

REPORT OF THE EXECUTIVE OFFICER  
State Allocation Board Meeting, April 15, 2015

IMPLEMENTATION OF SENATE BILL 869  
PROPOSED REGULATIONS

PURPOSE OF REPORT

To request State Allocation Board (Board) approval of proposed regulatory amendments for allocation of returning High Performance Incentive (HPI) Grants and Career Technical Education Facilities Program (CTEFP) funds as a result of Senate Bill (SB) 869 Chapter 39, Statutes of 2014.

DESCRIPTION

At the February 24, 2015 meeting, the Board approved regulations to implement the provisions set forth by SB 869 and directed Staff to bring back conforming regulations to establish a process for allocation of returning funds. This item includes proposed regulations that detail the process for allocation of HPI and CTEFP funds that return to the SFP on or after January 1, 2015. In addition, regulatory amendments are included to formalize the Board policy of prioritizing Facility Hardship applications.

AUTHORITY

See Attachment A.

BACKGROUND

On June 20, 2014, SB 869 was signed into law, adding Education Code (EC) Sections 17070.965 and 17078.73, and amending Sections 101012(a)(4) and (8). These sections pertain to the allocation of HPI and CTEFP funds

In accordance with the requirements of SB 869, the HPI and CTEFP Bond Authority not yet approved on January 1, 2015 was transferred on a 50/50 basis to the SFP New Construction and Modernization Accounts. In addition, statute states that the Board shall determine the percentage of rescinded funds to be allocated to the SFP New Construction and Modernization Accounts in the future.

As of February 24, 2015 there was approximately \$500,000 in HPI bond Authority and \$1 million in CTEFP Bond Authority remaining.

Current Board policy prioritizes the processing and funding of Facility Hardship applications. The Facility Hardship program provides funding for the replacement or rehabilitation of facilities when there is a threat to the health and safety of pupils occupying the facilities. Rehabilitation applications are Facility Hardship projects funded like a modernization application pursuant to SFP Regulation Section 1859.83(e).

STAFF ANALYSIS/STATEMENTS

On February 24, 2015 the Board directed Staff to bring back conforming regulatory amendments to detail the process of allocating HPI and CTEFP funds that may return in the future.

Attachment B includes proposed amendments to SFP Regulations 1859.70.4, 1859.93, 1859.93.1, and 1859.190.

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STAFF ANALYSIS/STATEMENTS (cont.)

*SFP Regulation Sections 1859.93 and 1859.93.1*

On October 24, 2012 the Board took action to prioritize processing and approval of Facility Hardship applications. The Board has statutory authority to approve these regulations.

*SFP Regulation Sections 1859.70.4 and 1859.190*

These regulations detail the process by which any funds returning from HPI or CTEFP projects shall first be allocated to Approved Applications for Facility Hardship and Rehabilitation projects in order of receipt. If there are no Approved Applications for Facility Hardship or Rehabilitation applications or after all of these Approved Applications are fully funded, any returning funds shall be divided on a 50/50 basis between the SFP New Construction and Modernization accounts to fund new construction and modernization projects in order of receipt.

Both sections remove language that was approved by the Board on February 24, 2015. The previously approved language is no longer necessary as the new regulatory amendments clarify the process for allocation of rescinded funds. There is a key which delineates the types of regulatory changes at the top of Attachment B.

RECOMMENDATIONS

1. Adopt the proposed regulations as shown on Attachment B.
2. Authorize the Executive Officer to file the proposed regulations with the Office of Administrative Law.

## ATTACHMENT A

### AUTHORITY

Education Code (EC) Section 17070.35 states:

(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. However, the board shall have no authority to set the level of the fees of any architect, structural engineer, or other design professional on any project. The initial regulations adopted pursuant to this chapter shall be adopted as emergency regulations, and the circumstances related to the initial adoption are hereby deemed to constitute an emergency for this purpose. The initial regulations adopted pursuant to this chapter shall be adopted by November 4, 1998. If the initial regulations are not adopted by that date, the board shall report to the Legislature by that date, explaining the reasons for the delay.

(2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary.

(3) Determine the eligibility of school districts to receive apportionments under this chapter.

(4) Apportion funds to eligible school districts under this chapter.

(b) The board shall review and amend its regulations as necessary to adjust its administration of this chapter to conform with the act that amended this section to add this subdivision. Regulations adopted pursuant to this subdivision shall be adopted by November 5, 2002, and shall be adopted as emergency regulations in accordance with 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). The adoption of any emergency regulation pursuant to this subdivision filed with the Office of Administrative Law shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any emergency regulation adopted pursuant to this section shall remain in effect for no more than 365 days unless the board has complied with Sections 11346.2 to 11348, inclusive, of the Government Code.

EC Section 17070.96 states:

As part of its application for funding under this chapter, a school district shall certify that it has considered the feasibility of using designs and materials for the construction or modernization project that promote the efficient use of energy and water, the maximum use of natural lighting and indoor air quality, the use of recycled materials and materials that emit a minimum of toxic substances, the use of acoustics conducive to teaching and learning, and other characteristics of high performance schools.

