

INITIAL STATEMENT OF REASONS

Section 1859.2. Definitions.

Specific Purpose of the Regulation

To provide the meaning of specific words and terms that are essential to these regulations.

Need for the Regulation

It was necessary to change the revision date of the Form SAB 50-05, *Fund Release Authorization*, from “10/12” to “01/13” for purposes of maintaining the continuity of the School Facility Program (SFP) Regulations so that applicants can file the most current State Allocation Board (SAB) Forms. This is a non-substantive change for the purpose of ensuring that the most recent version of the Form is utilized.

Section 1859.51. Adjustments to the New Construction Baseline Eligibility.

Specific Purpose of the Regulation

To amend subsection (d) regarding adjustments to a school district’s new construction baseline eligibility as a result of audit findings pursuant to specified regulation sections.

Need for the Regulation

Subsection (d): It was necessary to add “1859.90.3” to the list of specified sections under which an audit could result in adjusting a school district’s new construction baseline eligibility because proposed new Section 1859.90.3 (described below) makes specific reference to adjusting the district’s baseline eligibility pursuant to Section 1859.51(d).

Section 1859.61. Adjustments to the Modernization Baseline Eligibility.

Specific Purpose of the Regulation

To amend subsection (d) regarding adjustments to a school district’s modernization baseline eligibility as a result of audit findings pursuant to specified regulation sections.

Need for the Regulation

Subsection (d): It was necessary to add “1859.90.3” to the list of specified sections under which an audit could result in adjusting a school district’s modernization baseline eligibility because proposed new Section 1859.90.3 (described below) makes specific reference to adjusting the district’s baseline eligibility pursuant to Section 1859.61(d).

Section 1859.90.2. Priority Funding Process.

Specific Purpose of the Regulation

To delete two introductory paragraphs in order to restate and clarify them in new subsection (c). To add the consideration of proposed new Section 1859.90.3 in determining whether an application will be returned to the Unfunded List (Lack of AB 55 Loans) with a new unfunded approval date. To assign letters “(d)” and “(e)” to two concluding paragraphs and make minor non-substantive changes.

Need for the Regulation

It was necessary to delete the second introductory paragraph for the purpose of restating it with clarifying language as new subsection (c). The deleted phrase “(D)uring the priority funding process” is restated to include only those instances where an Apportionment or advance release of funds has been approved during the priority funding process.

- The restatement as “(c)” was a non-substantive change for improved placement of this text after subsections (a) and (b).
- Clarifying the phrase “(D)uring the priority funding process” was necessary to limit its scope to only the instances when the SAB approves an Apportionment or advance release of funds, thus excluding instances when no Apportionment or advance release of funds is approved, such as when bond funds are insufficient to approve the requested funding.

It was necessary to delete the third introductory paragraph for the purpose of restating it with clarifying language in both new subsections (c) and (c)(1). The restated text includes:

- The restatement as “(c)” and “(c)(1)” was a non-substantive change for improved placement of this text after subsections (a) and (b).
- In subsection (c)(1), the deleted phrase “shall be rescinded without further Board action” is restated but with the addition of the concluding word “and” so that the requirements in new subsection (c)(2) must first be applied if applicable. It was necessary to consider the criteria set forth in new subsection (c)(2) because it sets forth new processing requirements set forth in new Regulation Section 1859.90.3(c) and (d).

New subsection (c): This is the restatement and clarification of the two existing paragraphs as described immediately above. This text describes document submittal requirements that occur after requesting to participate as described in subsections (a) and (b), and so the context of this text is improved by placing it after subsections (a) and (b).

New subsection (c)(1): This is the restatement and clarification of the two existing paragraphs as described above. The clarification is that “apportionment” in the deleted text is changed to “Apportionment or approved advance release of funds” in the restated text because both types of funding can be received through this Section, and it was an inadvertent oversight not to have mentioned both types in this reference. This text describes not submitting documents that could only occur after requesting to participate as described in subsections (a) and (b), and so the context of this text is improved by placing it after subsections (a) and (b).

