

July 26, 2013

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO AMEND
REGULATION SECTIONS 1859.2, 1859.71, 1859.71.6, 1859.74.5, 1859.77.4,
1859.82, AND 1859.83, ALONG WITH AN ASSOCIATED FORM,
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 05/13), referenced in Regulation Section 1859.2

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-referenced regulation sections, including an 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 proposals 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, 17075.15, and 17078.72(l) of the Education Code. The proposals interpret and make specific reference Sections 17072.32, 17074.15, 17074.16, 17074.56, 17075.10, 17075.15, 17077.42, 17077.45, 17250.30, 101012(a)(1), and 101012(a)(8) 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 and filed with the Secretary of State on October 8, 1999.

The SAB, at its May 22, 2013 meeting, adopted regulatory amendments to the SFP Regulations to stimulate greater participation for High Performance Incentive (HPI) grants by allowing this grant funding for qualifying Facility Hardship replacement and rehabilitation (including Seismic) projects. These grants are achieved by using designs and materials in new construction and modernization projects for efficiencies in sustainable sites, energy, water, materials, and indoor environmental quality. The Division of the State Architect (DSA) reviews construction plans and scores the project if high performance building components are included in the project.

Bond Funds Impacted

- Kindergarten-University Public Education Facilities Bond Act of 2006 (Proposition 1D);
- Education Code Section 101012(a)(8) authorized \$100 million for HPI grants, but \$38 million continues to remain available.

Attached to this Notice is the specific regulatory language of the proposed regulatory action and the amendment to form SAB 50-04. You may also review the proposed regulatory language and Form on the OPSC Website at 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 in this Notice. The proposed 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.

Background and Problem Being Resolved

The HPI grant provides funding for the cost of design and materials that promote characteristics of high performance schools for the following programs under the SFP:

- New Construction,
- Modernization,
- Career Technical Education Facilities Program,
- Overcrowding Relief Grant Program,
- Critically Overcrowded Schools, and
- Charter School Facilities Program

Currently, as written, the SFP Regulations do not specify whether the HPI grant is available for certain Facility Hardship projects and there is no regulatory mechanism for providing and/or calculating the HPI grant for Facility Hardship replacement projects funded on a per-square foot basis or for rehabilitation projects, even though the SFP regulations do allow the HPI grant for Facility Hardship replacement schools. The proposed regulations address these inequities and allow Facility Hardship projects to expand the pool of projects eligible for the HPI grants. This carries out the SAB's directive in stimulating greater participation in the HPI Grant Program as well as apportioning those funds as quickly as possible.

Legislative History

Senate Bill (SB) 50 and Assembly Bill (AB) 16. The proposed regulatory amendments will help school construction projects under and fulfill the intent of SB 50 (Greene) and AB 16 (Hertzberg), which includes the following benefits to be obtained from the Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998 (Proposition 1A) and 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 Section 17075.10)

AB 127. The proposed amendments will help school construction projects under and fulfill the intent of AB 127, Chapter 35, Statutes of 2006 (Perata/Nunez). AB 127 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.

The Kindergarten-University School Facilities Act of 2006 (Proposition 1D) provided \$100 million in incentive grants to promote the use of high performance attributes in new construction and

modernization projects for K-12 schools. The HPI grant is an additional grant available to school districts with projects that have increased costs associated with high performance attributes in school facilities. High performance attributes include using designs and materials that promote energy and water efficiency, maximize the use of natural lighting, improve indoor air quality, utilize recycled materials and materials that emit a minimal amount of toxic substances, and employ acoustics that are conducive to teaching and learning.

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. 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 by SAB approval and next by date order received.

HPI Grant

By meeting High Performance Rating Criteria (HPRC) within the defined categories, a project achieves points; more high performance attributes generally means more points. Each project must achieve a minimum score to qualify for the HPI grant. The construction plans and supporting documentation are submitted to the DSA for review and score verification. The verified score is submitted to the OPSC as part of the complete funding application. The number of points corresponds to an increase ranging from 2 to just over 11 percent of the per pupil base grant amount.

In May 2010, a High Performance Base Incentive Grant (HPBIG) was introduced to encourage participation in acquiring HPI grants and to help offset some of the added costs incurred by school districts to design and install high performance building components.

