

December 7, 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
REGULATION SECTIONS 1859.2 AND 1859.95, ALONG WITH ONE
ASSOCIATED FORM, AND TO ADOPT REGULATION SECTION 1859.95.1,
TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO
LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

FORM PROPOSED FOR AMENDMENT:

*Application for Funding, Form SAB 50-04, (Revised ~~06/12~~ 09/12), referenced in Regulation
Section 1859.2*

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend and adopt the above-referenced Regulation Sections, and to amend the above-referenced 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 17070.35, 17070.40, 17071.75, 17072.20 and 17073.10 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 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 there is insufficient bond authority, 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, including one associated form, and adoption of one new Regulation Section, 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 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 there is Insufficient Bond Authority, which would supersede the process set forth in Regulation Section 1859.95 upon the effective date of this new Section 1895.95.1. 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 there is Insufficient Bond Authority, 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 become insufficient 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.

The new process in the proposed emergency regulations prevents any expectations or reliance by school districts upon future State bond funding for SFP project applications submitted after there is insufficient bond authority. Potential risks of litigation against the State will be eliminated because such project applications must be accompanied by a written school board resolution clarifying that the State bears no responsibility or liability for project eligibility and funding applications submitted after there is insufficient bond authority. This will avoid misinterpretations of the existing process in the SFP Regulations to argue that the State bears an ongoing responsibility or liability for these projects.

As of October 16, 2012, the OPSC received applications exceeding the available new construction bond authority by approximately \$102.6 million and applications exceeding the available modernization bond authority by approximately \$161.7 million. SFP funding applications (new construction and modernization combined) are now continuing to be submitted and increasing the State’s risk of liability by a daily average of \$2.1 million per day.

Since 1998, school districts facing the exhaustion of a preceding bond’s authority have waited on an unfunded list for the passage of the next school bond, and have either been “grandfathered” into program funding (Proposition 1A provided \$1.35 billion for growth projects and \$800 million for reconstruction or modernization projects), or been apportioned because a succeeding school bond was passed and approved by the voters which funded the projects on the unfunded list. However, the State’s current financial circumstances cannot justify any reliance upon such a future school bond. It has been six years since the last school bond, and it is uncertain whether the State’s financial circumstances can support a future school bond.

The State cannot risk financial responsibility for a growing “Unfunded List” of expectant school construction projects beyond the authority of the existing school bonds.

Financial Hardship Reviews Not Performed if Insufficient Bond Authority.

Under the proposed emergency regulations, once there is Insufficient Bond Authority, the OPSC would not process requests for Financial Hardship status. The existing SFP Regulations provide for the State to bear up to 100 percent of the local school district's share of project costs if the district undergoes the process of proving that it cannot pay its local share obligation. There are costs associated to both the State and the school district in applying for Financial Hardship. The Financial Hardship review process must continue under the existing Regulations. This process will expend considerable school district time and OPSC review time that is not necessary when there is Insufficient Bond Authority. School districts' financial status may change considerably in the years ahead before another potential school bond. Under the proposed emergency regulations, school districts would not have to pre-apply for financial hardship status before submitting the Form SAB 50-04, *Application for Funding*. The financial hardship determinations would only be made if sufficient bond authority became available to process the Form SAB 50-04.

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

Due to the large volume of Form SAB 50-04, this Form is not attached and may be reviewed on the Office of Public School Construction Web site at:

http://www.documents.dgs.ca.gov/opsc/Regulations/SFP_Proposed/12-2011/LCP_Amend.pdf.

Copies of the amended regulatory text and forms will be mailed to any person requesting this information by using the OPSC contact information set forth below under "Submission of Comments, Documents and Additional Information" (pages 6-7).

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed emergency 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 school districts 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.
- 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.
- There will be no non-discretionary costs or savings to local agencies.
- The proposed regulations create no costs to school districts beyond those required by law. School bonds in support of the SFP are at the point of Insufficient Bond Authority. It is the depletion of school bond funds and not these proposed regulations that will cause school districts to lose the SFP as a source for project funding. The proposed emergency regulations clarify that the State will bear no financial liability or responsibility for district projects after there is insufficient bond authority.
- 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 protecting the State (and hence all California taxpayers) from potential risk of liability for SFP funding applications submitted after there is Insufficient Bond Authority.
- There are no benefits to the health and welfare of California residents, worker safety, and the State's environment from the proposed emergency regulations.

The SAB finds that the proposed emergency amendments are reasonably necessary to prevent expectations or reliance by school districts upon future State bond funding for SFP project applications submitted after there is insufficient bond authority. Potential risks of liability against the State will be eliminated because such project applications must be accompanied by a written school board resolution clarifying that the State bears no responsibility or liability for project eligibility and funding applications submitted after there is insufficient bond authority. This will avoid misinterpretations of the existing process in the SFP Regulations to argue that the State bears an ongoing responsibility or liability for these projects.

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 for purposes of processing applications for SFP eligibility and funding for 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 January 21, 2013, 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 SAB 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.