New subsection (c)(2): The text in this subsection about an application being returned to the Unfunded List (Lack of AB 55 Loans) with a new unfunded approval date is a restatement of the existing process described in the final paragraph of this Section. The term “apportionment date” as used in the existing final paragraph of this Section was instead stated as “date of Apportionment or approval of the advance release of funds” because both types of funding could be the subject of this new subsection (c)(2). It was necessary to require the processing criteria in proposed 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) with a new unfunded approval date. This is because under Section 1859.90.3, the second occurrence of not participating in or not requesting a project apportionment through the priority funding process will result in the rescission of bond authority for that project (“rescission” as described in Section 1859.90.3, not as described in Section 1859.90.2).

Existing subsections lettered “(d)” and “(e)”: The two existing 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 and continuity of the SFP Regulations.

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. “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.

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.

Section 1859.90.3. Participation in the Priority Funding Process.

Specific Purpose of the Regulation

To adopt a new Regulation Section covering specific types of school bond funding programs, and to implement specific criteria in order to incentivize school districts to move their projects with reservations of bond authority forward to construction, or alternatively, for that bond authority to become available for other projects that are ready to move forward to construction.

Need for the Regulation

Introductory Paragraph, Lines 1-2: It was necessary to specify which program applications would be affected by this new regulation section:

- New Construction
- Modernization
- Facility Hardship pursuant to Section 1859.82
- Rehabilitation pursuant to Section 1859.83(e)

Introductory Paragraph, Lines 2-3: It was necessary for the purpose of accurately applying this new Section to state that it specifically excludes applications for the Charter School Facilities Program and the Career Technical Education Facilities Program. These programs work on different timelines than the programs noted above.

Subsection (a): It was necessary to specify that after the effective date of the regulations, projects on the Unfunded List (Lack of AB 55 Loans) would be limited in the number of “occurrences” of either (1) choosing not to participate in the priority funding 30-calendar day application filing period, or (2) participating in the priority funding process, receiving an Apportionment, and then failing to meet the fund release requirements. This was needed because projects on the Unfunded List (Lack of AB 55 Loans) have reservations of school bond authority, and if they choose not to request their Apportionment and thus fail to progress toward construction, they hinder the Legislative intent and voter approval for the school bond propositions - - that is, to build and renovate classrooms for pupils. As a result of these regulations, jobs will be created in construction-related trades and industries, and the State’s economy will continue to be stimulated. The SAB intends to limit the number of “occurrences” (1) or (2) by school districts in order to incentivize projects with bond authority to move forward to construction, or alternatively, for that bond authority to become available for other projects that are ready to move forward to construction.

Subsection (a)(1): It was necessary to state that the first of the limited “occurrences” for school districts with projects on the Unfunded List (Lack of AB 55 Loans) was to “abstain” (choose not to participate) in a 30-calendar day filing period for the priority funding process. The SAB decided to

limit such occurrences by school districts to one time because non-participation in the priority funding process keeps the district from getting its Apportionment and moving forward to construction.

Subsection (a)(2): It was necessary to state that the second of the limited “occurrences” for school districts with projects on the Unfunded List (Lack of AB 55 Loans) was to participate in the priority funding process, receive an approved Apportionment, but then fail to meet the fund release requirements (principally, fail to submit timely the Form SAB 50-05 request to receive the Apportionment). The SAB decided to limit such occurrences to one time because not requesting an approved Apportionment keeps the district from getting its Apportionment and moving forward to construction.

Subsection (b): It was necessary to set forth that the first “occurrence” of either (a)(1) or (a)(2) would have the processing results set forth in (b)(1) or (b)(2), which are the same processing results that already occur in the existing SFP Regulations, but which are repeated for better understanding.

