reliance upon State bond funding for their construction projects after there is Insufficient Bond Authority, and 2) if the school district intends to apply for financial hardship status, it must apply if bond authority becomes available for the SAB to fund the district’s request. This is to avoid spending time and documentation on financial hardship applications when there are insufficient bond funds.

Page 3, Specific Instructions, Column 1, #4, Financial Hardship Request: It was necessary to create an alternative process for school districts to request financial hardship funding when Insufficient Bond Authority exists, pursuant to Regulation Section 1859.95.1(b). This allows school districts to submit applications with no pre-approval, and ensures that the appropriate school district officials acknowledge that 1) there can be no reliance upon State bond funding for their construction projects after there is Insufficient Bond Authority, and 2) if the school district intends to apply for financial hardship status, it must apply if bond authority becomes available for the SAB to fund the district’s request. This is to avoid spending time and documentation on financial hardship applications when there are insufficient bond funds.

Page 6, Column 2, Section 4, First and Second Boxes: It was necessary to provide the first data field for applicants to check if requesting financial hardship when there is sufficient bond authority. For example, school districts requesting financial hardship funding under the Seismic Mitigation Program would need to check this data field and include the pre-approval letter because bond authority remains available for those types of projects. It was necessary to provide the second data field for applicants to check if requesting financial hardship when there is Insufficient Bond Authority, pursuant to Regulation Section 1859.95.1(b).

Page 10, Column 1, Certifications, Bullet #1: It was necessary to add a comma after the word “and” for purposes of consistency throughout the certifications on this SAB Form. This is a non-substantive grammatical change.

Page 10, Column 1, Certifications, Bullet #5: It was necessary to change a period and comma to “;” and add a comma at the end of this certification for purposes of consistency throughout the certifications on this SAB Form. This is a non-substantive grammatical change.

Page 10, Column 1, Certifications, Bullet #6: It was necessary to change a period to a “;” and add a comma at the end of this certification for purposes of consistency throughout the certifications on this SAB Form. This is a non-substantive grammatical change.

Page 10, Column 1, Certifications, Bullet #7: It was necessary to change a period to “;” and add the word “and,” at the end of this certification for purpose of consistency throughout the certifications on this SAB Form. This is a non-substantive grammatical change.

Page 10, Column 1, Certifications, New Bullet #8: It was necessary to add a new certification for the district representative to sign and acknowledge that if the application is submitted when there is Insufficient Bond Authority the district has adopted a school board resolution, pursuant to Regulation Section 1859.95.1. This certification ensures compliance with Regulation Section 1859.95.1.

Page 10, Column 1, Certifications, New Bullet #9: It was necessary to add this certification for the district representative to sign and acknowledge that the district will comply with all laws pertaining to the construction or modernization of its school building, because this particular certification was erroneously removed from this Form while updating Office of Administrative Law-approved regulatory changes. This particular certification had been a standard certification since the inception of the SFP and it continues to be a necessary certification.

Page 10, Bottom of Page, Data Fields: Two concluding data fields are added for the district representative’s name to be printed, and for the district representative’s phone number. These data fields are for the purpose of improved communication between the OPSC and the school district so questions can be addressed quickly and to ensure that the most current information is on file with the OPSC.

Technical Documents Relied Upon

The State Allocation Board’s Action item, dated September 19, 2012, entitled “Accepting School Facility Program Applications Once Bond Authority has Been Exhausted.”

The Economic Impact Assessment prepared pursuant to Government Code Section 11346.3(b).

Alternatives to the Proposed Regulatory Action that would be as Effective and Less Burdensome to Private Persons

The SAB finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Alternatives to the Proposed Regulatory Action that would Lessen any Adverse Economic Impact on Small Business

The SAB has determined that the proposed regulations do not affect small businesses.

Finding of Significant Adverse Economic Impact on Businesses

The SAB has determined that the adoption of the regulations will not affect businesses, including small businesses, because they are not required to comply with or enforce the regulations, nor will they benefit from or be disadvantaged by the regulations.

Impact on Local Agencies or School Districts

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. They will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulations.