

FINDING OF EMERGENCY

The State Allocation Board (SAB) finds that an emergency exists, and that the proposed regulations are necessary for immediate action to avoid serious harm to the public peace, health, safety, or general welfare, pursuant to Government Code Section 11342.545.

Specific Facts Showing the Need for Immediate Action

Immediate action is needed to approve emergency regulatory amendments to the School Facility Program (SFP) Regulations because school construction projects for new construction, modernization, and facility hardship (health and safety needs) can receive:

- school bond apportionments six months sooner than if processed as regular regulations for projects on the Unfunded List (Lack of AB 55 Loans); and
- school bond unfunded approvals six months sooner than if processed as regular regulations for projects on the Unfunded List (Information List), meaning the applications were received before November 1, 2012 but beyond bond authority.

Please see “Timing of the Regulatory Impact” below explaining how emergency regulatory processing will achieve these apportionments/unfunded approvals six months sooner.

Bond Funds Impacted

- 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 proposed emergency regulatory amendments 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 state apportionments 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 Such rescinded bond authority will return to the respective SFP funding programs for the SAB to reallocate to other projects that are ready to move forward toward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 be used to build and modernize California classrooms, create jobs in construction-related trades and industries, and stimulate the state’s economy. This is in direct alignment with the Governor’s directive.

The state’s economy will be stimulated because school districts receiving an estimated \$200 million to \$400 million in bond authority will award their construction contracts. Such construction projects will create and maintain professional and trades jobs such as architects, engineers, surveyors, planners, equipment operators, installers of all types of building materials, framers, plumbers, roofers, electricians, installers of electronics, painters, finishers, landscapers, and administrators. Jobs are also created and sustained in manufacturing all building materials and components, including green technology and energy-saving components.

Timing of the Regulatory Impact

The trigger mechanism in the proposed emergency amendments is the second occurrence of a school district with a project on the list of unfunded approvals choosing not to participate in or not to request its state apportionment through the Priority Funding process. Priority Funding periods before the effective date of the regulations will not be counted against a district’s project.

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.

If approved with an emergency effective date before May 8, 2013, then the next two filing periods will end on December 12, 2013 and it can then be determined which school districts have twice chosen not to participate in or not to request state apportionments through the Priority Funding process, and how much bond authority is available for reallocation to other participating SFP projects.

However, processing these as regular regulations would result in an effective date after May 8, 2013, thus eliminating the first filing period shown above for purposes of whether a project chose not to participate in or not to request its state apportionment. In that instance, the next two filing periods will end on June 12, 2014, and only then could it be determined which school districts had twice chosen not to participate in or not to request state apportionments through the Priority Funding process.

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

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

Financial Impact

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 list of unfunded approvals. These projects were previously approved by the SAB without apportionments. There is \$269 million of the above \$839.5 million that represents the above projects having two or more times chosen not to participate in or not to request state apportionments through the Priority Funding process.

It is estimated that the proposed emergency regulatory amendments would return \$200 million to \$400 million of school bond authority to the respective SFP funding programs from projects that are choosing not to request apportionments. The SAB can then reallocate the funds to projects that are ready to move forward to construction. This estimate is based upon:

- the current \$269 million of bond authority already tied up in projects that have twice chosen not to participate in or not to request state apportionments through the Priority Funding process, and
- two more Priority Funding periods must occur after these regulations become effective which could result in more projects twice choosing not to participate in or not to request state apportionments through the Priority Funding process.

Background and Problem Being Resolved

The proposed emergency regulatory amendments resolve the problem of bond authority being tied up in school district construction projects that have ceased moving forward for reasons such as declining enrollment, lack of funds for the local matching share, or other reasons. There is currently no incentive for districts to voluntarily withdraw their projects from the Unfunded List (Lack of AB 55 Loans) because district inaction keeps a project's place in line

on this List. Therefore, school districts with approved projects could tie up bond authority indefinitely. The proposed amendments meet the need for a fair mechanism to reallocate the remaining bond authority to districts ready to move their projects forward to construction.

The proposed regulations describe two ways for a district to choose not to participate in or not to request its 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 to request the release of funds after the Board 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 Board approves an apportionment if the district then fails to submit a valid Form SAB 50-05 requesting the release of funds.