Subsection (b)(1): It was necessary to clarify that the first “occurrence” of (a)(1) would allow a project to keep its place on the Unfunded List (Lack of AB 55 Loans), which is the processing result that already occurs in the existing SFP Regulations (Regulation Section 1859.90.2). This is repeated for better understanding of the SFP Regulations, and to distinguish this result from the result explained in subsection (c) for a subsequent occurrence.

Subsection (b)(2): It was necessary to set forth that the first “occurrence” of (a)(2) would result in the priority funding Apportionment being “rescinded” (meaning its definition in Regulation Section 1859.90.2) and the application returned to the Unfunded List (Lack of AB 55 Loans) pursuant to Regulation Section 1859.90.2(c)(2), which is the processing result that already occurs in the existing SFP Regulations. This is repeated for better understanding of the SFP Regulations, and to distinguish this result from the result explained in subsection (c) for a subsequent occurrence.

Subsection (c): It was necessary to set forth the processing result for a subsequent occurrence of either (a)(1) or (a)(2) because the processing results differ from the results for the first occurrence of either (a)(1) or (a)(2) as set forth immediately above. It is the purpose of the proposed regulatory amendments to limit school districts to only one occurrence of (a)(1) or (a)(2), while the results of a subsequent occurrence of (a)(1) or (a)(2) would include:

- rescinding the application’s Apportionment and/or unfunded approval, as applicable,
- removing the application from the Unfunded List (Lack of AB 55 Loans), and
- returning the application to the applicant.

The purpose of these consequences for a subsequent occurrence of either (a)(1) or (a)(2) is to resolve the problem in the existing SFP Regulations that school districts are permitted to not participate in the priority funding process, or to participate but fail to request their Apportionment, and still retain their reservation of school bond authority by keeping their place in line for funding. The proposed emergency regulatory amendments would allow, upon the subsequent/second occurrence of (a)(1) or (a)(2), for a project’s bond authority to be rescinded and made available for other projects that are ready to request their Apportionments and move forward to construction. This is intended to incentivize school districts to move their projects with bond authority forward to construction, or alternatively, for that bond authority to become available for other projects that are ready to move forward to construction.

Subsection (d): It was necessary to adopt and understand the meaning and processing results of “rescinded” or “rescission” for the purposes of Section 1959.90.3(c) because this clarifies the results for the subsequent occurrence of either (a)(1) abstaining from participating in the 30-calendar day request filing period for the priority funding process, or (a)(2) participating and

receiving a Priority Funding Apportionment but failing to meet the fund release requirements. The processing results that were deemed necessary were:

- the bond authority associated with the Apportionment and/or unfunded approval returns to the appropriate SFP bond authority source for reallocation, and
- if applicable, the pupils housed in the project would be added back to the district's baseline eligibility for new construction or modernization.

These results were deemed necessary in order to make bond authority reserved for “non-participating” projects available for other projects that were ready to request their Apportionments and move forward to construction. Also, it was necessary to maintain compliance with existing Regulation Sections 1859.51 and 1859.61 under which pupil grants for projects removed from the Unfunded List (Lack of AB 55 Loans) may have to be returned to a school district's new construction or modernization baseline eligibility.

Authority Cited: It was necessary to adopt Education Code Section 17070.35 as the Authority citation because this Section authorizes the State Allocation Board to adopt regulations to administer the School Facility Program.

Reference Citations: It was necessary to adopt Education Code Sections 17072.12, 17072.30, 17074.16 and 17076.10 as reference citations because these Sections describe applicable processing and funding criteria, and the requirement for projects to make “substantial progress” once bond funds have been released.

Section 1859.90.3 Renumbered 1859.90.4. Local Bond Reimbursement Fund Releases.

Specific Purpose of the Regulation

To renumber this Section because a new Section was added preceding it.

Need for the Regulation

It was necessary to renumber Section 1859.90.3 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 the continuity of the SFP Regulations.

Section 1859.104. Program Reporting Requirements.

Specific Purpose of the Regulation

To add “or 1859.90.2” to the text of three subsections regarding the release of project funds to a school district.

