



January 26, 2007

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

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO REPEAL, ADOPT, AND AMEND THE FOLLOWING REGULATION SECTIONS, ALONG WITH ASSOCIATED FORMS, TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998 AND THE STATE SCHOOL DEFERRED MAINTENANCE ACT

SCHOOL FACILITY PROGRAM REGULATIONS

THE FOLLOWING REGULATION SECTION IS REPEALED: 1859.162.1.

THE FOLLOWING REGULATION SECTIONS ARE ADOPTED: 1859.70.4, 1859.71.6, 1859.77.4, 1859.162.1, 1859.162.2, 1859.162.3, 1859.163.4, 1859.163.5, 1859.163.6, 1859.163.7 AND 1859.169.1.

THE FOLLOWING REGULATION SECTIONS ARE AMENDED: 1859.2, 1859.51, 1859.60, 1859.61, 1859.70.3, 1859.71, 1859.78.9, 1859.83, 1859.93.2, 1859.160, 1859.161, 1859.162, 1859.163.1, 1859.163.2, 1859.163.3, 1859.164, 1859.164.1, 1859.164.2, 1859.165, 1859.166, 1859.167 AND 1859.167.1.

THE FOLLOWING FORMS ARE AMENDED:

*Application for Funding*, Form SAB 50-04, (Revised 09/06), referenced in Regulation Section 1859.2

*Fund Release Authorization*, Form SAB 50-05, (Revised 09/06), referenced in Regulation Section 1859.2

*Expenditure Report*, Form SAB 50-06, (Revised 09/06), referenced in Regulation Section 1859.2

*Application for Charter School Preliminary Apportionment*, Form SAB 50-09, (Revised 09/06), referenced in Regulation Section 1859.2

STATE SCHOOL DEFERRED MAINTENANCE PROGRAM

THE FOLLOWING REGULATION SECTIONS ARE AMENDED: 1866.4 AND 1866.13.

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-referenced regulation sections and associated forms, 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 proposals substantially as set forth above without further notice.

### AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to repeal, adopt, and amend the above regulation sections under the authority provided by Sections 17070.35, 17075.15 and 17078.64 of the Education Code, and Section 15503 of the Government Code. The proposals interpret and make specific reference to Sections 17052, 17070.51, 17071.25, 17071.75, 17071.76, 17072.10, 17072.11, 17072.15, 17072.20, 17073.15, 17073.20, 17074.10, 17074.15, 17074.16, 17074.32, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17078.52, 17078.53, 17078.54, 17078.56, 17078.58, 17582, 17584.1, 17587, 17591, 101012(a)(5) 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 and filed with the Secretary of State on October 8, 1999.

The SAB at its September 27, 2006 meeting adopted proposed emergency regulations for the purpose of implementing provisions contained in Assembly Bill (AB) 127, Chapter 35, Statutes of 2006. AB 127 established the Kindergarten-University Public Education Facilities Bond Act of 2006, providing \$10.416 billion in bonds for educational facilities, of which \$7.329 billion is earmarked for K-12 projects. This is the Proposition 1D school bond measure which was approved by voters at the November 7, 2006 general election. Additionally, the SAB at its October 25, 2006 meeting adopted proposed emergency regulatory amendments to clarify its September 27, 2006 regulatory action.

AB 127 modifies and adds several new SFP components, and provides funding for new and existing components of the SFP, including:

- Additional funding is provided to continue the New Construction, Modernization, Small High School (500 pupils or less), and Joint-Use Programs.
- High Performance Schools. Up to \$100 million is made available for districts with projects that meet "high performance" rating criteria for components such as energy, water, natural lighting, air quality, use of recycled and low-toxin materials, and learning-enhancing acoustics for construction projects.
- Charter School Facilities Program. \$500 million is made available for the program, and a new project category is created called charter school rehabilitation projects. There are funding changes and alternatives to the impact on a school district's new construction baseline eligibility when a charter school receives funding for the construction of a school.
- Grant Increases. The new construction per-pupil grant is increased by seven percent for the elementary and middle school, and four percent for the high school, effective July 1, 2006. In addition, after January 1, 2008, the Board can increase (by no more than six percent) or decrease the per-pupil grant to correspond to the actual costs to construct new schools.

The proposed regulatory amendments are summarized as follows:

Existing Regulation Section 1859.2 defines words and terms used exclusively for these regulations. The proposed amendments add definitions regarding the Charter School Facilities Program, High Performance Schools, and make other changes to conform to AB 127.

Existing Regulation Section 1859.51 provides adjustment factors that increase or decrease a school district's baseline eligibility for new construction. The proposed amendment changes a Regulation Section number in the narrative text in order to refer to an applicable new section being proposed for adoption.

Existing Regulation Section 1859.60 sets forth the criteria for a school district to calculate its modernization baseline eligibility for each school site. The proposed amendment clarifies that for purposes of determining the age of a classroom and period of years to earn baseline eligibility, charter school classrooms previously rehabilitated with State funds are treated the same as other school classrooms previously modernized with State funds.

Existing Regulation Section 1859.61 sets forth specific factors which impact a district's capacity to house pupils and therefore require adjustments to the modernization baseline eligibility. The proposed amendment clarifies that for purposes of reducing eligibility by the number of pupils provided grants in approved projects, Charter School Facilities Program projects are treated the same as SFP modernization projects.

Existing Regulation Section 1859.70.3 sets forth that \$25 million was set aside for grants to school districts to construct small high schools or reconfigure a large high school into small high schools. The proposed amendment authorizes the Board to provide up to \$200 million for the Small High School Program in accordance with AB 127 and the Proposition 1D school bond.

Proposed adoption of Regulation Section 1859.70.4 sets aside \$100 million and sets forth criteria for grants to school districts for the costs of designs 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.

Existing Regulation Section 1859.71 authorizes the Board to adjust the SFP new construction per-unhoused-pupil grant amounts annually each January based on the change in the Class B Construction Cost Index. The proposed amendment authorizes the Board to increase the per-pupil base grant amount by up to an additional six percent (or reduce the per-pupil base grant amount if school building costs are declining), in conformance with AB 127 (Education Code Section 17072.11).

Proposed adoption of Regulation Section 1859.71.6 sets forth a point system based upon construction industry-recognized High Performance Rating Criteria, for school districts to qualify for a SFP additional grant for including "high performance" designs and materials in their new construction projects.

Proposed adoption of Regulation Section 1859.77.4 sets forth criteria based upon the High Performance Rating Criteria point system with review/approval by the Division of the State Architect (DSA), to provide qualifying school districts a percentage increase in their new construction or modernization grants for an addition to a school site or modernization project meeting the point value threshold.

Existing Regulation Section 1859.78.9 sets forth the criteria for school districts to qualify for an additional SFP apportionment for Modernization Reconfiguration under the Small High School Program by reconfiguring a large high school into small high schools (500 pupils or less). The proposed amendment clarifies the determination of this apportionment.

Existing Regulation Section 1859.83 sets forth school district eligibility criteria for excessive cost hardship grant funding as a result of specified unusual circumstances. The proposed amendment clarifies the grant entitlement for small high schools created in different configurations.

Existing Regulation Section 1859.93.2 specifies the qualifying criteria and time period to submit applications for a new construction adjusted grant under the Small High School Program. The proposed amendments extend the application period to September 30, 2007, and specify different configurations for which small high school projects may qualify.

Existing Regulation Section 1859.160 provides guidelines to charter schools seeking to apply for a preliminary apportionment for new school facilities construction. The proposed amendment adds charter school rehabilitation projects as subject to the guidelines of this section and also requires charter schools to submit documents necessary for a financial soundness determination.

Existing Regulation Section 1859.161 specifies the time period for submitting applications for charter school funding, including a prescribed period following an election authorizing additional funding. The proposed amendment changes the post-election filing period starting date from "30" to "90" calendar days following such election.

Existing Regulation Section 1859.162 sets forth the eligibility criteria for a preliminary apportionment for charter schools. The proposed amendments:

- a. strike criteria which limit charter school eligibility to the new construction eligibility of the school district in which it is located, and strike certain maximums for pupil-grants based upon grade level;
- b. add a criterion requiring at least 30 days advance written notice by a charter school to a school district in which it is located, of its intent to submit a preliminary charter school application;
- c. requires the withdrawal of a preliminary charter school apportionment and rescission by the Board before a charter school project application can be resubmitted under a future funding cycle.

Existing Regulation Section 1859.162.1 sets forth the determination of pupil grant eligibility for charter schools which provide instruction for a combination of grade levels serving pupils from more than one school district's boundaries. This Section is proposed to be repealed and its subject matter adopted within new Section 1859.162.3.

Proposed adoption of Regulation Section 1859.162.1 sets forth preliminary charter school new construction apportionment eligibility criteria, pertaining to the required advance notification by a charter school entity to the school district in which it is located of the charter school's intent to submit a Preliminary Charter School Application.

Proposed adoption of Regulation Section 1859.162.2 sets forth criteria for preliminary apportionment eligibility adjustments for charter school new construction projects, as determined by either a charter school applying on its own behalf, or school districts applying on behalf of a charter school.

Proposed adoption of Regulation Section 1859.162.3 sets forth the determination of pupil grant eligibility for charter schools which provide instruction for a combination of grade levels serving pupils from more than one school district's boundaries, and clarify that district responsibilities toward a charter school located in overlapping district boundaries are dependant upon the charter school serving the grade levels served by that school district.

Existing Regulation Section 1859.163.1 prescribes charter school construction cost apportionments based upon specific cost components related to the size, scope, grade levels and location of the project, but subject to a funding cap based upon grade level(s) of the project and urban or non-urban location. The proposed amendments strike this funding cap, reduce per-pupil grant amounts by 11 percent, modify other cost components included in the apportionment, set forth percentage increases in the charter school new construction apportionment for projects housing up to 200 pupils, add a cost adjustment

based on the change in the Class B Construction Cost Index, and make the pupil-grants subject to annual adjustment by the Board as prescribed in Section 1859.71.

Existing Regulation Section 1859.163.2 sets forth criteria for determining the preliminary charter school apportionment site acquisition value. The proposed amendment strikes Education Code Section "17078.56" from the list of reference sections because the revision of this Education Code Section by AB 127 deleted the paragraph pertinent to Regulation Section 1859.163.2.

Existing Regulation Section 1859.163.3 establishes two fund accounts in which to reserve funding from the 2004 school bond (Proposition 55) for site acquisition values that will not be part of the preliminary charter school apportionments, but which may be apportioned in final charter school apportionments. The proposed amendments clarify that this section applies only to the apportionments awarded by the Board on February 23, 2005.

Proposed adoption of Regulation Section 1859.163.4 sets forth preliminary charter school rehabilitation apportionment eligibility criteria, including certain required agreements between a charter school applying on its own and the school district where it is located.

Proposed adoption of Regulation Section 1859.163.5 sets forth criteria for the preliminary charter school rehabilitation apportionment, which will be determined based on the eligible square footage included in the project.

Proposed adoption of Regulation Section 1859.163.6 sets forth preliminary charter school rehabilitation apportionment eligibility criteria for sites previously funded under the SFP modernization program.

Proposed adoption of Regulation Section 1859.163.7 sets forth the permissible uses of Charter School Facilities Program rehabilitation funds.

Existing Regulation Section 1859.164 sets forth criteria for the sequential ordering of charter school applications for apportionment by the Board if the estimated total cost of all preliminary charter school applications exceeds available funds. The proposed amendment provides criteria for sequential ordering for apportionment of applications received on the same day.

Existing Regulation Section 1859.164.1 sets forth the required calculation of "preference points" for all Preliminary Charter School Applications based upon the percentage of low-income pupils, the degree of overcrowding in the school district, and whether the entity operating the charter school is a non-profit entity. The proposed amendments modify the calculation methods for these three factors and add a fourth factor granting preference points for all projects that rehabilitate existing facilities.

Existing Regulation Section 1859.164.2 sets forth criteria for the release of funds to charter school entities from preliminary charter school apportionments. Qualified charter schools must maintain financial soundness. The proposed amendments add preliminary charter school rehabilitation apportionments as subject to the provisions of this section, and add the requirement that Charter School Agreements must be executed prior to the release of any funds.

Existing Regulation Section 1859.165 sets forth the requirements for the preliminary charter school apportionment to be converted to the final charter school apportionment. The proposed amendment modifies the section to apply to both charter school new construction and rehabilitation apportionments.

