

August 29, 2014

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS OF SCHOOLS, CHARTER SCHOOLS, AND OTHER INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO AMEND VARIOUS REGULATION SECTIONS, ALONG WITH ASSOCIATED FORMS, AND TO ADOPT THREE REGULATION SECTIONS, TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

REGULATION SECTIONS PROPOSED FOR AMENDMENT: 1859.2, 1859.77.4, 1859.106.1, 1859.160, 1859.161, 1859.162, 1859.163, 1859.163.1, 1859.163.4, 1859.163.5, 1859.164, 1859.164.1, 1859.164.2, 1859.165, 1859.166, 1859.166.1, 1859.167, 1859.167.4, 1859.167.5, 1859.168, 1859.171, AND 1859.172.

FORMS PROPOSED FOR AMENDMENT:

*Application for Funding*, Form SAB 50-04 (Revised ~~05/13~~ 05/14), referenced in Regulation Section 1859.2 and is incorporated by reference.

*Application for Charter School Preliminary Apportionment*, Form SAB 50-09 (Revised ~~12/11~~ 05/14), referenced in Regulation Section 1859.2 and is incorporated by reference.

REGULATION SECTIONS PROPOSED FOR ADOPTION: 1859.167.1, 1859.167.2, AND 1859.167.3.

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to adopt and amend the above-referenced Regulation Sections, including the associated forms, contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the OPSC, at its own motion or at the instance of any interested person, may adopt the proposal substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to adopt and amend the above-referenced regulation sections under the authority provided by Section 17070.35 of the Education Code. The proposed and existing Regulation sections noted above operate under the authority of 17078.63, 17078.64, 17078.72(l) of the Education Code and Section 1771.3 of the Labor Code, and makes specific reference Sections 17071.25, 17071.75, 17075.10, 17075.15, 17076.10(c), 17078.52, 17078.53, 17078.54, 17078.56, 17078.58, 17078.62, 17078.63, 17250.30, and 101012(a)(8) of the Education Code, and Section 1771.3 of the Labor Code.

## INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on October 8, 1999.

The SAB, at its May 28, 2014 meeting, adopted proposed regulations to the SFP Regulations that address the supplemental grant components and calculations for the Final Charter School Apportionment, Labor Compliance Program or prevailing wage monitoring costs, and Excessive Cost Hardship grant for Charter School Facilities Program (CSFP) rehabilitation projects. The purpose of the proposed regulations is to align the supplemental grants for CSFP rehabilitation projects with Education Code requirements in order to ensure that the appropriate state and local contributions are correctly calculated for the project. Without these proposed regulatory amendments, the funding contributed by the state would be considered a gift of public funds for CSFP rehabilitation projects.

### Bond Funds Impacted

- 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)

### Background and Problem Being Resolved

The proposed regulations resolve the problem of CSFP rehabilitation projects being out of compliance with Education Code requirements. Without these proposed regulations, the funding structure of existing SFP regulation sections (these sections provide supplemental grants for CSFP rehabilitation projects on the same basis as modernization projects) would continue to provide excess funding for the State's contribution to CSFP rehabilitation projects, resulting in a gift of public funds which is not consistent with the Legislative and voter intent of the school bonds. These existing regulation sections affect modernization projects which are statutorily funded on a 60/40 state and local share basis whereas the CSFP rehabilitation projects are statutorily funded on a 50/50 state and local share basis. Therefore, implementing these proposed regulations will ensure compliance with requirements outlined in the Education Code and the integrity of the SFP and the CSFP will be maintained.

### Legislative History

Assembly Bill (AB) 16. The proposed regulations help to correctly apportion school construction projects under AB 16, Chapter 33, Statutes of 2002 (Hertzberg), for CSFP projects because this is the statute which established the CSFP as a pilot program to determine the optimum method for providing school facilities funding for charter schools under the Kindergarten-University Public Education Facilities Bond Acts of 2002 and 2004 (Propositions 47 and 55). The following funding amounts were established under Propositions 47 and 55, respectively:

- \$100 million, and
- \$300 million

AB 127. The proposed regulatory amendments will help to correctly apportion school construction projects under AB 127, Chapter 35, Statutes of 2006 (Perata/Nunez). AB 127 continued to provide funding in the amount of \$500 million for the CSFP under Proposition 1D.

### Anticipated Benefits of the Proposed Regulations

The proposed regulations promote fairness and assists in the State's general welfare by aligning the supplemental grants for CSFP rehabilitation projects with Education Code requirements in order to ensure that the calculations for state and local contributions are correctly distributed for these types of projects. Without these proposed regulations, the funding structure of existing SFP regulations would continue to provide excess funding for the State's contribution to CSFP rehabilitation projects, resulting in a gift of public funds which is not consistent with the Legislative and voter intent of the school bonds.

