

March 27, 2015

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
REGULATION SECTION 1859.163.1, 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 Section, 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 section under the authority provided by Sections 17070.35 and 17078.64 of the Education Code, and makes specific reference Sections 17078.52, 17078.58, and 17250.30 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 October 16, 2014 meeting, adopted proposed regulatory amendments to the SFP Regulations that would align the Charter School Preliminary Apportionment general site development grant with the New Construction general site development grant. This will ensure that this additional grant is calculated equally and consistently so that the Charter School Preliminary Apportionment does not result in increased bond authority being reserved for the project that will not be necessary at the time the project converts to a Final Charter School Apportionment. After four or five years when the project converts, the Charter School Preliminary Apportionment amount should be close to the calculated Final Charter School Apportionment amount. This allows charter school

applicants funding to more accurately develop a budget for their construction project(s) as they move through the planning process. As a reminder, the general site development additional grant helps school districts and charter schools cover the extra costs for items such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields. School districts may be eligible for the additional grant when building new schools and for additions to existing school sites where additional acreage is acquired.

Bond Funds Impacted

The following three State school bonds were authorized by the Legislature and approved by the State's electorate for purposes of school facility construction for the Charter School Facilities Program (CSFP):

- 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 regulation resolves the problem of the inconsistent calculation of the general site development for Charter School Preliminary Apportionments outlined in Regulation Section 1859.163.1(a)(4) compared to the calculation outlined in Regulation Section 1859.76(d). Under the CSFP, when a Charter School Preliminary Apportionment is calculated, it includes the same grants as a full funding new construction grant approval. However, the current reading of Regulation Section 1859.163.1(a)(4) would calculate the general site development at twice the amount thereby resulting in an increase in bond authority being reserved for the Charter School Preliminary Apportionment for the project. Charter School Preliminary Apportionment amounts should be close to what the project will receive when it converts to a Final Charter School Apportionment. This allows charter school applicants funding to more accurately develop a budget for their construction project(s) as they move through the planning process.

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.

Anticipated Benefits of the Proposed Regulations

The proposed regulation aligns an inconsistent calculation of the general site development for Charter School Preliminary Apportionments outlined in Regulation Section 1859.163.1(a)(4). With the deletion of three words, the integrity of the SFP will be maintained because increased bond authority will not be reserved for Charter School Preliminary Apportionments. Further, when the projects convert to Final Charter School Apportionments, the amount of the Final Charter School Apportionment should be close to what the initial Charter School Preliminary Apportionment was for the project. This benefits the SFP as well as the State in ensuring the integrity of the bond funds.

The proposed regulatory amendments are therefore determined to be consistent and compatible with existing State laws and regulations.

Summary of the proposed regulatory amendment is as follows:

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 align the general site development grant calculation with the new construction general site development grant calculation outlined in Regulation Section 1859.76(d).

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.

Determination of Inconsistency or Incompatibility with Existing State Regulations

The proposed regulatory amendments align the calculation for the general site development grant for Charter School Preliminary Apportionments with the general site development grant for new construction projects. Without this proposed regulation, increased bond authority would be reserved beyond what the Charter School Preliminary Apportionment should be when the project converts to a Final Charter School Apportionment. This would not be a prudent use of bond funds because consistency in the application of the calculation would not be maintained.

After conducting a review, the OPSC, on behalf of the SAB, has concluded that this is the only regulation on this subject area, and therefore, the proposed regulation is 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 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 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 regulation creates no costs to any local agency, school district, 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

There is a positive economic impact to California businesses because school districts and charter schools building new construction projects will contract with businesses and suppliers for necessary landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields, including the companies which supply the materials for these improvements. The proposed regulation indirectly creates an unknown amount of (temporary) jobs in landscaping, concrete, asphalt, finishing, playground and athletic field equipment, and other construction trades, along with stimulating the economy.

Therefore, the proposed regulation will not negatively impact 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

There is no health and safety impact assigned to this regulatory amendment. There is no impact to the State's environment from the proposed regulation. This regulatory amendment deletes three words that specifically apply to the calculation of the general site development grant for a Charter School Preliminary Apportionment.

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 May 11, 2015, 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.