

February 14, 2020

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 AMEND  
REGULATION SECTION 1859.2,  
TITLE 2, CALIFORNIA CODE OF REGULATIONS,  
RELATING TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

REGULATION SECTION PROPOSED FOR AMENDMENTS:

- 1859.2

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, 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 amend the above-referenced regulation sections under the authority provided by Sections 17070.35 and 17078.64 of the Education Code. The proposals interpret and make specific reference Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.75, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17073.25, 17074.10, 17074.30, 17075.10, 17075.15, 17077.40, 17077.45, 17078.52, 17078.56, 17078.72(k), 17079, 17079.10, 17280, 56026 and 101012(a)(8) of the Education Code; Section 53311, Government Code; and Sections 1771.3 in effect on January 1, 2012 through June 19, 2014 and 1771.5, 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 and filed with the Secretary of State on October 8, 1999.

At its September 25, 2019 meeting, the SAB adopted proposed regulatory amendments that amend the definitions of “Rural Area” and “Suburban Area” for purposes of determining the funding order for applications participating in the Career Technical Education Facilities Program (CTEFP) under the SFP. The California Department of Education (CDE) and OPSC collaboratively administer the CTEFP. School districts that wish to participate in the CTEFP submit applications to CDE in order to be assigned a plan score, which is based on statutory requirements, and then school districts file an application and submit it to OPSC. OPSC funds applications by the highest overall plan score and locale (Urban, Suburban and Rural) as provided in the SFP Regulations. This definition is also used in the Charter School Facilities Program (CSFP) and will have a similar effect in more accurately determining the locale code designation of a project.

### *Bond Funds Impacted*

- Kindergarten-University Public Education Facilities Bond Act of 2006 (Proposition 1D)
- Kindergarten through Community College Public Education Facilities Bond Act of 2016 (Proposition 51)

Attached to this Notice is the specific regulatory language of the proposed regulatory action, along with the proposed regulatory amendments. The proposed regulations can also be reviewed on [OPSC's website](https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations) at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>. Copies of the proposed regulatory amendments will be mailed to any person requesting this information by using OPSC's contact information set forth below in this Notice. The proposed regulations 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.

### *Background and Problem Being Resolved*

As stated above, the CDE and OPSC collaboratively administer the CTEFP. School districts that wish to participate in the CTEFP submit applications to CDE in order to be assigned a plan score, which is based on statutory requirements, and then school districts file an application and submit it to OPSC. OPSC funds applications by the highest overall plan score and locale (Urban, Suburban and Rural) as provided in the SFP Regulations.

In the fifth CTEFP funding cycle, 220 applications were filed and received by OPSC and once the applications were ordered by the highest overall plan score and locale (Urban, Suburban and Rural), the result was over 95 percent of the applications received in the “Rural Area” were funded, while only 26 percent were funded in the “Urban Area” and 23 percent in the “Suburban Area” locales. Stakeholders expressed concerns about the equity of the funding order for the CTEFP, specifically about the assignment off the Town locale codes in the definition of “Suburban Area.” OPSC held two stakeholder meetings to discuss and illustrate the impact of regulation changes. Although there was not an overwhelming consensus favoring one over another, there was consensus to move the sites classified as “Town” from the definition of “Suburban Area” to the definition of “Rural Area.”

OPSC performed a search on whether the proposed regulatory amendments were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that the proposed regulatory amendments are consistent and

compatible with existing State laws and regulations. Proceeding with the proposed regulatory amendments will help to equalize the number of applications funded across all three locales.

#### Anticipated Benefits of the Proposed Regulations

The proposed regulatory amendments promote fairness and equity to the funding process for the three locales so similar applications can compete against each other. This will benefit school districts and local educational agencies by distributing state bond funds on an equitable basis by moving the Town designation within the definition of "Rural Area." In the CTEFP, this should allow for higher scoring applications in the Town locale to compete with similar Rural applicants in order to receive funding, which is in alignment with the statutory intent to distribute CTEFP funding equitably. This will also help ensure that the most accurate locale designation is assigned to projects in the CSFP. The State of California will also benefit by continuing to provide facilities needed for students to learn the skills and knowledge critical for today's high demand technical careers resulting in a positive impact to the State's economy as well as supporting job creation.

The proposed amendments are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed amendments carries out the will of the voters based on the successful passage of Proposition 1D in November 2006 and Proposition 51 in November 2016.