The proposed regulations are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of these proposed regulations will have a positive impact on the State's general welfare while carrying out the Legislative and voter intent that the school bonds will be used for charter school purposes.

The proposed regulations will directly impact the State's economy as well as the local economies because school bond apportionments affect local businesses, manufacturing, and construction industries such as architects, engineers, trades and municipalities, along with the potential creation of an unspecified number of jobs. This is in direct alignment with the Governor's directive.

### Summary of the proposed regulatory amendments, including associated forms, and the proposed adoption of three regulation sections are as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed regulatory amendments add a reference to a new regulation subsection that provides a grant for prevailing wage monitoring and enforcement costs, and make minor non-substantive changes.

Existing Regulation Section 1859.77.4 sets forth a point system based upon construction industry-recognized High Performance Rating Criteria, for school districts to qualify for a SFP additional grant, including a \$250,000 High Performance Base Incentive Grant for projects evaluated using the 2009 CA-CHPS criteria, by including "high performance" design and materials in their new construction projects on existing sites and in modernization projects. The proposed regulatory amendments add a reference to clarify that CSFP rehabilitation projects will remain eligible to receive High Performance Incentive grants and make non-substantive changes.

Existing Regulation Section 1859.106.1 implements alternative actions upon a school district's failure to repay SAB-approved SFP funds due to the State within 60 days. Either the OPSC will initiate collection procedures as outlined in Education Code Section 17076.10(c)(1), or the school district may request a repayment schedule of up to five years upon showing that a lump sum repayment would put the school district in fiscal distress. The proposed regulatory amendments make non-substantive changes.

Existing Regulation Section 1859.160 instructs charter schools to file a specific form if seeking a preliminary apportionment for new school facilities construction. The proposed regulatory amendments make non-substantive changes that are consistent with the Education Code.

Existing Regulation Section 1859.161 specifies the timeframes for submitting applications for the CSFP. The proposed regulatory amendments make non-substantive changes that are consistent with the Education Code.

Existing Regulation Section 1859.162 sets forth the eligibility criteria for a preliminary apportionment for charter schools. The proposed regulatory amendments make non-substantive changes that are consistent with the Education Code.

Existing Regulation Section 1859.163 provides a collaborative effort between the California School Finance Authority and the SAB in approving charter school applications for funding. The proposed regulatory amendments make non-substantive changes that are consistent with the Education Code.

Existing Regulation Section 1859.163.1 establishes construction cost funding caps for Preliminary Charter School Apportionment determinations, based upon grade level(s) of the project and urban or non-urban location. The proposed regulatory amendments make non-substantive changes that are consistent with the Education Code.

Existing Regulation Section 1859.163.4 sets forth eligibility criteria whereby a school district or a charter school can apply for a Preliminary Charter School Rehabilitation Apportionment. The proposed regulatory amendments make non-substantive changes.

Existing Regulation Section 1859.163.5 provides the calculation that determines a Preliminary Charter School Rehabilitation Apportionment based on the eligible square footage included in the project and additional supplemental grants. The proposed regulatory amendments: 1) clarify the calculation of supplemental grants, and the requirements and calculations for initiating and enforcing a Labor Compliance Program as well as for prevailing wage monitoring and enforcement; 2) align CSFP rehabilitation supplemental grants with Education Code requirements, specifically Section 17078.54(d); and 3) make non-substantive changes.

Existing Regulation Section 1859.164 sets forth the funding prioritization and processing if the estimated total apportionments for all financially sound Preliminary Charter School Applications exceed the funds available. The proposed regulatory amendments make non-substantive changes that are consistent with the Education Code.

Existing Regulation Section 1859.164.1 sets forth the calculation of preference points used to prioritize Preliminary Charter School Applications in case the estimated total apportionments for all qualified applications exceeds the funds available. The proposed regulatory amendments make non-substantive changes that are consistent with the Education Code.

Existing Regulation Section 1859.164.2 sets forth criteria for the release of funds to charter school applicants from Preliminary Charter School Apportionments. This Section also provides for the advance releases of funds for specified design costs and site acquisition costs for qualified charter schools that maintain financial soundness. The proposed regulatory amendments make non-substantive changes that are consistent with the Education Code.