EC Section 17070.965 states:

On or after January 1, 2015, the board shall not approve funding for incentive grants to promote the use of designs and materials in new construction and modernization projects that include the attributes of high-performance schools, including, but not limited to, the elements set forth in Section 17070.96.

EC Section 17075.15 states:

(a) From funds available from any bond act for the purpose of funding facilities for school districts with a financial hardship, the board may provide other construction, modernization, or relocation assistance as set forth in this chapter or Chapter 14 (commencing with Section 17085) to the extent that severe circumstances may require, and may adjust or defer the local financial participation, as pupil health and safety considerations require to the extent that bond act funds are provided for this purpose.

(b) The board shall adopt regulations for determining the amount of funding that may be provided to a district, and the eligibility and prioritization of funding, under this article.

EC Section 17078.73 states, on or after January 1, 2015, the board shall not approve any projects pursuant to this article.

## ATTACHMENT A

EC Section 101012 states:

- (a) The proceeds from the sale of bonds, issued and sold for the purposes of this chapter, shall be allocated in accordance with the following schedule:
- (1) The amount of one billion nine hundred million dollars (\$1,900,000,000) for new construction of school facilities of applicant school districts under Chapter 12.5 (commencing with Section 17070.10) of Part 10. Of the amount allocated under this paragraph, up to 10.5 percent shall be available for purposes of seismic repair, reconstruction, or replacement, pursuant to Section 17075.10.
  - (2) The amount of five hundred million dollars (\$500,000,000) shall be available for providing school facilities to charter schools pursuant to Article 12 (commencing with Section 17078.52) of Chapter 12.5 of Part 10.
  - (3) The amount of three billion three hundred million dollars (\$3,300,000,000) for the modernization of school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10.
  - (4) (A) The amount of five hundred million dollars (\$500,000,000) for the purposes set forth in Article 13 (commencing with Section 17078.70) of Chapter 12.5 of Part 10, relating to facilities for career technical education programs.  
(B) Of the amount not yet approved for allocation by the State Allocation Board pursuant to this paragraph by January 1, 2015, 50 percent shall be available for the purpose of paragraph (1), and 50 percent shall be available for purposes of paragraph (3). If an apportionment or State Allocation Board approval pursuant to this paragraph is rescinded after January 1, 2015, the rescinded amount shall be available for the purposes of paragraphs (1) and (3). The State Allocation Board shall determine the percentage of the rescinded amount to be used for purposes of paragraph (1) and the percentage of the rescinded amount to be used for purposes of paragraph (3).
  - (5) Of the amounts allocated under paragraphs (1) and (3), up to two hundred million dollars (\$200,000,000) for the purposes set forth in Chapter 894 of the Statutes of 2004, relating to incentives for the creation of smaller learning communities and small high schools.
  - (6) The amount of twenty-nine million dollars (\$29,000,000) for the purposes set forth in Article 10.6 (commencing with Section 17077.40) of Chapter 12.5 of Part 10 of Division 1 of Title 1, relating to joint use projects.
  - (7) The amount of one billion dollars (\$1,000,000,000) shall be available for providing new construction funding to severely overcrowded schoolsites pursuant to Article 14 (commencing with Section 17079) of Chapter 12.5 of Part 10 of Division 1 of Title 1.
  - (8) (A) The amount of one hundred million dollars (\$100,000,000) for incentive grants to promote the use of designs and materials in new construction and modernization projects that include the attributes of high-performance schools, including, but not limited to, the elements set forth in Section 17070.96, pursuant to regulations adopted by the State Allocation Board.  
(B) Of the amount not yet approved for allocation by the State Allocation Board pursuant to this paragraph by January 1, 2015, 50 percent shall be available for purposes of paragraph (1), and 50 percent shall be available for purposes of paragraph (3). If an apportionment or State Allocation Board approval pursuant to this paragraph is rescinded on or after January 1, 2015, the rescinded amount shall be available for purposes of paragraphs (1) and (3). The State Allocation Board shall determine the percentage of the rescinded amount to be used for purposes of paragraph (1) and the percentage of the rescinded amount to be used for purposes of paragraph (3).
- (b) School districts may use funds allocated pursuant to paragraph (3) of subdivision (a) only for one or more of the following purposes in accordance with Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1:
- (1) The purchase and installation of air-conditioning equipment and insulation materials, and related costs.
  - (2) Construction projects or the purchase of furniture or equipment designed to increase school security or playground safety.
  - (3) The identification, assessment, or abatement in school facilities of hazardous asbestos.
  - (4) Project funding for high-priority roof replacement projects.
  - (5) Any other modernization of facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1.
- (c) Funds allocated pursuant to paragraph (1) of subdivision (a) may also be used to provide new construction grants for eligible applicant county boards of education under Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 for funding classrooms for severely handicapped pupils, or for funding classrooms for county community school pupils.
- (d) (1) The Legislature may amend this section to adjust the funding amounts specified in paragraphs (1) to (8), inclusive, of subdivision (a), only by either of the following methods:
- (A) By a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals,

## ATTACHMENT A

by not less than two-thirds of the membership in each house concurring, if the statute is consistent with, and furthers the purposes of, this chapter.

