

October 3, 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 AND ADOPT REGULATION SECTIONS, INCLUDING AN ASSOCIATED FORM, SUBGROUP 3.5, TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO SURPLUS SCHOOL PROPERTY; USE OF PROCEEDS: RETURN OF MONEYS FROM A STATE SCHOOL FACILITIES FUNDING PROGRAM

REGULATION SECTION PROPOSED FOR AMENDMENT: 1700.

REGULATION SECTIONS PROPOSED FOR ADOPTION: 1701 AND 1702.

FORM PROPOSED FOR ADOPTION:

Return of Real Property Sale Proceeds Notification, Form SAB 308 (New 06/14), referenced in Regulation Section 1700 and is incorporated by reference.

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend and adopt 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 proposal substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend and adopt the above-referenced regulation sections under the authority provided by Sections 17462 and 17462.3 of the Education Code. The proposed and existing Regulation sections noted above operate under the authority of 17462.3 of the Education Code, and Section 15490 of the Government Code, and makes specific reference Sections 17462, 17462.3, and 17463.8 of the Education Code.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

Education Code Section 17462 requires school districts to use the funds derived from the sale of surplus property for capital outlay purposes or maintenance of school district property. It also provides a ten year lock-out period for which the school district governing board and the SAB must agree that the school district has no anticipated need for additional sites, building construction, or major deferred maintenance.

Education Code Section 17462.3 specifies that the SAB may establish a program that requires school districts, county offices of education, or charter schools that sell real property that was purchased with or modernized with, or on which improvements were constructed that were funded with any moneys from a state school facilities funding program to return moneys to the SAB, based on certain criteria.

The SAB, at its June 25, 2014 meeting, adopted a proposed regulation that establishes the Return of Real Property Sale Proceeds Program and addresses the provisions in Education Code Section 17462.3. Although this proposed regulation operates outside the regulatory parameters of the School Facility Program (SFP) of Chapter 12.5, the recovery of these moneys will revert back to specific SFP propositions for reallocation to construction-ready projects, which do operate under the SFP, Chapter 12.5. This will continue to help expand businesses and create jobs while stimulating the economy. This is in direct alignment with the Governor's directive. Without this proposed regulation, the provisions of the statute would not be in effect as the statute requires the SAB to take an action to create a program. The State would not have a mechanism to recover state funding provided to school districts, county offices of education or charter schools that sell surplus property that was purchased, constructed, or modernized with state bond proceeds. Further, the amount of state funding to be returned would be unclear. This would not be in the best interest of the State.

Background and Problem Being Resolved

The proposed regulation resolves the State's inability to recover bond funds when school districts, county offices of education, or charter schools sell real property that was purchased with or modernized with, or on which improvements were constructed that were funded with any moneys from a state school facilities funding program, based on certain criteria. This means that moneys recovered will revert back to specific SFP propositions for reallocation to construction-ready projects, which directly impacts the State's economy as well as the local economies. Therefore, this proposed regulation carries out the Legislative and voter intent that the bond funds are being used prudently while maintaining the integrity of the SFP.

Bond Funds Impacted

- Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998 (Proposition 1A),
- Kindergarten-University Public Education Facilities Bond Act of 2002 (Proposition 47),
- Kindergarten-University Public Education Facilities Bond Act of 2004 (Proposition 55),
- Kindergarten-University Public Education Facilities Bond Act of 2006 (Proposition 1D)

Anticipated Benefits of the Proposed Regulation

The proposed regulation promotes fairness and assists in the State's general welfare through the recovery and reallocation of bond funds in order to ensure the prudent use of taxpayer dollars. Without this proposed regulation, the provisions of the statute would not be in effect as

the statute requires the SAB to take an action to create a program. The State would not have a mechanism to recover state funding provided to school districts, county offices of education or charter schools that sell surplus property that was purchased, constructed, or modernized with state bond proceeds. Further, the amount of state funding to be returned would be unclear. This would not be in the best interest of the State.

The proposed regulations are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of this proposed regulation will have a positive impact on the State's general welfare while carrying out the Legislative and voter intent that the bond funds are being used prudently while maintaining the integrity of the SFP.

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 amendment, and the proposed adoption of two regulation sections, including an associated form, are as follows:

Existing Regulation Section 1700 represents a set of defined words and terms used exclusively for these regulations. The proposed regulation adds new words and terms that are specific to the requirements of Education Code Section 17462.3.