#### Summary of the Proposed Regulatory Amendments

Existing Regulation Section 1859.2 provides the meaning of additional specific words and terms that are essential to these regulations. The proposed regulatory amendments delete the locale codes (31, 32 and 33) from the definition of "Suburban Area" and add them to the definition of "Rural Area." It was necessary to amend these two definitions in order to help similarly situated applications compete against one another ["Suburban Area" and "Rural Area"].

#### 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 CDE and OPSC collaboratively administer the CTEFP. School districts that wish to participate in the CTEFP submit applications to CDE in order to be assigned a plan score, which is based on statutory requirements, and then school districts file an application and submit it to

OPSC. OPSC funds applications by the highest overall plan score and locale (Urban, Suburban and Rural) as provided in the SFP Regulations.

In the fifth CTEFP funding cycle, 220 applications were filed and received by OPSC and once the applications were ordered by the highest overall plan score and locale (Urban, Suburban and Rural), the result was over 95 percent of the applications received in the “Rural Area” were funded, while only 26 percent were funded in the “Urban Area” and 23 percent in the “Suburban Area” locales. Stakeholders expressed concerns about the equity of the funding order for the CTEFP, specifically about the assignment off the Town locale codes in the definition of “Suburban Area.” OPSC held two stakeholder meetings to discuss and illustrate the impact of regulation changes to the funding order. Although there was not an overwhelming consensus favoring one over another, there was consensus to move the sites classified as “Town” from the definition of “Suburban Area” to the definition of “Rural Area.”

After conducting a review, the SAB has concluded that these are the only regulations on this subject area, and therefore, the proposed amendments 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 regulatory amendments 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 regulatory amendments.

#### 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 regulatory amendments 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 regulatory amendments 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*

The proposed regulatory amendments promote fairness and equity to the funding process for the three locales so similar applications can compete against each other. This will benefit school districts and local educational agencies by distributing state bond funds on an equitable basis by moving the Town designation within the definition of "Rural Area." In the CTEFP, this should allow for higher scoring applications in the Town locale to compete with similar Rural applicants in order to receive funding, which is in alignment with the statutory intent to distribute CTEFP funding equitably. This will also help ensure that the most accurate locale designation is assigned to projects in the CSFP.

Proceeding with the implementation of the proposed regulatory amendments will provide facilities needed for students to learn the skills and knowledge critical for today's high demand technical careers resulting in a positive impact to the State's economy as well as supporting job creation. The CTEFP carries out the will of the voters based on the successful passage of Proposition 1D in November 2006 and Proposition 51 in November 2016.

Therefore, the proposed regulations will most likely have a positive effect on the State's economy, creation of jobs, creation of new businesses, expansion of businesses, and will not eliminate jobs or eliminate existing businesses within California.

### *Benefits to Public Health and Welfare, Worker's Safety, and the State's Environment*

- The proposed regulatory amendments promote fairness and equity to the funding process for the three locales so similar applications can compete against each other. This will benefit school districts and local educational agencies by distributing state bond funds on an equitable basis by moving the Town designation within the definition of "Rural Area." In the CTEFP, this should allow for higher scoring applications in the Town locale to compete with similar Rural applicants in order to receive funding, which is in alignment with the statutory intent to distribute CTEFP funding equitably. This will also help ensure that the most accurate locale designation is assigned to projects in the CSFP.
- The proposed regulations promote the State's general welfare by providing facilities needed for students to learn the skills and knowledge critical for today's high demand technical careers. The CTEFP carries out the will of the voters based on the successful passage of Proposition 51 in November 2016.
- There are continued benefits to the health and welfare of California residents and worker safety. School districts and local educational agencies utilize construction and trades employees to work on school construction projects and although this proposed regulation does 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.
- There is no impact to the State's environment from the proposed regulatory amendments.

The SAB finds the proposed regulations fully consistent with the stated purposes and benefits.

## EFFECT ON SMALL BUSINESSES

It has been determined that the proposed regulatory amendments 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 regulatory amendments only apply to school districts and local education agencies 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 March 30, 2020. 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 Ms. 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 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 OPSC during normal working hours. Items 1 through 3 are also available on [OPSC's Internet Website](https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations) at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations> then click on "SFP Pending Regulatory Changes."

### ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB has determined 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. OPSC held two stakeholder meetings to discuss and receive input from stakeholders regarding the "Suburban Area" and "Rural Area" locales. Stakeholders were supportive in having the Town locale codes moved to the "Rural Area" so that similarly situated applicants in the three locales could more evenly compete against each other for state funding.

### 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 website listed above.