

October 2, 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  
SECTIONS 1859.70.4, 1859.93, 1859.93.1, AND 1859.190,  
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, 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, 17078.72(k), and 101012 of the Education Code, and makes specific reference Sections 17070.35, 17070.965, 17072.25, 17074.15, 17075.15, 17078.72, 17078.73, 101012(a)(4), and 101012(a)(8) of the Education 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 April 15, 2015 meeting, adopted proposed regulatory amendments to the SFP Regulations that establish and delineate the process for the allocation of returning High Performance Incentive (HPI) grants and Career Technical Education Facilities Program (CTEFP) bond authority to the SFP on or after January 1, 2015. These proposed regulatory amendments are a result of Senate Bill (SB) 896, Chapter 39, Statutes of 2014.

### Background and Problem Being Resolved

The statute stipulates that the SAB shall determine, on or after January 1, 2015, the percentage by which returning HPI grants and CTEFP bond authority will be distributed to the New Construction and Modernization Accounts. The proposed regulations also address the prioritization of Facility Hardship applications (health and safety projects and includes rehabilitation projects) in determining the distribution of returning bond authority. The proposed regulatory amendments specify the process by which any returning HPI grants and CTEFP projects shall first be allocated to Facility Hardship projects (health and safety projects and includes rehabilitation projects) in order of receipt. The process also delineates that should all of the Facility Hardship projects be funded, or if there are no Facility Hardship projects to fund, the returning funds will 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. These proposed regulations could also address some of the 182 projects on the Unfunded List (Lack of Authority) totaling approximately \$375 million by providing unfunded approvals for placement on the Unfunded List (Lack of AB 55 Loans). These proposed regulatory amendments continue to promote the stimulation of the economy and support the creation of jobs.

The proposed regulatory text is attached behind this Notice of Proposed Regulatory Action and may be reviewed on OPSC Web site at [www.dgs.ca.gov/opsc](http://www.dgs.ca.gov/opsc). Copies of the proposed regulatory text will be mailed to any person requesting this information by using OPSC contact information set forth below under "Submission of Comments, Documents and Additional Information" (page 6). 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 regulatory amendments benefit school districts and the State of California by redirecting returning HPI grants and CTEFP bond authority to Facility Hardship projects (health and safety projects and includes rehabilitation projects). These regulatory amendments benefit school districts in that health and safety projects (including financial hardship projects) are prioritized to receive funds first and once these projects have been addressed, non-health and safety projects are next in line for funding. As stated above, there are 182 projects on the Unfunded List (Lack of Authority) totaling approximately \$375 million that could receive funding. In addition, the State of California benefits from these regulations as they assist in increasing the State's infrastructure investment resulting in a positive impact to the State's economy as well as help to support job creation. These regulations will have a positive impact to various business, manufacturing, and construction-related industries such as architecture, engineering, trades (carpenters, masons, electricians, roofers, etc.), and municipalities.

The proposed regulatory amendments help carry out the Legislative intent of SB 869, Chapter 39, Statutes of 2014. Therefore, the proposed regulatory amendments are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of these regulatory amendments will have a positive impact on public health and safety, on the State's economy, and help to support job creation.

Summary of the proposed regulatory amendments are as follows:

Existing Regulation Section 1859.70.4 sets aside \$100 million and sets forth criteria for school districts for the costs of design and materials in new construction and modernization projects that save energy and water, maximize natural lighting and indoor air quality, use recycled and low-toxin materials, use better acoustics to promote learning, and apply other high performance improvements. The proposed regulatory amendments: 1) delete new language that is no longer applicable to this Section; and 2) sets forth how remaining HPI bond authority will be distributed to new construction and modernization health and safety projects, non-health and safety projects, and includes financial hardship projects.

Existing Regulation Section 1859.93 sets forth a specified funding order for modernization projects. The proposed regulatory amendments: 1) delete language that is no longer applicable to this Section; and 2) specify the new funding order for health and safety projects [rehabilitation projects] and non-health and safety modernization projects.