(B) By a statute that becomes effective only when approved by the voters.

(2) Amendments pursuant to this subdivision may adjust the amounts to be expended pursuant to paragraphs (1) to (8), inclusive, of subdivision (a), but may not increase or decrease the total amount to be expended pursuant to that subdivision.

(e) Funds available pursuant to this section may be used for acquisition of school facilities authorized pursuant to Section 17280.5.

## ATTACHMENT B

The text below reflects single strikethrough and single underlines that were previously approved by the Board on February 24, 2015. All double underlines and strikethroughs require Board action as of April 15, 2015.

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### Section 1859.70.4. Available Funding for High Performance.

The Board shall set aside \$100 million pursuant to Education Code Section 101012(a)(8) for the costs of designs and materials that promote in new construction and modernization projects, the efficient use of energy and water, the maximum use of natural lighting and indoor air quality, the use of recycled materials and materials that emit a minimum of toxic substances, the use of acoustics conducive to teaching and learning and other characteristics of high performance schools.

On or after January 1, 2015, the Board shall not approve High Performance Incentive grants pursuant to Education Code Section 17070.965.

~~Any High Performance funds not yet approved for allocation by the Board by January 1, 2015, or rescinded on or after January 1, 2015, shall be subject to EC Section 101012(a)(8)(B).~~

Funds in the High Performance School Account on or after January 1, 2015 shall be made available to Approved Applications pursuant to Section 1859.93 (a) or Section 1859.93.1(a) in order of receipt pursuant to EC Sections 17075.15 (a) and (b). Funds remaining in excess of the aforementioned Approved Applications shall be allocated as follows:

- (a) 50 percent to Approved Applications pursuant to Section 1859.93 (b); and,
- (b) 50 percent to Approved Applications pursuant to Section 1859.93.1 (b).

Note: Authority cited: Sections 17070.35 and 101012, Education Code.  
Reference: Section 101012(a)(8) and 17070.965, Education Code.

### Section 1859.93. Modernization Project Funding Order.

Applications shall be funded as follows:

- (a) First, to applications for Rehabilitation pursuant to Section 1859.83(e) in order of receipt of an Approved Application for funding; then,
- (b) If there are no applications pursuant to subsection (a), to applications for modernization funds in order of receipt of an Approved Application for funding.

~~All modernization applications shall be funded in the order of receipt of an Approved Application for funding until all modernization funds available to the Board have been apportioned.~~

Note: Authority cited: Sections 17070.35 Education Code.  
Reference: Section 17074.15 and 17075.15, Education Code.

Section 1859.93.1. New Construction Project Funding Order.

~~All new construction Applications, except those new construction applications identified in (ac) through (ee) below, shall be funded as follows: shall be funded in the order of receipt of an Approved Application for funding.~~

~~(a) First, to applications for Facility Hardship pursuant to Section 1859.82, except those for the seismic mitigation of the Most Vulnerable Category 2 Buildings, in order of receipt of an Approved Application for funding; then,~~

~~(b) If there are no applications pursuant to subsection (a), to applications for New Construction Grant(s) in order of receipt of an Approved Application for funding.~~

~~(ac) Approved Applications for New Construction Grant(s) funded with the proceeds of state bonds approved by the voters prior to January 1, 2002.~~

~~(ad) Approved Applications for New Construction Grant(s) authorized by Education Code Sections 17078.10 through 17078.30.~~

~~(ee) Approved Applications that utilize pupil eligibility derived from the Alternative Enrollment Projection method. These applications shall be funded in order of receipt once the OPSC and the DRU have approved the Alternative Enrollment Projection method or the Alternative Enrollment Projection annual update.~~

Note: Authority cited: Sections 17070.35 Education Code.

Reference: Sections 17072.25, and 17070.35, and 17075.15, Education Code.

Section 1859.190. General.

An applicant seeking Career Technical Education Facilities Project funding pursuant to the provisions of Education Code Section 17078.72, shall complete and file Form SAB 50-10.

An applicant may submit multiple Career Technical Education Facilities applications for different career technical education projects located at a single school site, pursuant to Education Code Section 17078.72(e), (f), and (i).

Modernization of facilities under Article 16 shall not affect the Modernization Eligibility of the facility pursuant to Section 1859.60.

On or after January 1, 2015, the Board shall not approve any Career Technical Education Facility projects pursuant to Education Code Section 17078.73

~~Any Career Technical Education Facilities funds not yet approved for allocation by the Board on or by January 1, 2015, or rescinded after January 1, 2015, shall be subject to EC Section 101012(a)(4)(B).~~

Funds in the Career Technical Education Facilities Program account on or after January 1, 2015 shall be made available to Approved Applications pursuant to Section 1859.93 (a) or Section 1859.93.1(a) in order of receipt pursuant to EC Sections 17075.15 (a) and (b). Funds remaining in excess of the aforementioned Approved Applications shall be allocated as follows:

(a) 50 percent to Approved Applications pursuant to Section 1859.93 (b); and,

(b) 50 percent to Approved Applications pursuant to Section 1859.93.1(b).

Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Sections 17078.72, 17078.73, and 101012(a)(4), Education Code.