

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 1859.77.3, TITLE 2,
CALIFORNIA CODE OF REGULATIONS, RELATING TO
LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend Regulation Sections 1859.2 and 1859.77.3 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 and 17072.13 of the Education Code. The proposal interprets and makes specific reference Sections 17072.13 and 17072.35 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 September 19, 2012, adopted proposed amendments to the SFP Regulations to allow qualifying school districts to use their eligibility for school bond funding for construction of Multipurpose Room (MPR)/Gymnasium Hybrid facilities. The existing SFP Regulations allow "Use of Grants" funding for multipurpose rooms or gymnasiums as separate facilities; however, the Regulations did not anticipate situations where some school districts could choose to include hybrid facilities within the same building structure and share a portion of the square footage.

An example is a K-8 school with an MPR but no gymnasium. Instead of funding a separate 7,000 square foot gymnasium, the proposed regulations will allow the school district to devote

3,000 square feet from its existing MPR toward the gymnasium function, and apply for SFP funding for only an additional 4,000 square feet of gymnasium space. The school district can save in total project costs, and allow the State to save bond costs for its 50 percent State matching share.

The proposed amendments apply to the “Use of Grants” (UOG) regulations by which school districts, under Regulation Section 1859.77.3, apply for funding for ancillary facilities including only:

- MPR
- Gymnasium (for High Schools and Middle Schools only)
- Library/Media Center
- Counseling and/or Conference Rooms (Alternative Education only)

Use of Grants. Under the SFP, a school district’s eligibility for new construction State funding is determined by a formula that projects the number of unhoused pupils and assigns available new construction pupil grants. These grants are used to construct new classrooms and other buildings necessary to house and facilitate projected new students or to relieve classroom overcrowding.

However, existing SFP Regulation Section 1859.77.3 allows school districts meeting specific requirements to use these new construction pupil grants to construct an MPR, gymnasium, library (minimum essential facilities), counseling offices and/or conference rooms rather than using them to fund new classrooms. These facilities will not be funded if “adequate” size facilities already serve the school. “Adequate” square footage is calculated using the charts in SFP Regulation Section 1859.77.3 for Alternative Education projects, and Regulation Section 1859.82 for all other projects.

The existing SFP Regulations provide criteria to determine what types of facilities may be funded for schools serving elementary, middle, or high school students, and a formula to determine whether the square footage of an existing facility exceeds the threshold to qualify for State funding under the UOG option. The formula also identifies the maximum number of new construction grants that may be used to fund construction of these ancillary facilities instead of classrooms.

The proposed regulatory amendments provide square footage amounts for MPR/Gymnasium Hybrids for school sites with high school pupils and/or middle school pupils. K-6 sites are not eligible for a separate gym, so this option would not impact elementary schools. However, it could occur at middle schools, high schools, or schools that combine grade levels, such as K-8.

The proposed minimum and maximum square footage amounts were calculated based on the number of pupils that would be required to meet the minimum and maximum square footage amounts under current SFP regulations. This method was used to calculate the proposed minimum and maximum square feet for both middle school and high school hybrids, and is consistent with current regulations. The proposed \$154 per-square-foot funding amount for MPR/Gymnasium Hybrids reflects the current per-square-foot funding amount in Regulation Section 1859.82(b) for MPRs and gymnasiums. The figure is subject to adjustment through the SAB’s annual Class B Construction Cost Index adjustments.

Fiscal Impact. About half a dozen school districts have expressed interest in such MPR/Gymnasium Hybrid facilities, although it is not known how many may apply for SFP funding under this UOG option. It is estimated that five or fewer hybrid projects will be funded under these regulatory amendments, at an estimated \$1 million (representing the State’s share) in State bond cost per project.

An estimated five MPR/Gymnasium Hybrid facilities funded through the proposed regulations would reduce the remaining available school bond funding by about \$5 million.

There remains approximately \$758.6 million of school bond authority to be apportioned, as of October 24, 2012:

Proposition 1D	\$ 523.4 million
Proposition 55	210.7 “
Proposition 47	<u>24.5</u> “
Total	\$ 758.6 million *

* Because SFP applications are now exceeding the remaining school bond authority, these proposed regulations will only apply to an application if more bond authority becomes available.

Anticipated Benefits of the Proposed Regulations:

This regulatory action will benefit school districts by allowing them to use their eligibility for school bond funding for construction of MPR)/Gymnasium Hybrid facilities, sharing a portion of the square footage within the same building, and thus being able to provide pupils both functions at less cost than building separate facilities. The existing SFP Regulations allow “Use of Grants” funding for multipurpose rooms or gymnasiums as separate facilities because hybrid MPR/gymnasiums were not anticipated.