Existing Regulation Section 1859.165 provides the criteria necessary for the conversion of the Preliminary Charter School Apportionment to the Final Charter School Apportionment. This Section also specifies that there may be no increase of the number of pupils for a project when the preliminary apportionment is converted to a final apportionment. The proposed regulatory amendments make non-substantive changes that are consistent with the Education Code.

Existing Regulation Section 1859.166 provides a four-year time limit to convert a Preliminary Charter School Apportionment to a Final Charter School Apportionment. This Section also details the process of rescinding Preliminary Charter School Apportionments which are not converted timely, including the appropriate transfer of funds, and restoring new construction eligibility to the affected school district. The proposed regulatory amendments make non-substantive changes that are consistent with the Education Code.

Existing Regulation Section 1859.166.1 specifies that a one-year extension to the time limit as set forth in Regulation Section 1859.166 above may be requested under certain conditions. The proposed regulatory amendments make non-substantive changes that are consistent with the Education Code.

Existing Regulation Section 1859.167 sets forth the Final Charter School Apportionment funding process for those Charter School Preliminary Apportionments provided by the SAB on February 23, 2005. This Section also distinguishes the process of converting Preliminary Charter School Apportionments to Final Charter School Apportionments for preliminary apportionments approved by the SAB either on or after July 2, 2003. For approvals after July 2, 2003, this Section clarifies which regulations will be applied, eligibility criteria, grant limitations, allowable funding increases for specified costs, and specified accounts to handle the funds. The proposed regulatory amendments make non-substantive changes that are consistent with the Education Code, along with renumbering corrections.

Proposed adoption of Regulation Section 1859.167.1 describes the components and calculation of the Final Charter School Apportionment for CSFP rehabilitation projects, based on a square footage grant in lieu of a per-pupil grant. This Section simplifies the alignment of regulations with statute.

Proposed adoption of Regulation Section 1859.167.2 describes the components and calculation of the additional grant for Labor Compliance Program costs or for the costs of prevailing wage monitoring and enforcement. This Section simplifies the alignment of regulations with statute.

Proposed adoption of Regulation Section 1859.167.3 describes the components and calculation of the Excessive Cost Hardship grant for CSFP rehabilitation projects. This Section addresses geographic location, small size, urban location, security requirements and impacted site, handicapped accessibility and fire code requirements, two-stop elevators and additional elevator stops beyond two stop elevators. This Section simplifies the alignment of regulations with statute.

Existing Regulation Section 1859.167.4 establishes Conversion Increase Fund accounts and processes for the return of CSFP funds to the Program resulting from rescissions of Preliminary Charter School Apportionments. The proposed regulatory amendments make minor non-substantive changes, including the renumbering of this regulation section.

Existing Regulation Section 1859.167.5 establishes criteria and the prioritization for the use of funds in the Unrestricted Charter School Fund accounts for the purposes outlined in Sections 1859.163.3 and 1859.167(a) and (b), and Education Code Section 17078.58. The proposed regulatory amendment renumbers this regulation section because of the proposed adoption of the three regulation sections noted above.

Existing Regulation Section 1859.168 specifies that the Preliminary Charter School Apportionment, once it has been converted to a Final Charter School Apportionment, is subject to the district matching share requirement and that the matching share requirement may be met through lease payments. The proposed regulatory amendments make a minor non-substantive change.

Existing Regulation Section 1859.171 provides provisions for the use of or disposal of a charter school facility once a facility is no longer occupied by the original applicant or in cases where an applicant has received advance site acquisition funding but has not met the specified time limits in regulation. The proposed regulatory amendments make non-substantive changes that are consistent with the Education Code.

Existing Regulation Section 1859.172 specifies that before funds are released for site acquisition or new construction Final Charter School Apportionments, documentation must be submitted regarding title to project facilities, based on certain criteria. The proposed regulatory amendments make minor non-substantive changes that are consistent with the Education Code.

Existing Form SAB 50-04, *Application for Funding*, (incorporated by reference) is submitted by school districts to apply for State funding for new construction or modernization projects. The proposed regulatory amendments provide for the following:

- Adds a new numbered paragraph that sets forth document submittal requirements for Final Charter School Apportionments for CSFP rehabilitation projects.
- Separates the specific instructions for Modernization additional grant requests and CSFP rehabilitation additional grant requests, including excessive cost hardship requests.
- Separates data fields for Modernization additional grant requests and CSFP rehabilitation additional grant requests, including excessive cost hardship requests.
- Renumbers existing paragraphs because of newly-inserted paragraphs and sections.
- Makes other non-substantive changes.

