

March 8, 2013

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 January 23, 2013. These emergency regulatory amendments to the School Facility Program (SFP) Regulations provide a mechanism for the rescission of school bond funding for construction projects with unfunded approvals that twice choose not to participate in or not to request a State apportionment through the Priority Funding process. Such rescinded bond authority will return to the respective SFP funding programs for the SAB to reallocate to other projects that are ready to move forward toward construction. This helps to carry out the Legislative intent that the school bonds build and modernize California classrooms, create jobs in construction-related trades and industries, and stimulate the State's economy.

The proposed emergency regulatory amendments would apply to the following SFP programs:

- New Construction,
- Modernization, and
- Facility Hardship (health and safety needs), replacement and rehabilitation.

As of January 23, 2013, for the above categories of projects, there was \$839.5 million of bond authority reserved for a total 406 projects on the Unfunded List (Lack of AB 55 Loans) (hereafter the "list of unfunded approvals"). There is approximately \$269 million of the \$839.5 million that represents projects having two or more times chosen not to participate in or not to request State apportionments through the Priority Funding process. No rescission of bond authority would occur until after the effective date of the regulations, followed by the passage of two Priority Funding 30-calendar day filing periods. Only then could the projects be identified which twice chose not to participate in or not to request State apportionments. The SAB could then reallocate the bond funds to projects that are ready to move forward to construction.

The proposed amendments would specifically exclude applications for the:

- Charter School Facilities Program (CSFP) and
- Career Technical Education Facilities Program (CTEFP).

Attached to this Notice is the specific regulatory language of the proposed emergency action, proposed amendments to Form SAB 50-05, *Fund Release Authorization*, and the Finding of Emergency. You may also review the proposed regulatory language, the Form, and the Finding of Emergency on the Office of Public School Construction (OPSC) Web site at [www.dgs.ca.gov/opsc](http://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 submit these emergency regulations to the Office of Administrative Law (OAL) during March 2013. 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 SAB, at its January 23, 2013 meeting, adopted these proposed emergency regulatory amendments to provide for the rescission of school bond funding for construction projects with unfunded approvals that twice choose not to participate in or not to request a State apportionment through the Priority Funding process. Priority funding filing periods before the effective date of the regulations will not be counted against a project.

The proposed emergency regulations describe two ways for a district to choose not to participate in or not to request a State apportionment through the Priority Funding process:

- Not submit a Priority Funding request in the 30-day filing period, or
- Submit a Priority Funding request but fail to submit a valid Form SAB 50-05 within the required timeline to request the release of funds after the SAB approves an apportionment.

The second time that either of these occurs, the funding for the project would be rescinded without further Board action. Rescission would occur either:

- at the end of the 30-day filing period if a request to participate is not submitted, or
- 90 days after the SAB approves an apportionment if the district then fails to submit a valid Form SAB 50-05 within the required timeline requesting the release of funds.

In the existing SFP Regulations, the next 30-day filing periods to participate in the Priority Funding process are:

- May 8, 2013 through June 6, 2013,
- November 13, 2013 through December 12, 2013, and
- May 14, 2014 through June 12, 2014.

The bond funds impacted by the proposed regulatory amendments are:

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

The SAB established the Priority Funding process in May 2010 and has held five Priority Funding periods to date. The Priority Funding process re-prioritizes SFP apportionments for school construction projects that are “construction-ready,” meaning capable of submitting fund release requests within a short time (90 days) following approval by the SAB. Applicants must indicate that they have or will sign construction contracts within 90 days of an apportionment, ensuring that funds are prioritized for projects that have begun or will begin construction very soon. Priority Funding apportionments are accomplished through authorized bond sales by the State Treasurer’s Office, the return of bond funds from rescinded projects, and/or other sources.

A summary of the proposed emergency regulatory amendments, adoption of a new section, and an amendment 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 amendments change the definition of the Form SAB 50-05, *Fund Release Authorization*, by changing its revision date from “10/12” to “01/13.”