Need for the Regulation

Subsection (a)(1): It was necessary to expand “pursuant to Section 1859.90” to “pursuant to Section 1859.90 or 1859.90.2” because Section 1859.104 also applies to projects that receive funding through the priority funding process.

Subsection (b), First Sentence: It was necessary to expand “pursuant to Section 1859.90” to “pursuant to Section 1859.90 or 1859.90.2” because Section 1859.104 also applies to projects that receive funding through the priority funding process.

Subsection (b), Third Sentence: It was necessary to expand “pursuant to Section 1859.90” to “pursuant to Section 1859.90 or 1859.90.2” because Section 1859.104 also applies to projects that receive funding through the priority funding process.

Section 1859.164.2. Preliminary Charter School Apportionment Fund Release.

Specific Purpose of the Regulation

To add “or 1859.90.2” to the text of one sentence regarding the release of project funds to a charter school.

Need for the Regulation

Last Paragraph, last line. It was necessary to expand “prescribed in Section 1859.90” to “prescribed in Section 1859.90 or 1859.90.2” because Section 1859.164.2 also applies to charter school projects that receive funding through the priority funding process.

Section 1859.184.1. Application Process for Districts with Financial Hardship Approval.

Specific Purpose of the Regulation

To add “or 1859.90.2, as applicable” to the text of one sentence regarding project timelines for an Overcrowding Relief Grant project.

Need for the Regulation

Last Paragraph, 5th line. It was necessary to expand “outlined in Section 1859.90” to “outlined in Section 1859.90 or 1859.90.2, as applicable” because Section 1859.184.1 also applies to project timelines for the priority funding process.

SCHOOL FACILITY PROGRAM FORM

Fund Release Authorization, Form SAB 50-05 (Revised 01/13).

Specific Purpose of the Form

To correct the numerical reference to an SFP Regulation Section that was renumbered by the proposed emergency amendments, and to change the revision date of the Form from “10/12” to “01/13.”

Need for the Form

Heading on All Three Pages: It was necessary to change the revision date of Form SAB 50-05 from “10/12” to “01/13” so that applicants can identify and file the most current version of the Form. This is a non-substantive change for the purpose of providing correct references and maintaining consistency in the SFP Regulations.

Page 3, Certifications, Bullet #6: It was necessary to change Section “1859.90.3” to “1859.90.4” in order for this textual reference to correctly refer to a Section that has been renumbered to “1859.90.4” by the proposed emergency regulations. This is a non-substantive change for the purpose of providing correct references and maintaining consistency in the SFP Regulations.

The only alternative to these emergency regulations would be to take no action and allow school district projects to tie up bond authority indefinitely. There would be no incentive for school districts to voluntarily withdraw their projects from the Unfunded List (Lack of AB 55 Loans) because school district inaction keeps a project's place in line on this List. These emergency regulations meet the need for a fair mechanism to reallocate the bond authority to other school districts that are ready to move their projects forward to construction. Therefore, no other alternatives were considered.

Technical Documents Relied Upon

The State Allocation Board's Action item, dated January 23, 2013, entitled "School Facility Program Regulatory Amendments."

The Economic Impact Assessment prepared pursuant to Government Code Section 11346.3(b).

Alternatives to the Proposed Regulatory Action that would be as Effective and Less Burdensome to Private Persons

The SAB finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Alternatives to the Proposed Regulatory Action that would Lessen any Adverse Economic Impact on Small Business

The SAB has determined that the proposed emergency regulations do not affect small businesses.

Finding of Significant Adverse Economic Impact on Businesses

The SAB has determined that the adoption of the emergency regulations will not affect businesses, including small businesses, because they are not required to comply with or enforce the regulations, nor will they benefit from or be disadvantaged by the regulations.

Impact on Local Agencies or School Districts

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. They will not require local agencies, school districts or charter schools to incur additional costs in order to comply with the proposed emergency regulations.