- New Construction Projects - \$150,000 will be added to HPI grants meeting the minimum of 27 points on the HPRC point system.
- Modernization and New Construction Addition Projects - \$250,000 will be added to HPI grants meeting the minimum of 20 points on the HPRC point system.

Anticipated Benefits of the Proposed Regulations

The proposed regulatory amendments promote fairness and the State's general welfare, including protection of public health and safety, by expanding participation of the HPI grants to Facility Hardship replacement and rehabilitation (including Seismic) projects that carry out the intent of SB 50, AB 16, AB 127 and Propositions 1A (1998), 47 (2002), 55 (2004), and 1D (2006) by funding:

- extreme financial, disaster-related, or other hardship pupil housing needs; 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 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 allowing Facility Hardship replacement and rehabilitation (including Seismic) projects to include high performance building components in these types of projects.

Summary of the Proposed Regulatory Amendments

A summary of the proposed regulatory amendments is as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments add the definitions of "Facility Hardship Square Footage Grant" and "Seismic Rehabilitation Grant" in order to provide clear and concise references when calculating the HPI grant in SFP Regulation Section 1859.77.4. The addition of "and 2009 CA-CHPS Criteria" in the definition of "High Performance Rating Criteria" is for reference only and is considered a non-substantive change, as well as the capitalization of the letters "C," "R," and "C" found in the definition of "Rehabilitation Cost." [The letters represent Current Replacement Cost which is a defined term in the SFP Regulations.] The Form SAB 50-04, *Application for Funding*, which is incorporated by reference, is being revised and its revision date changes from "09/12" to "05/13."

Existing Regulation Section 1859.71 sets forth the manner by which the annual adjustment to the New Construction Grant is adjusted. The proposed amendment updates the *Project Information Worksheet* revision date from "New 09/07" to "Revised 05/10."

Existing Regulation Section 1859.71.6 sets forth a point system based upon construction industry-recognized High Performance Rating Criteria (HPRC), for school districts to qualify for an SFP additional grant for including "high performance" designs and materials in their new construction projects. Additional points were added to the HPRC categories which facilitated projects achieving more points and therefore qualifying for HPI grants. A High Performance Base Incentive Grant (HPBIG) was also added to encourage participation in acquiring HPI grants and to help offset some of the added costs incurred by districts to design and install high performance building components in projects. The proposed amendments make clarifying language changes referring to the points available for certain high performance criteria, remove year-specific references to the California Energy Code, and add a citation of the title and part of the California Energy Code as specified in the California Code of Regulations.

Existing Regulation Section 1859.74.5 sets forth criteria for a new construction additional grant when school district wants to construct a school on a district-owned site rather than acquire a site. The proposed amendment corrects the use of a word from "proceeding" to "preceding." This is considered a non-substantive change and is grammatically correct.

Existing Regulation Section 1859.77.4 sets forth criteria based upon the HPRC point system with review/approval by the Division of the State Architect (DSA), to provide qualifying school districts a percentage increase in their new construction addition project or modernization project grants for meeting the point value threshold. The proposed amendments restructures subsection (b) by adding subsections (b)(1) through (b)(5) and names the types of projects eligible for the HPI grant that is calculated pursuant to subsection (b), and the appropriate references to the new subsections. This addition provides the HPI grant to Facility Hardship projects funded on a square footage basis, seismic rehabilitation projects, and rehabilitation projects. In addition, there is the renumbering of subsections from subsections (1), (2), and (3) to subsections (6), (7), and (8) due to the addition of subsections (b)(1) through (b)(5).

Existing Regulation Section 1859.82 establishes the criteria a district must meet to be eligible for facility hardship funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. The proposed amendments require that a cost/benefit analysis shall not include the costs of high performance components unless those high performance components were already existing in the classroom or related facility. The proposed amendments also list HPI grant funding as supplemental funding for Facility Hardship replacement projects that are funded on a square footage basis, including Seismic projects, as long as the points attained are related to the scope of the Facility Hardship project. The addition of an unnumbered paragraph relates to seismic

rehabilitation projects and lists the additional grants for HPI and Prevailing Wage Monitoring for these types of projects.

