

October 19, 2012

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 September 19, 2012. These emergency amendments to the School Facility Program (SFP) Regulations will establish an "Applications Received Beyond Bond Authority List" for the purpose of accepting and tracking SFP project eligibility and funding applications once school bond authority has been exhausted. This is a list that will be formally acknowledged by the SAB and not a commitment of State funds. Applications submitted when there is "Insufficient Bond Authority" must include a school board resolution acknowledging that bond authority is insufficient, that there is no guarantee of State funding, and that any future bond may have different eligibility and funding requirements.

Under the proposed emergency regulations, the existing process for accepting SFP applications after bond authority has been exhausted (Regulation Section 1859.95) would be superseded by the process to be adopted in Regulation Section 1859.95.1, and no projects would be added to the existing "Unfunded List" but instead they would be added to the new "Applications Received Beyond Bond Authority List."

Attached to this Notice is the specific regulatory language of the proposed emergency action, proposed amendments to Form SAB 50-04, and the Finding of Emergency. You may also review the proposed regulatory language, the Form, and Finding of Emergency on the Office of Public School Construction (OPSC) Web site at www.dgs.ca.gov/opsc. Copies of the amended regulatory text and form will be mailed to any person requesting this information by using the OPSC contact information set forth below. 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 October 2012. 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. The SFP has been funded by the following school bonds:

1. Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998 (Proposition 1A)
2. Kindergarten-University Public Education Facilities Bond Act of 2002 (Proposition 47)
3. Kindergarten-University Public Education Facilities Bond Act of 2004 (Proposition 55)
4. Kindergarten-University Public Education Facilities Bond Act of 2006 (Proposition 1D)

The school bond authority for the SFP is at the point of being exhausted.

The SAB, at its September 19, 2012 meeting, adopted emergency regulatory amendments to the SFP Regulations to establish an “Applications Received Beyond Bond Authority List” for the purpose of accepting and tracking SFP project eligibility and funding applications once school bond authority has been exhausted. The proposed emergency amendments would add definitions of “Applications Received Beyond Bond Authority List,” “Bond Authority,” and “Insufficient Bond Authority” in order to implement a different process for accepting SFP applications after bond authority becomes insufficient.

The proposed adoption of Regulation Section 1859.95.1 would establish a different process for the OPSC to accept SFP eligibility and funding applications when bond authority has been exhausted, without fully processing them, without presenting them to the SAB for approval, and without placing them on the “Unfunded List” currently described in the Regulations.

The OPSC would review application packages to ensure that all required documents are submitted, which would be identified as “Approved Applications.” Approved Applications would be presented to the SAB for formal acknowledgment but not approval, and placed on the “Applications Received Beyond Bond Authority List” in the order of date received, and with the preliminary grant amounts requested by the district.

Financial Hardship Requests. Once there is Insufficient Bond Authority, the OPSC will not process requests for Financial Hardship status. School districts will not have to pre-apply for financial hardship status before submitting the Form SAB 50-04, *Application for Funding*. The financial hardship determinations will only be made if sufficient bond authority becomes available to process the Form SAB 50-04.

The proposed adoption of Regulation Section 1859.95.1 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.

A summary of the proposed emergency regulatory amendments, adoption of a new section, and amendments to 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 emergency amendments add the following three definitions:

- “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.

- “Bond Authority” means the authority of the Board to Apportion bond funds pursuant to Education Code Section 17070.40.
- “Insufficient Bond Authority” means the total funding requested on the Approved Application received by the OPSC exceeds the Bond Authority.

In addition, the definition of “Approved Application(s)” is amended by deleting redundancies in a listing of SAB forms, and by deleting an obsolete reference to OPSC reviews pursuant to Education Code Section 17072.25(a). The reference is obsolete because this Education Code Section applies to ranking funding applications to be funded with proceeds of State bonds approved by the voters prior to January 1, 2002. Such funds are no longer being apportioned. Finally, in the definition of Form SAB 50-04, *Application for Funding*, the proposed amendments change the revision date of the Form to “09/12.”

Existing Regulation Section 1859.95 sets forth a process for accepting SFP funding applications when the SAB has no funds to apportion, which includes processing both eligibility and funding applications, presenting them to the SAB for approval, and placing them on the “Unfunded List” to await additional bond authority becoming available. The proposed emergency amendments 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.”

Proposed adoption of Regulation Section 1895.95.1 would establish a new process for handling SFP applications received when bond authority has been exhausted, which would supersede the process set forth in Regulation Section 1859.95 upon the effective date of this new Section 1859.95.1. Under this new process, the OPSC will not:

- process the applications,
- present the applications to the SAB for approval, nor
- place approved projects on the existing “Unfunded List.”

Under proposed Regulation Section 1859.95.1, when bond authority has been exhausted, the OPSC would accept eligibility and funding application packages to be reviewed to ensure that all required documents are submitted. Application packages that include all required documentation would be identified as “Approved Applications.” An Approved Application would be required to include a school board resolution acknowledging that:

- the remaining SFP bond authority is exhausted for funds requested on the district’s application,
- the State is not expected nor obligated to fund the project, and there is no guarantee of future State funding,
- any potential future State bond may not provide funds for the district’s application,
- 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,
- the school board elects to commence pre-construction or construction activities at its own discretion and the State is not responsible for those activities, and
- if the school district intends to apply for financial hardship status, it must submit the application if bond authority becomes available for the SAB to fund the district’s submitted application.

“Approved Applications” would be placed on the “Applications Received Beyond Bond

Authority List” in the order of date received, and with the preliminary grant amounts requested by the district. This list would be presented to the SAB for formal acknowledgement, but not approval.

In addition, proposed Regulation Section 1859.95.1 states that it will not constitute notification from the SAB pursuant to Government Code (GC) Section 65995.5(b)(1). In other words, the proposed new process for handling SFP applications after bond authority has been exhausted does not constitute notification from the SAB regarding a district’s eligibility application under that GC Section nor regarding a district’s decision to impose developer fees thereunder.

Finally, the proposed Regulation Section 1859.95.1 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.

Existing Form SAB 50-04, *Application for Funding*, is submitted by school districts to apply for State funding for new construction or modernization projects. The proposed emergency amendments provide for the following:

- Applicants, including applicants for financial hardship status, are advised that if there is Insufficient Bond Authority, the school district must submit a school board resolution meeting the requirements of Regulation Section 1859.95.1.
- Financial hardship applicants must check a box for either submitting with a “pre-approval” letter, or for submitting with a school board resolution pursuant to Regulation Section 1859.95.1 (Insufficient Bond Authority).
- A “Certification” is added to which the district representative must sign, 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.
- A “Certification” is added to which the district representative must sign, that the district will comply with all laws pertaining to the construction or modernization of its school building.
- Two concluding data fields are added for the district representative’s name to be printed, and for the district representative’s phone number.
- Non-substantive grammatical and punctuation corrections are made.

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 “School Facility Program Applications When Bond Authority is Insufficient,” 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 Emergency 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.