

August 1, 2014

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

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO AMEND
REGULATION SECTIONS 1859.73.2, 1859.76,
1859.78.7, AND 1859.82,
TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO
LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-referenced Regulation Sections, 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 amend the above-referenced regulation sections under the authority provided by Section 17070.35 of the Education Code. The existing Regulation sections noted above operate under the authority of 17075.15 of the Education Code, and makes specific reference Sections 17071.46, 17072.12, 17072.35, 17074.26, 17074.56, 17075.10, 17075.15, 17250.30, and 101012(a)(1) 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 regulatory amendments to the SFP Regulations that update the name of a publication that is used in the SFP to calculate certain grants based on cost estimates, including site development (off-site, service site and utility work) for new construction, demolition costs for replaced facilities, utility costs for permanent buildings 50 years or older in a modernization project, and Facility Hardship.

Attached to this Notice is the specific regulatory language of the proposed regulatory action. You may also review the proposed regulatory language on the OPSC Web site at www.dgs.ca.gov/opsc. Copies of the amended regulatory text will be mailed to any person requesting this information by using the OPSC contact information set forth below. 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.

Background and Problem Being Resolved

The current publications or manuals, *Saylor Current Construction Costs* and *Saylor Current Construction Costs Remodeling/Repair*, are published by Saylor Publications, Inc., which was purchased in 2011 by Sierra West Group. As a result of the ownership change, the titles of the publications will change to *Current Construction Costs* and *Repair Remodeling Construction Costs* and will continue to be published by the Sierra West Group without reference to the “Saylor” trademark, as of January 1, 2015. Therefore, the proposed regulatory amendments remove reference to the “Saylor” trademark by removing “Saylor” and adding “publication by the Sierra West Group” in four SFP regulation sections. This will allow the SFP to continue to use the same publication that has been used since the inception of the Program (in 1998).

Anticipated Benefits of the Proposed Regulations

The proposed regulations allow continued use of the same publication used since the inception of the Program (in 1998) to ensure integrity while maintaining consistency of the SFP. The proposed regulations also ensure stakeholders are clear on which publication will continue to be used. The proposed regulatory amendments are therefore determined to be consistent and compatible with existing State laws and regulations.

Statutory Authority and Implementation

Education Code Section 17070.35. (a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following: (1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter.

Government Code Section 15503. Whenever the board is required to make allocations or apportionments under this part, it shall prescribe rules and regulations for the administration of, and not inconsistent with, the act making the appropriation of funds to be allocated or apportioned. The board shall require the procedure, forms, and the submission of any information it may deem necessary or appropriate. Unless otherwise provided in the appropriation act, the board may require that applications for allocations or apportionments be submitted to it for approval.

Summary of the proposed regulatory amendments are as follows:

Existing Regulation Section 1859.73.2 sets forth the criteria for school districts to receive supplemental funding when replacing single-story buildings with multistory buildings for purposes of increasing classroom capacity, which helps avoid overcrowding, creates more open space for physical education activities, etc., and saves State funds by avoiding costs to purchase new school sites that would have otherwise been needed. The proposed regulatory amendment updates the name of a publication that is used in the SFP to calculate certain grants. This will ensure integrity while maintaining consistency of the SFP.

Existing Regulation Section 1859.76 provides new construction additional grants for specific types and amounts of site development costs, including general site development costs. The proposed regulatory amendment updates the name of a publication that is used in the SFP to calculate certain grants. This will ensure integrity while maintaining consistency of the SFP.

Existing Regulation Section 1859.78.7 sets forth criteria for how a school district will access this funding for site development and utility related costs associated with 50 year or older permanent buildings. It also provides a limit on this funding. The proposed regulatory amendment updates the name of a publication that is used in the SFP to calculate certain grants. This will ensure integrity while maintaining consistency of the SFP.

Existing Regulation Section 1859.82 sets forth 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 regulatory amendment updates the name of a publication that is required to be used in the calculation of certain grants for facility hardship projects under this regulation section. This will ensure integrity while maintaining consistency of the SFP.

Determination of Inconsistency or Incompatibility with Existing State Regulations

The current publications or manuals, *Saylor Current Construction Costs* and *Saylor Current Construction Costs Remodeling/Repair*, are published by Saylor Publications, Inc., which was purchased in 2011 by Sierra West Group. As a result of the ownership change, the titles of the publications will change to *Current Construction Costs* and *Repair Remodeling Construction Costs* and will continue to be published by the Sierra West Group without reference to the “Saylor” trademark, as of January 1, 2015. Therefore, the proposed regulatory amendments remove reference to the “Saylor” trademark by removing “Saylor” and adding “publication by the Sierra West Group” in four SFP regulation sections. This will allow the SFP to continue to use the same publication that has been used since the inception of the Program (in 1998).

After conducting a review, the OPSC, on behalf of 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 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:

- 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 not have an impact on California businesses and jobs as the amendments are updating the name of a publication that is used in the SFP to calculate certain grants based on cost estimates, including site development (off-site, service site and utility work) for new construction, demolition costs for replaced facilities, utility costs for permanent buildings 50 years or older in a modernization project, and Facility Hardship.

The current publications or manuals, *Saylor Current Construction Costs* and *Saylor Current Construction Costs Remodeling/Repair*, are published by Saylor Publications, Inc., which was purchased in 2011 by Sierra West Group. As a result of the ownership change, the titles of the publications will change to *Current Construction Costs* and *Repair Remodeling Construction Costs* and will continue to be published by the Sierra West Group without reference to the “Saylor” trademark, as of January 1, 2015.

Therefore, the proposed regulations will not impact 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, Safety, and the State’s Welfare

- The proposed regulatory amendments will benefit the health and safety of pupils, staff, and others on California school sites because the publication that this regulatory amendment addresses is required when calculating grants for some types of qualifying facility hardship (health and safety) projects. Without updating the name of the publication, there will be no means to calculate the grant amounts for these types of projects. The proposed regulatory amendments will ensure continued availability of the publication. By updating the name to continue the use of the publication, consistency in the calculation of those grants for facility hardship projects and the integrity of the SFP will be maintained.
- The proposed regulatory amendments promote fairness and the State’s general welfare by ensuring consistency in the calculation of the SFP grants and maintaining the integrity of the SFP.
- The proposed regulatory amendments will not impact 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 within California.
- The proposed regulatory amendments will not increase or decrease the investment in the State because the amendments are updating the name of a publication, which is used to calculate certain SFP grants. The amendments will ensure consistency in calculating those grants while maintaining the integrity of the SFP.
- The proposed regulatory amendments do not provide incentive for innovation because the amendments are updating the name of a publication, which is used to calculate SFP grants. This will ensure consistency in calculating the SFP grants while maintaining the integrity of the SFP.

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 September 15, 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, 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 Koeppel at (916) 375-2032. If Mr. Koeppel 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.