Existing Regulation Section 1859.83 specifies additional school project funding (Excessive Cost Hardship Grants) for which school districts may apply as a result of unusual circumstances that create excessive project costs. Subsection (e) prescribes Excessive Cost Hardship Grants for excessive costs for rehabilitation of facilities that have been determined to be a health and safety risk to the pupils. The proposed amendments specify that the increased costs associated with high performance related costs or components shall be excluded from the required cost/benefit analysis with the exception of those high performance components that were pre-existing in the classroom or related facility. The proposed amendments also list the HPI grant as an additional grant that is available for rehabilitation projects and provides that high performance points attained must be related to the scope of the Facility Hardship project.

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 amendment adds a reference to SFP Regulation Section 1859.77.4, which provides the HPI grant for new construction projects on existing sites.

Determination of Inconsistency or Incompatibility with Existing State Regulations

The HPI grant provides funding for the cost of design and materials that promote characteristics of high performance schools for the following programs under the SFP:

- New Construction,
- Modernization,
- Career Technical Education Facilities Program,
- Overcrowding Relief Grant Program,
- Critically Overcrowded Schools, and
- Charter School Facilities Program

Currently, as written, the SFP Regulations do not specify whether the HPI grant is available for certain Facility Hardship projects and there is no regulatory mechanism for providing and/or calculating the HPI grant for Facility Hardship replacement projects funded on a per-square foot basis or for rehabilitation projects, even though the SFP regulations do allow the HPI grant for Facility Hardship replacement schools. The proposed regulations address these inequities and allow Facility Hardship projects to expand the pool of projects eligible for the HPI grants. This carries out the SAB's directive in stimulating greater participation in the HPI Grant Program as well as apportioning those funds as quickly as possible.

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 regulatory amendments are within the SAB's authority to enact regulations for the SFP under Education Code Section 17070.35 and Government Code Section 15503.

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 local agencies or 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:

- An initial determination has been made 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.
- There are no cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- 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 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.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Proceeding with the implementation of these amendments will have a positive impact on California businesses, such as local businesses, manufacturing, “green” technology and construction industries (i.e., architects, engineers, trades and municipalities), along with maintaining or creating an unspecified number of jobs. The proposed regulations have a direct benefit to California businesses because once State bond funding has been released school districts are able to use the funds for construction projects; thus, expanding construction-related trades and businesses and stimulating the State’s economy. Therefore, the proposed regulations most likely will have a positive effect on the creation of jobs, creation of new businesses, expansion of businesses, and will not eliminate jobs or eliminate existing businesses within California.

Since February 2008, the SAB has apportioned \$62 million for HPI grants, representing 246 projects. There is \$38 million remaining available for the HPI Grant Program. The proposed amendments will allow school districts with Facility Hardship replacement and rehabilitation (including Seismic) projects to include high performance components and help meet the legislative intent to achieve these efficiencies in health and safety school facility projects.

Benefits to Public Health and Welfare, and the State’s Environment

- The proposed emergency regulations have an impact upon public health and safety because the SAB elected to provide funding 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. The action taken by the SAB, at its August 4, 2010 meeting, approved the placement of 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. This ensures the SAB’s commitment to the health and safety of the students and public.
- The proposed regulatory amendments promote fairness and the State’s general welfare, including protection of public health and safety, by expanding participation of the HPI grants to Facility Hardship replacement and rehabilitation (including Seismic) projects that carry out the intent of SB 50, AB 16, AB 127 and Propositions 1A (1998) 47 (2002), 55 (2004), and 1D (2006) by funding:
 - extreme financial, disaster-related, or other hardship pupil housing needs; 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 regulations have a direct benefit to California businesses because once State bond funding has been released school districts are able to use the funds for construction projects; thus, expanding construction-related trades and businesses and stimulating the State’s economy.
- There will be a positive impact to the State’s environment from the proposed regulations because school districts will be incorporating green technology and high performance building components in their projects.

The SAB finds the proposed regulations fully consistent with the stated purposes and benefits of SB 50, AB 16 and AB 127, including the decision to prioritize Facility Hardship projects.

EFFECT ON SMALL BUSINESSES

It has been determined that the amendments to the regulation sections will not affect small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. These 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 September 9, 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:

Lisa Jones, Regulations Coordinator

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

E-mail Address: lisa.jones@dgs.ca.gov

Fax No.: (916) 375-6721

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Ron Koepl at (916) 375-2032. If Mr. Koepl is unavailable, these questions may be directed to the backup contact person, Ms. 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 regulation should be addressed to the agency's regulation 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 regulation coordinator named in this notice or may be accessed on the Web site listed above.