

April 1, 2011

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

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED EMERGENCY REGULATORY ACTION

In accordance with Assembly Bill 1302, Chapter 713, Statutes of 2006, enclosed are proposed emergency regulations adopted by the State Allocation Board (SAB) at its meeting on February 23, 2011. These amendments to the School Facility Program (SFP) Regulations will expand the types of projects eligible to participate in priority funding rounds. Charter School Facility Program (CSFP) projects may apply for advance release of design and site acquisition funds from a Preliminary Charter School Apportionment. Critically Overcrowded School (COS) Facilities Program projects may apply for advance release of environmental hardship site acquisition funds from a Preliminary Apportionment.

Advance Public Notice. The amendments add “charter schools” to the entities that must be given advance public notice of a SAB meeting by which a priority funding round would be established.

30 Calendar Day Filing Period. The existing timeline of 30 calendar days for “school districts” to submit a request to participate in a priority funding round is expanded to include “charter schools” as eligible to participate. The amendments also clarify that all requests to participate must be physically received by the OPSC by the 30th calendar day in order to be valid.

90 Calendar Day Filing Period. The existing timeline of 90 calendar days for “school districts” to file their request for fund release, Form SAB 50-05, is expanded to include “charter schools,” and two types of advance funding are set forth as subject to the 90 calendar day limit:

- Advance release of design funds from a Preliminary Charter School Apportionment, and
- Advance release of environmental hardship site acquisition funds from a Preliminary Apportionment for a COS project.

180 Calendar Day Filing Period. The proposed amendments establish a new timeline of 180 calendar days for school districts and charter schools to file their request for fund release, Form SAB 50-05, for advance release of site acquisition funds from a Preliminary Charter School Apportionment. Conditions include the district or charter school within the 30 calendar day filing period providing a signed written statement acknowledging specific timelines and required documents, and within 90 calendar days of SAB approval submitting evidence of signing the required Charter School Agreements, with failure to do so resulting in rescission of the approval.

Attached to this Notice is the specific regulatory language of the proposed emergency action and the Finding of Emergency. You may also review the proposed regulatory language and Finding of Emergency on the Office of Public School Construction (OPSC) Web site at www.dgs.ca.gov/opsc. The proposed emergency regulations would amend the SFP Regulations under the California Code of Regulations, 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.

The OPSC, on behalf of the SAB, will be submitting these emergency regulations to the Office of Administrative Law (OAL) during early April 2011. The following is an overview of the proposed regulatory amendments.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established the SFP through Senate Bill 50, Chapter 407, Statutes of 1998. 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 OAL and filed with the Secretary of State on October 8, 1999.

CSFP Program. Three legislative acts and voter approvals established and funded the program with a cumulative total of \$900 million in bond funds:

- The CSFP was established by Assembly Bill (AB) 14, Chapter 935, Statutes of 2002, and was funded with \$100 million through the passage of Proposition 47.
- Senate Bill 15, Chapter 587, Statutes of 2004, authorized an additional \$300 million which was funded by the passage of Proposition 55.
- AB 127, Chapter 35, Statutes of 2006, authorized an additional \$500 million which was funded through the passage of Proposition 1D at the November 7, 2006 General Election.

Without the amendments, CSFP projects may not participate in priority funding rounds to apply for advance release of design and site acquisition funds from Preliminary Charter School Apportionments. Therefore, the projects would remain in an unperfected status and the funding could not be utilized until sometime in the future.

COS Program. The COS Program was established by Assembly Bill 16, Chapter 33, Statutes of 2002, to provide funding to relieve overcrowding on severely impacted sites. Proposition 47 (the Kindergarten-University Public Education Facilities Bond Act of 2002) authorized \$1.7 billion for this program, which was passed by voters at the November 2002 general election. Proposition 55 (the Kindergarten-University Public Education Facilities Bond Act of 2004) authorized \$2.44 billion for this program, which was passed by voters at the March 2004 general election.