Existing Regulation Section 1859.51 sets forth criteria for adjusting a school district’s new construction baseline eligibility, including subsection (d) requiring an adjustment as a result of audit findings pursuant to specified regulation sections. The proposed amendments add new Regulation Section 1859.90.3 to the specified sections under which an audit could result in adjusting the new construction baseline eligibility.

Existing Regulation Section 1859.61 sets forth criteria for adjusting a school district’s modernization baseline eligibility, including subsection (d) requiring an adjustment as a result of audit findings pursuant to specified regulation sections. The proposed amendments add new Regulation Section 1859.90.3 to the specified sections under which an audit could result in adjusting the modernization baseline eligibility.

Existing Regulation Section 1859.90.2 establishes the Priority Funding Process described in the following four 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 school bond funds.
2. It includes projects under the CSFP that may apply for advance release of design funds from a Preliminary Charter School Apportionment. It includes projects under the Critically Overcrowded School Facilities Program that may apply for advance release of environmental hardship site acquisition funds. These applicants must provide a written statement signed by the authorized district representative within the 30-calendar day filing period that acknowledges specific requirements for participation and funding. Applicants must also submit the Form SAB 50-05, with an original signature, to be received by the OPSC within 90 calendar days of the SAB’s approval of the apportionment.
3. Also included are projects under the CSFP that may apply for advance release of site acquisition funds from a Preliminary Charter School Apportionment. These projects are subject to a timeline of 180 calendar days to file their Form SAB 50-05, with the specific requirement to provide a written statement signed by an authorized representative within the 30-calendar day filing period that acknowledges specific requirements for participation and funding.
4. Participants meeting the priority funding process requirements but for which an Apportionment cannot be provided shall retain their date order position on the Unfunded List. Participants failing to meet required criteria have their apportionment or approved advance release of funds returned to unfunded approval status with a specified unfunded approval date.

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

1. The second and third introductory paragraphs are deleted for the purpose of restating them with clarifying language as new subsection (c) and (c)(1). The restated text includes:

- In subsection (c), the deleted phrase “(D)uring the priority funding process” is restated with clarification to mean only those instances where an Apportionment or advance release of funds has been approved by the SAB.
  - In subsection (c)(1), the phrase “. . . shall be rescinded without further Board action” is restated but with the added criteria set forth in new subsection (c)(2).
2. New subsection (c)(2) adds the additional consideration of new Regulation Section 1859.90.3(c) and (d) before determining whether an SFP project returns to the Unfunded List (Lack of AB 55 Loans) or is removed from that List without further Board action. (Proposed adoption of new Regulation Section 1859.90.3. is discussed below.)
  3. The two unnumbered paragraphs at the end of Section 1859.90.2 are assigned letters “(d)” and “(e),” respectively. This is a non-substantive change for the purpose of improved readability.
  4. In newly lettered subsection (d) the term “Unfunded List” is clarified to mean “Unfunded List (Lack of AB 55 Loans)” as defined in Regulation Section 1859.2, Definitions, of the SFP Regulations. The name “Office of Public School Construction (OPSC)” is shortened to “OPSC” because this acronym is already identified in the Definitions section of the SFP Regulations. These are non-substantive changes for the purpose of improved readability and maintaining consistency in the SFP Regulations.
  5. In newly lettered subsection (e) the word “after” is changed to “from” in determining a number of days following the apportionment date. This is a non-substantive change for the purpose of improved readability.