Legislative History

Assembly Bill (AB) 16. The proposed emergency regulatory amendments will also help to apportion school construction projects under and fulfill the intent of AB 16, Chapter 33, Statutes of 2002 (Hertzberg), which includes the following benefits to be obtained from the Kindergarten-University Public Education Facilities Bond Acts of 2002 and 2004 (Propositions 47 and 55):

- funding for extreme financial, disaster-related, or other hardship pupil housing needs (Education Code (EC) Section 17075.10);
- funding for remedial health and safety projects (EC Section 17075.15);
- supplemental apportionments for small schools (EC Section 17074.10);
- cost adjustments for projects in densely populated urban areas (EC Section 17072.10);
- costs to modernize older school buildings (EC Section 17074.26).

By the language of AB 16, the filing of the original implementing regulations “shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.” It is urged that these proposed emergency regulations to enable funding the above types of new construction, modernization, and facility hardship projects should be accorded similar “emergency” status.

Prioritization of Facility Hardship Projects. Funding is provided for Facility Hardship projects that replace or rehabilitate school facilities in critical cases where there is a serious risk to the health and safety of pupils. These health and safety projects will be the first to benefit from the proposed emergency regulations reallocating school bond authority to projects awaiting funding. This is because the SAB, at its August 4, 2010 meeting, approved placing Facility Hardship projects with unfunded approvals at the top of the cumulative Unfunded List (Lack of AB 55 Loans) at all times, with placement order determined first by SAB approval date and next by date order received. By approving these proposed regulations on an emergency basis, bond authority would be freed up to apportion bond funds to two health and safety projects for the Alpaugh Unified School District, whose applications were received on December 21, 2012:

- Estimated \$2,745,656 bond cost for Alpaugh Elementary School, and
- Estimated \$14,635,966 bond cost for Alpaugh Junior-Senior High School.

AB 127. The proposed emergency regulations will help to apportion school construction projects under and fulfill the intent of AB 127, Chapter 35, Statutes of 2006 (Perata/Nunez). AB 127 provided new bond funding to relieve public school overcrowding and to repair older

schools through Proposition 1D. AB 127 also made available up to \$100 million for projects that meet “high performance” rating criteria for components such as energy, water, natural lighting, air quality, use of recycled and low-toxin materials, and learning-enhancing acoustics for construction projects.

Without the proposed emergency amendments in effect as soon as possible, the school bond authority currently reserved for projects on the Unfunded List (Lack of AB 55 Loans) cannot be reallocated to other projects. School districts choosing not to participate in or not to request state apportionments through the Priority Funding process could indefinitely tie up that reserved bond authority in projects that are not moving forward toward construction. It would take four to six months to process these regulatory amendments through the Administrative Procedure Act, which would mean that these regulations would not become effective in time to count the Priority Funding 30-calendar day filing period that begins on May 8, 2013 as the first “occurrence” of non-participation or not requesting an apportionment. As a result, for purposes of counting two 30-calendar day filing periods of not participating or not requesting an apportionment, the periods beginning November 13, 2013 and May 14, 2014, respectively, would be those counted. Therefore, June 12, 2014 would be the end of the second filing period and the earliest that the SAB could use the mechanism in the proposed regulatory amendments to determine bond authority that could be reallocated to other SFP projects. This timeframe does not provide the SAB with the ability to manage the bond funds to make timely apportionments and/or unfunded approvals.

History of the Priority Funding Process

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 apportionment, ensuring that funds are prioritized for projects that have or will very soon begin construction. 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. However, not all districts with projects on the list of unfunded approvals have chosen to participate.

1. The first Priority Funding Round was established by the SAB through emergency regulations at its May 26, 2010 meeting, and allowed the SAB to fund **\$408.14 million** of construction-ready” school construction projects at its August 4, 2010 meeting. The SAB then adopted emergency regulations establishing future priority funding rounds, each to commence with a 30-calendar day application filing period.
2. For the second Priority Funding Round, the SAB approved 488 project apportionments from December 2010 through February 2011. All but one participant requested and/or received project funding, for a success rate of 99.92 percent and total release of **\$1.630 billion**.
3. The third Priority Funding Round followed the State Treasurer’s Office successful sale of General Obligation Bonds on October 19, 2011, providing nearly \$1.0 billion of bond funding for the SFP. In turn, the SAB approved **\$923.8 million** in apportionments to 154 school districts for 377 “shovel-ready” construction projects.
4. The fourth Priority Funding Round approved by the SAB at its meeting on June 27, 2012 totaled \$637.6 million for construction-ready projects. However, four approved projects

totaling \$22.1 million declined to submit their Form SAB 50-05 to receive apportionments, for a total release of **\$615.5 million**.