Without the amendments, COS projects may not participate in priority funding rounds to apply for advance release of environmental hardship site acquisition funds from Preliminary Apportionments.

A summary of the proposed emergency regulatory amendments is as follows:

Existing Regulation Section 1859.90.2, "Priority Funding Round Process," authorizes the SAB to establish 30-calendar day application filing periods to distribute available State school bond funds to school districts with approved unfunded apportionments. To participate, school districts must agree to submit their Form SAB 50-05, "Fund Release Authorization," with an original signature, to be physically possessed by the OPSC within 90 calendar days of the Board's approval of the apportionment.

The proposed emergency regulatory amendments:

- authorize projects under the CSFP to apply for advance release of design funds from a Preliminary Charter School Apportionment, subject to the existing 90 calendar day timeline to submit the request for fund release, Form SAB 50-05;

- authorize projects under the CSFP to apply for advance release of site acquisition funds from a Preliminary Charter School Apportionment, subject to a new timeline of 180 calendar days for school districts and charter schools to file their request for fund release, Form SAB 50-05, with the specific requirements to provide a written statement signed by an authorized representative within the 30 calendar day filing period that:
 - a) requests to convert the advance release of funds to an approved advance release of funds,
 - b) concurs with the 180 calendar day timeline to submit the fund release request,
 - c) acknowledges the participant's requirement to submit a valid, signed Form SAB 50-05 to be physically received by the OPSC within the 180 calendar day time limit, and failure to do so will result in the rescission of the approved advance release of funds request without further Board action, and
 - d) acknowledges that the participant must provide evidence of entering into the Charter School Agreements within 90 calendar days of the approval of the advance release of funds request, and failure to do so will result in the rescission of the approval without further Board action.
- authorize projects under the COS Program to apply for advance release of environmental hardship site acquisition funds subject to the existing 90 calendar day timeline to submit the request for fund release, Form SAB 50-05;
- add "charter schools" to the entities which must be given advance public notice of a SAB meeting by which a priority funding round would be established;
- add "charter schools" as eligible for priority funding rounds by submitting a request to participate within 30 calendar days;
- clarify that all requests to participate must be physically received by the OPSC by the 30th calendar day to be valid;
- add "charter schools" to the requirement for participants to file their request for fund release, Form SAB 50-05;
- clarify that all submittals of fund release requests, Form SAB 50-05, must be physically received by the OPSC within the time periods specified in this regulation section; and
- clarify that "rescinded" and "rescission" as used in this section apply to apportionments and "approved advance release of funds requests."

SUBMISSION OF COMMENTS

Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the OAL, the adopting agency provide a Notice of the Proposed Emergency Action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulations to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6.

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed emergency regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OAL within five days after the SAB submits the emergency regulations to the OAL for review.

Please reference submitted comments as regarding "State Allocation Board – CSFP and COS Program Priority Funding Round Regulations," addressed to:

Reference Attorney

Mailing Address: Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

E-mail Address: staff@oal.ca.gov

Fax No.: (916) 323-6826

For the status of the SAB submittal to the OAL for review, and the end of the five-day written submittal period, please consult the Web site of 1) the OAL at www.oal.ca.gov under the heading "Emergency Regulations," and 2) the OPSC at www.dgs.ca.gov/opsc under the Tab "Resources," then click on "Laws and Regulations," then click on "SFP Pending Regulatory Changes."

Pursuant to Title I, Section 55, please send a copy of written comments regarding the proposed regulatory action, as well as requests for a copy of the proposed regulatory action, and questions concerning the substance of the proposed regulatory action, addressed to:

Robert Young, Regulations Coordinator

Mailing Address: Office of Public School Construction
707 Third Street, Room 1-430
West Sacramento, CA 95605

E-mail Address: robert.young@dgs.ca.gov

Fax No.: (916) 376-5332

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Emergency Regulatory Action may be directed to Robert Young at (916) 375-5939. If Mr. Young is unavailable, these questions may be directed to the backup contact person, Ms. Lisa Jones, Supervisor, Regulations Team, at (916) 376-1753.