Proposed adoption of Regulation Section 1701 sets forth criteria for the program and clarifies that the date funds are received will be the date the school district, county office of education, or charter school was provided an Apportionment from the SAB. The date the real property is sold is the date of the title transfer and, in addition to the sale of real property, real property transferred through condemnation proceedings is included.

Proposed adoption of Regulation Section 1702 establishes the program described in Education Code Section 17462.3, including reporting requirements and criteria for the return of funds for school districts, county offices of education, or charter schools, as well as requires the submittal of a completed Form SAB 308, *Return of Real Property Sale Proceeds Notification*, in order to document pertinent data for purposes of administering the program.

Proposed adoption of Form SAB 308, *Return of Real Property Sale Proceeds Notification*, (incorporated by reference) will be used by school districts, county offices of education, and charter schools for purposes of notifying the OPSC, within 90 days, of the sale of real property. The Form includes data fields to identify the submitting educational entity, buyer, seller, sale and property data, state school facilities program funding received, certifications, and signature and date by the district representative.

Determination of Inconsistency or Incompatibility with Existing State Regulations:

The proposed regulation resolves the State's inability to recover bond funds when school districts, county offices of education, or charter schools sell real property that was purchased with or modernized with, or on which improvements were constructed that were funded with any moneys from a state school facilities funding program, based on certain criteria. This means that moneys recovered will revert back to specific SFP propositions for reallocation to construction-ready projects, which directly impacts the State's economy as well as the local

economies. This is in direct alignment with the Governor's directive. Therefore, this proposed regulation carries out the Legislative and voter intent that the bond funds are being used prudently while maintaining the integrity of the SFP.

With the reallocation of the bond funds to construction-ready projects, the State's economy will be stimulated because school districts and/or charter schools receiving State apportionments for their 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 regulation is neither inconsistent nor incompatible with existing State laws and regulations. Although this proposed regulation is outside the regulatory parameters of the SFP of Chapter 12.5, the recovery of these moneys will revert back to specific SFP propositions for reallocation to construction-ready projects, which do operate under the SFP, Chapter 12.5. Therefore, it is within the SAB's authority to enact regulations for the SFP under Education Code Section 17070.35(a) and Government Code Section 15503.

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 proposed regulatory text, including the associated form, 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 6). The proposed regulation amends and adopts regulatory language under the CCR, Title 2, Chapter 3, Subchapter 4, Group 1, State Allocation Board, Subgroup 3.5, Regulations relating to Surplus School Property: Use of Proceeds; Return of Moneys from a State School Facilities Funding Program.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulation does 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, county offices of education or charter schools to incur additional costs in order to comply with the proposed regulation.

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, county office of education, or charter school 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 regulation creates 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 the proposed regulation 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. Once school districts, county offices of education, or charter schools have met the requirements outlined in Education Code Section 17462.3, the State will recover bond funds which will revert into specific SFP propositions, which will result in the reallocation of bond funds to construction-ready projects. This 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 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 regulation 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 regulation benefits the health and safety of pupils, staff, and others on California school sites, and to the State’s environment because the proposed regulation will facilitate and accelerate the completion of school construction projects. Once bond funds have reverted to specific SFP propositions upon the sale of real property, the bond funds will be reallocated to construction-ready projects that improve energy and water efficiency, indoor environmental quality, and natural lighting, low toxin materials, and improved acoustics for schools.
- The proposed regulation promotes fairness and assists in the State’s general welfare through the recovery and reallocation of bond funds in order to ensure the prudent use of taxpayer dollars. Without this proposed regulation, the provisions of the statute would not be in effect as the statute requires the SAB to take an action to create a program. The State would not have a mechanism to recover state funding provided to school districts, county offices of education or charter schools that sell surplus property that was purchased, constructed, or modernized with state bond proceeds. Further, the amount of state funding to be returned would be unclear. This would not be in the best interest of the State.
- The proposed regulation has a direct benefit to California businesses because once State bond funding has been released school districts, county offices of education, and/or charter schools are able to use the funds for their 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 this proposed regulation will benefit the school district communities by stimulating the local economies.

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 regulation only applies to school districts, county offices of education, and charter schools for purposes of recovering bond funds and 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 November 17, 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 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.