5. The fifth Priority Funding Round approved by the SAB at its meeting on December 12, 2012 totaled **\$383.8 million** for 196 construction-ready projects. The period is underway for projects that received apportionments to submit their Form SAB 50-05 to request the release of state funds.

Note: The proposed emergency amendments would not apply to projects in the:

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

These two programs work on different timelines than standard New Construction and Modernization Programs, and the return of any bond funds from rescissions would not necessarily result in immediate reallocation of this authority.

The State has relied upon the SFP as a means to provide an economic stimulus to construction-related trades and businesses while meeting the classroom needs of the K-12 student population. There has been \$3.96 billion apportioned by the SAB for school construction projects from August 2010 through December 2012 for these vital purposes. However, the SFP Regulations that are currently in place do not allow the SAB to rescind the bond authority tied up in a growing number of projects.

The following chart supports the SAB’s concern that in 2012 an increased percentage of projects on the Unfunded List (Lack of AB 55 Loans) did not participate in the Priority Funding process, thereby tying up reserved bond authority in projects that are not moving forward to construction:

Priority Funding Period Beginning	Total \$ Eligible for Priority Funding (in millions)	Total \$ Requesting to Participate (in millions)	Percent Participating and Requesting Apportionments
April 2010	\$2,180.8	\$1,612.2	73.9 %
October 2010	\$2,595.8	\$1,983.8	76.4 %
July 2011	\$1,766.0	\$1,318.5	74.7 %
January 2012	\$1,289.2	\$710.1	55.1 %
July 2012	\$995.3	\$534.3	53.7 %

The proposed emergency regulations promote fairness and the state’s general welfare by helping to reallocate an estimated \$200 million to \$400 million of school bond authority from school construction projects that are not participating in or not requesting state apportionments through the Priority Funding process, and reallocating that bond authority to other projects to carry out the Legislative intent of AB 16, AB 127, and Propositions 47 (2002), 55 (2004), and 1D (2006) by funding:

- extreme financial, disaster-related, or other hardship pupil housing needs;
- funding for remedial health and safety projects;
- supplemental apportionments for small schools;
- cost adjustments for projects in densely populated urban areas;
- costs to modernize older school buildings; and
- projects that meet “high performance” rating criteria for components such as energy, water, natural lighting, air quality, use of recycled and low-toxin materials, and learning-enhancing acoustics for construction projects.

The proposed emergency regulatory amendments are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of these regulatory amendments will have a positive impact on public health and safety at public K-12 schools by reallocating an estimated \$200 million to \$400 million in school bond authority from construction projects that have twice chosen not to participate in or not to request state apportionments through the Priority Funding process.

Reallocating the bond authority to SFP projects that are ready to move forward toward construction will benefit construction-related trades and businesses, stimulate the state's economy, and relieve school pupil housing needs for classrooms. The dollars associated with these emergency regulatory amendments would also benefit the school district communities by stimulating the local economies.

Authority and Reference Citations

Authority: Section 17070.35 of the Education Code and Section 15503 of the Government Code.

Reference: Sections 17072.12, 17072.30, 17074.16, 17076.10, 17077.40, 17077.42 and 17077.45 of the Education Code.

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 proposed regulatory amendments to the SFP Regulations 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 state apportionments 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. Again, this is in direct alignment with the Governor's directive.

Summary of the Proposed Emergency Regulations

A summary of the proposed emergency regulatory amendments, including an associated form, is 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 request filing periods for school districts and charter schools to request 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 (COS) 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 (Lack of AB 55 Loans). 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 is 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
 - Facility Hardship pursuant to Section 1859.82
 - Rehabilitation pursuant to Section 1859.83(e)
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 to request the release of funds.
4. The first occurrence of abstaining from participating in the 30-calendar day request 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 submit a valid Form SAB 50-05 to request the release of funds 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 request 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 and/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 in 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 refer to an additional section in subsections (a)(1) and (b) in order for these reporting requirements to also apply to funding through 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 amendment refers to an additional section in the last sentence of the final paragraph in order for this process to also apply to funding through 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 amendment refers to an additional section in the fifth line of the final paragraph 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 renumber "Section 1859.90.3" to "Section 1859.90.4" in one of the Certifications because of the proposed adoption of new Regulation Section 1859.90.3. In addition, the revision date of the Form changes from "10/12" to "01/13" so that applicants can identify and file the latest version of the Form. These are non-substantive changes for the purpose of providing correct references and maintaining consistency in the SFP Regulations.

Mandate 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 emergency regulations.

Cost Estimate

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact that might result from the proposed emergency regulatory action and it has been determined that:

- There will be no costs or savings to the State.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts 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.