The proposed adoption of Regulation Section 1859.90.3 is described in the following seven paragraphs:

1. It would apply only to applications for:
  - New Construction,
  - Modernization, and
  - Facility Hardship (health and safety needs), replacement and rehabilitation.
2. It would specifically exclude applications for the CSFP and the CTEFP.
3. It would provide for the rescission of an Apportionment and/or unfunded approval for SFP projects on the Unfunded List (Lack of AB 55 Loans) that twice choose not to participate in or not to request State apportionments through the Priority Funding process. Two ways are specified for a district to choose not to participate or not to request its apportionment:
  - Not participating in the 30-calendar day filing period for the Priority Funding process, or
  - participating in the process and receiving an Apportionment but failing to submit a valid Form SAB 50-05 within the required timeline to request the release of funds.
4. The first occurrence of abstaining from participating in the 30-calendar day filing period allows a project to keep its place on the Unfunded List (Lack of AB 55 Loans). The first occurrence of receiving a Priority Funding Apportionment but failing to meet the fund release requirements would result in rescission of the Apportionment and the application returns to the Unfunded List (Lack of AB 55 Loans) with a new unfunded approval date that is 90 calendar days from the date of Apportionment.
5. A subsequent occurrence of abstaining from participating in the 30-calendar day filing period for the priority funding process or receiving a Priority Funding Apportionment but failing to submit a valid Form SAB 50-05 to request the release of funds shall mean that:

- the application is removed from the Unfunded List (Lack of AB 55 Loans) without further Board action,
  - the bond authority associated with the Apportionment or unfunded approval returns to the appropriate SFP bond authority source for reallocation,
  - the application is returned to the applicant, and
  - the pupils assigned to the project would be added back to the district's baseline eligibility for new construction or modernization, if applicable.
6. Education Code Section 17070.35 is added as the Authority citation.
  7. Education Code Sections 17072.12, 17072.30, 17074.16 and 17076.10 are added as Reference citations.

Existing Regulation Section 1859.90.3 is renumbered as "1859.90.4" because of the adoption of new Regulation Section 1859.90.3 preceding it. This is a non-substantive change for the purpose of correct numbering and maintaining continuity of the SFP Regulations.

Existing Regulation Section 1859.104 sets forth document submittal requirements for school districts receiving funds under the Leroy F. Greene School Facilities Act of 1998. It also refers to the release of funds to school districts pursuant to Regulation Section 1859.90 titled "Fund Release Process." The proposed amendments change "Section 1859.90" to "Section 1859.90 or 1859.90.2" in three places in order for these reporting requirements to also apply to funding from the Priority Funding process.

Existing Regulation Section 1859.164.2 sets forth the Preliminary Charter School Apportionment fund release process, and refers to the release of funds pursuant to Regulation Section 1859.90 titled "Fund Release Process." The proposed amendments change "Section 1859.90" to "Section 1859.90 or 1859.90.2" in order for this process to also apply to funding from the Priority Funding process.

Existing Regulation Section 1859.184.1 sets forth the Overcrowding Relief Grant Program application process for school districts with Financial Hardship approval, and refers to project timelines in Regulation Section 1859.90 titled "Fund Release Process." The proposed amendments change "Section 1859.90" to "Section 1859.90 or 1859.90.2, as applicable" in order for these timelines to also apply to the Priority Funding process.

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 has met specific criteria. The proposed amendments change "Section 1859.90.3" to "Section 1859.90.4" in one of the Certifications because the proposed amendments renumber that referenced Section from 1859.90.3 to "1859.90.4." In addition, the revision date of the Form changes from "10/12" to "01/13" so that applicants can identify and file the most current version of the Form. These are non-substantive changes for the purpose of providing correct references and maintaining consistency throughout the SFP Regulations.

## 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 “Non-Participation in the Priority Funding Process,” 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](mailto: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](http://www.oal.ca.gov) under the heading “Emergency Regulations,” and 2) the OPSC at [www.dgs.ca.gov/opsc](http://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 emergency regulatory action, as well as requests for a copy of the proposed emergency regulatory action, and questions concerning the substance of the proposed emergency regulatory action, addressed to:

Lisa Jones, Regulations Coordinator

Mailing Address: Office of Public School Construction  
707 Third Street, 9<sup>th</sup> Floor  
West Sacramento, CA 95605

E-mail Address: [lisa.jones@dgs.ca.gov](mailto:lisa.jones@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 Lisa Jones at (916) 376-1753. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Ron Koepl, Regulations Team, at (916) 375-2032.