Existing Regulation Section 1859.93.1 sets forth a specified funding order for new construction projects. The proposed regulatory amendments: 1) delete language that is no longer applicable to this Section; and 2) specify the new funding order for health and safety projects [facility hardship projects] and non-health and safety new construction projects; and 3) make minor lettering changes due to the addition of the new regulatory language, which are considered non-substantive changes.

Existing Regulation Section 1859.190 sets forth general filing submittal instructions and specifies that CTEFP modernization projects do not affect the Modernization Eligibility of that facility pursuant to Regulation Section 1859.60. The proposed regulatory amendments: 1) delete new language that is no longer applicable to this Section; and 2) sets forth how remaining CTEFP bond authority will be distributed to new construction and modernization health and safety projects, non-health and safety projects, and includes financial hardship projects.

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 statute stipulates that the SAB shall determine the percentage by which returning HPI grants and CTEFP bond authority will be distributed to the New Construction and Modernization Accounts. The proposed regulations also address the prioritization of Facility Hardship applications (health and safety projects and includes rehabilitation projects) in determining the distribution of returning bond authority. The proposed regulatory amendments specify the process by which any returning HPI grants and CTEFP projects shall first be allocated to Facility Hardship projects (health and safety projects and includes rehabilitation projects) in order of receipt. The process also delineates that should all of the Facility Hardship projects be funded, or if there are no Facility Hardship projects to fund, the returning funds will 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. There are 182 projects on the Unfunded List (Lack of Authority) totaling approximately \$375 million that could be impacted through these regulations. These proposed regulatory amendments continue to promote the stimulation of the economy and support the creation of jobs.

The proposed regulatory amendments help carry out the Legislative intent of SB 869, Chapter 39, Statutes of 2014. Proceeding with the implementation of these regulatory amendments will have a positive impact on public health and safety, on the State's economy, and help support job creation.

After conducting a review, 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*

There is a positive economic impact to California business assigned to these regulatory amendments. With HPI grants and CTEFP bond authority returning to the SFP, specifically the New Construction and Modernization categories, the funds/bond authority will be used to make apportionments for school construction projects, which include health and safety projects and could address the 182 projects on the Unfunded List (Lack of Authority) totaling approximately \$375 million by providing unfunded approvals for placement on the Unfunded List (Lack of AB 55 Loans). Once the funds have been released, school districts can begin construction, which means they have entered into contracts and work can begin. These regulations affect various business, manufacturing, and construction-related industries such as architecture, engineering, trades and municipalities, which continue to promote the stimulation of the economy and help to support job creation.

Therefore, the proposed regulations will have a positive impact on 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, Worker's Safety, and the State's Environment*

- There is a health and safety impact assigned to these regulatory amendments. Health and safety projects are considered priority projects by the SAB and have been included in determining the distribution of returning bond authority. This means that when funds become available for apportionment, these projects are first in line to receive the funding.
- There are continued benefits to the health and welfare of California residents and worker safety. School districts utilize construction and trades employees to work on school construction projects and although these proposed regulations do not directly impact worker's safety, existing law provides for the availability of a skilled labor force and encourages improved health and safety of construction and trades employees through proper apprenticeship and training. Further, public health and safety is enhanced because a properly paid and trained workforce will build school construction projects that are higher quality, structurally code-compliant and safer for use by pupils, staff, and other occupants on the site.
- These regulations will have a positive impact to various business, manufacturing, and construction-related industries such as architecture, engineering, trades (carpenters, masons, electricians, roofers, etc.), and municipalities, and support the creation of an unspecified number of jobs.
- There is no impact to the State's environment from the proposed regulations.

## EFFECT ON SMALL BUSINESSES

It has been determined that the amendments to the regulation sections will not have a negative impact on small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. Although the proposed regulations only apply to school districts for purposes of funding school facility projects, the demand on the manufacturing and construction-related industries could potentially stimulate the creation of small businesses in these areas.

## 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 OPSC no later than November 16, 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, 6<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 Lisa Jones at (916) 376-1753. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Michael Watanabe, Chief of Administrative Services, at (916) 376-1646.

## 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 OPSC during normal working hours. Items 1 through 3 are also available on 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.