Existing Form SAB 50-09, *Application for Charter School Preliminary Apportionment*, (incorporated by reference) is used by school districts and charter schools for purposes of requesting a preliminary apportionment for the new construction of charter school facilities. The proposed regulatory amendments make minor non-substantive grammatical changes, as well as non-substantive changes that are consistent with the Education Code.

*Determination of Inconsistency or Incompatibility with Existing State Regulations:*

The proposed regulations resolve the problem of CSFP rehabilitation projects being out of compliance with Education Code requirements. Without these proposed regulations, the funding structure of existing SFP regulation sections (these sections provide supplemental grants for CSFP rehabilitation projects on the same basis as modernization projects) would continue to provide excess funding for the State's contribution to CSFP rehabilitation projects, resulting in a gift of public funds which is not consistent with the Legislative and voter intent of the school bonds. These existing regulation sections affect modernization projects which are statutorily funded on a 60/40 state and local share basis whereas the CSFP rehabilitation projects are statutorily funded on a 50/50 state and local share basis. Therefore, implementing these proposed regulations will ensure compliance with requirements outlined in the Education Code and the integrity of the SFP and the CSFP will be maintained.

The State's economy will be stimulated because school districts and/or charter schools receiving State apportionments for CSFP rehabilitation projects 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.

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.

Due to the large amount of proposed regulatory text and two associated forms, this information is not attached and may be reviewed on the OPSC Web site at [www.dgs.ca.gov/opsc](http://www.dgs.ca.gov/opsc). Copies of the proposed regulatory text and forms will be mailed to any person requesting this information by using the OPSC contact information set forth below under "Submission of Comments, Documents and Additional Information" (page 9). The proposed regulations amend the SFP Regulations under the CCR, 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.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500)

of Division 4 of the Government Code. It will not require school districts or charter schools to incur additional costs in order to comply with the proposed regulations.

### DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Executive Officer of the SAB has made the following initial determinations relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- The proposed regulations create no costs to any local agency or school district requiring reimbursement pursuant to Section 17500 et seq., or 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

#### *Impact to Businesses and Jobs in California*

Proceeding with the implementation of these regulatory 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. This will result when school districts and charter schools bid their projects, which will expand businesses and stimulate the State’s economy, as well as the local economies. This is in direct alignment with the Governor’s directive, and carries out the Legislative and voter intent that the school bonds will be utilized prudently, and the integrity of the SFP and the CSFP will continue to be maintained.

Therefore, the proposed regulations provide a positive impact to the creation of jobs, the creation of new businesses, and the expansion of businesses in California. It is not anticipated that the proposed regulations will result in the elimination of existing businesses or jobs within California.

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

- The proposed regulatory amendments benefit the health and safety of pupils, staff, and others on California school sites, and to the State’s environment because the proposed regulations will facilitate and accelerate the rehabilitation of charter schools. The CSFP funds rehabilitation projects that improve energy and water efficiency, indoor environmental quality, and natural lighting, low toxin materials, and improved acoustics for schools.
- The proposed regulations promote fairness and the State’s general welfare by aligning the supplemental grants for CSFP rehabilitation projects with Education Code requirements in order to ensure that the calculations for state and local contributions are correctly distributed for these types of projects. Without these proposed regulations, the funding structure of existing SFP regulation sections would continue to provide excess funding for the State’s contribution to CSFP rehabilitation projects, resulting in a gift of public funds which is not consistent with the Legislative and voter intent of the school bonds.

- The proposed regulations have a direct benefit to California businesses because once State bond funding has been released school districts and charter schools are able to use the funds for rehabilitation projects; thus, expanding construction-related trades and businesses and stimulating the State's economy. These actions are in direct alignment with the Governor's directive. In addition, the dollars associated with these proposed regulations will benefit the school district communities by stimulating the local economies.
- The proposed regulations increase the investment in the State because school facilities are rehabilitated for the students' health and safety, and overall academic success.
- The proposed regulations provide incentive for innovation because more school districts and charter school are introducing high performance components such as natural lighting, energy and water efficiency, and air quality that enhance the learning environment into their plans for CSFP rehabilitation 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. The regulations only apply to school districts and charter schools 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 October 13, 2014, 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, 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) 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 regulations should be addressed to the agency's regulations coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

### SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

### RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in strikeout/underline.
2. A copy of this Notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received, they will be added to the rulemaking file. The file is available for public inspection at the OPSC during normal working hours. Items 1 through 3 are also available on the OPSC Internet Web site at: <http://www.dgs.ca.gov/opsc> under "Resources," 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 regulations coordinator named in this notice or may be accessed on the Web site listed above.