Existing Regulation Section 1859.166 provides specific time limits to convert preliminary charter school apportionments to final charter school apportionments, and the required actions if the time limits are not met. The proposed amendments clarify the required eligibility adjustments if the time limits are not met.

Existing Regulation Section 1859.167 sets forth the charter school final apportionment funding process. The proposed amendments distinguish those provisions applicable to the preliminary charter school apportionments approved by the Board on February 23, 2005, and those provisions applicable to all subsequent preliminary charter school apportionments.

Existing Regulation Section 1859.167.1 specifies that the amount of the final charter school apportionment may not be increased for site acquisition costs exceeding those calculated under Section 1859.163.1(b), nor increased for useable acres for the project in excess of the previously approved recommended site size by the California Department of Education. The proposed amendment limits the application of this section only to charter school apportionments approved by the Board on February 23, 2005.

Proposed adoption of Regulation Section 1859.169.1 requires that State funds remaining at the completion of charter school projects must be returned to the State.

Existing Form SAB 50-04, *Application for Funding*, is submitted to apply for State funding for new construction or modernization projects. The proposed amendments add instructions, data fields, and district certifications to accommodate the new categories of charter school rehabilitation projects and high performance school grants.

Existing Form SAB 50-05, *Fund Release Authorization*, is used by school districts to request the release of State funds that have been apportioned by the SAB, upon the district's certification of compliance with specific legal and SFP requirements. The proposed amendments re-format the form, add instructions, data fields, and district certifications to accommodate the new category of charter school rehabilitation projects, and require submittal of charter school agreements.

Existing Form SAB 50-06, *Expenditure Report*, is submitted to report expenditures of State funding for new construction or modernization projects. The proposed amendments re-format this form and add a district certification that a new Project Information Worksheet is true, correct, and current.

Form SAB 50-09, *Application for Charter School Preliminary Apportionment*, is used by school districts/charter schools to request a preliminary apportionment for the new construction of charter school facilities. The proposed amendments add instructions, data fields, supporting document requirements, and district certifications to accommodate the new category of charter school rehabilitation projects.

#### DEFERRED MAINTENANCE PROGRAM

Existing Regulation Section 1866.4 sets forth guidelines for school districts to file with the Board a five year plan for deferred maintenance needs of the district. The proposed amendment adds reference to the new category of charter school rehabilitation grant funds.

Existing Regulation Section 1866.13 protects against duplicate apportionments of State funds by requiring school districts to exclude work in deferred maintenance extreme hardship projects from being funded in SFP modernization projects, and to eliminate from five year plans any projects that will be funded as SFP modernization projects or Federal Renovation Program projects. The proposed amendment adds the new category of funding for charter school rehabilitation projects as requiring elimination of such projects from five year plans.

#### 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 local agencies or school districts to incur additional costs in order to comply with the proposed regulations.

## ECONOMIC IMPACT

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact on businesses or private persons that might result from the proposed regulatory action and the following determinations have been made 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.
- There will be no impact in the creation or elimination of jobs within the State, the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California.
- 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.
- There will be no costs to school districts 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.
- There are no costs or savings to any State agency.
- The SAB has made an initial determination that there will be no impact on housing costs.

## EFFECT ON SMALL BUSINESSES

It has been determined that the adoption of the regulation sections will not affect small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. These 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 March 12, 2007, 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:

Robert Young, Regulation Coordinator

Mailing Address: Office of Public School Construction  
1130 K Street, Suite 400  
Sacramento, CA 95814

E-mail Address: [robert.young@dgs.ca.gov](mailto:robert.young@dgs.ca.gov)

Fax No.: (916) 445-5526

## AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Robert Young at (916) 445-0083. If Mr. Young is unavailable, these questions may be directed to the backup contact person, Lisa Jones, Supervisor, Regulations Team, at (916) 322-1043.

## 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 regulation should be addressed to the agency's regulation 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.opsc.dgs.ca.gov> under "Regulations," then click on "Proposed Regulations."

### 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 the attention of the SAB would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

### 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 regulation coordinator named in this notice or may be accessed on the Web site listed above.