The proposed regulatory action promotes fairness and social equity by allowing some lower income school districts and their pupils to enjoy the benefits of both an MPR and gymnasium facility through the lower cost option of an MPR/Gymnasium Hybrid facility sharing square footage in the same building.

There are benefits to the health and welfare of a minimal number of California school pupils because some lower income school districts and their pupils can enjoy the benefits of both an MPR and gymnasium facility through the lower cost option of an MPR/Gymnasium Hybrid facility sharing square footage in the same building. This facilitates sporting activities, assemblies, meeting space, lunchtime seating, special events, recess area for pupils in inclement weather, and after-school programs.

There are no benefits to worker safety based on the proposed regulatory amendments. There is no impact to the State’s environment from the proposed regulations.

The proposed regulatory amendments are as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments would add the following definition:

“Multipurpose/Gymnasium Hybrid” means a single facility that is comprised of both a multipurpose room and a gymnasium that share common space for purposes of Section 1859.77.3. The facility must be identified as a Multipurpose/Gymnasium Hybrid by the California Department of Education.

Existing Regulation Section 1859.77.3 sets forth the criteria and permissible uses of New Construction Grant funds in accordance with Education Code Section 17072.35 and other specified purposes, including multipurpose room, gymnasium, library (minimum essential facilities), and in addition, for Alternative Education schools, counseling offices and/or conference rooms. The proposed amendments add MPR/Gymnasium Hybrid facilities as permissible uses subject to specific size, need, grade level, and square footage criteria. In addition, it is clarified that:

- schools with middle school and/or high school pupils are eligible for both one MPR and one gymnasium; and
- a school site with an adequate MPR and an adequate gymnasium is not eligible for an MPR/Gymnasium Hybrid under this Section.

Determination of Inconsistency or Incompatibility with Existing State Regulations:

After conducting a review, the SAB has concluded that these are the only regulations on this subject area, and therefore, the proposed regulations are neither inconsistent nor incompatible with existing State laws and regulations.

The proposed amendments are within the SAB's authority to enact regulations for the SFP under Education Code Section 17070.35 and Government Code Section 15503. The SAB finds the proposed regulatory amendments reasonably necessary to provide a lower cost option for school districts seeking to construct ancillary facilities that directly benefit the pupils.

Summary of Public Policy, Support, or Opposition.

The SAB Implementation Committee is the informal advisory body to the SAB comprised of school districts and other stakeholders in the school construction community which holds public meetings to discuss proposals in advance of presentation to the SAB. The SAB Implementation Committee discussed the issue at the June, July and August 2012 meetings, and reached a consensus on the proposed regulatory changes. Staff brought forward these proposed regulatory amendments to provide square footage funding allowances specifically for MPR/Gym Hybrid facilities for districts making a UOG request. The proposed regulatory amendments were approved by the SAB at its meeting on September 19, 2012 and there were no opposing public comments.

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

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

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 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 what is already required by law and existing SFP Regulations.
- 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, except for the required district 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 minimal savings in school bond apportionments by the SAB versus existing law and SFP Regulations because an estimated five school districts will refrain from the higher cost of constructing a separate MPR or gymnasium in favor of the lower cost of an MPR/Gymnasium Hybrid facility sharing square footage in the same building. The State then has a reduced outlay of school bonds for its 50 percent matching share of total project costs.
- The SAB has made an initial determination that there will be no impact on housing costs.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

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 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 regulation, nor will they benefit from or be disadvantaged by the regulations. There is a negligible difference to California businesses in construction trades and industries if an estimated five school districts elect to build combined MPR and gymnasium facilities versus building separate MPRs and gymnasiums.

The proposed regulatory action promotes fairness and social equity by allowing some lower income school districts and their pupils to enjoy the benefits of both an MPR and gymnasium facility through the lower cost option of an MPR/Gymnasium Hybrid facility sharing square footage in the same building.

Benefits to Health and Welfare, Worker Safety, and the State's Environment:

- There are benefits to the health and welfare of a minimal number of California school pupils because some lower income school districts and their pupils can enjoy the benefits of both an MPR and gymnasium facility through the lower cost option of an MPR/Gymnasium Hybrid facility sharing square footage in the same building. This facilitates sporting activities, assemblies, meeting space, lunchtime seating, special events, recess area for pupils in inclement weather, and after-school programs.
- There are no benefits to worker safety based on the proposed regulatory amendments.
- There is no impact to the State's environment from the proposed regulations.

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 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 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," 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.