

March 8, 2024

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO AMEND
REGULATION SECTION 1859.76,
TITLE 2, CALIFORNIA CODE OF REGULATIONS,
RELATING TO THE LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

PROPOSED AMENDMENT TO THE FOLLOWING REGULATION SECTION:

- 1859.76

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 section under the authority provided by Section 17070.35 of the Education Code. The proposal interprets and make specific reference Sections 17070.35, 17072.12, 17072.35 of the Education Code.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill (SB) 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 27, 2023 meeting, the SAB adopted a proposed regulatory amendment, on an emergency basis, that would extend for two years (until January 1, 2026) the additional grant for general site development. This extension will prevent a lapse in regulatory authority and would continue to allow School Facility Program (SFP) new construction applications be processed with this additional grant. The Governor's budget has appropriated \$1.9 billion for funding eligible new construction and modernization projects under the SFP for the 2023/24 fiscal year. The Legislature has declared its intent to appropriate an additional \$875 million from the

General Fund in the 2024/25 fiscal year for the same purpose, funding eligible new construction and modernization projects under the SFP.

Attached to this Notice is the specific regulatory language of the proposed regulatory action, along with the proposed regulatory amendment. The proposed regulation can also be reviewed on OPSC's website 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 regulation will be mailed to any person requesting this information by using OPSC's contact information set forth below in this Notice. The proposed regulation amends 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.

Bond Funds Impacted

The following five State school bonds were authorized by the Legislature and approved by the State's electorate for purposes of school facility construction:

- Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998 (Proposition 1A)
- Kindergarten-University Public Education Facilities Bond Act of 2002 (Proposition 47)
- Kindergarten-University Public Education Facilities Bond Act of 2004 (Proposition 55)
- Kindergarten-University Public Education Facilities Bond Act of 2006 (Proposition 1D)
- Kindergarten through Community College Public Education Facilities Bond Act of 2016 (Proposition 51)

General Fund Proceeds

For the 2023/24 fiscal year, the Governor's budget has appropriated \$1.9 billion for funding eligible new construction and modernization projects under the SFP. The Legislature has declared its intent to appropriate an additional \$875 million from the General Fund in the 2024/25 fiscal year for the same purpose, funding eligible new construction and modernization projects under the SFP.

Background and Problem Being Resolved

As first implemented, the additional grant for general site development costs was to be suspended "no later than January 1, 2008" unless extended by the SAB. The following is a sequence of events extending the additional grant for general site development:

- First One-Year Extension: The SAB, at its December 12, 2007 meeting, approved emergency regulations extending the suspension date to "no later than January 1, 2009," which was approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on March 3, 2008.
- Second One-Year Extension: The SAB, at its February 25, 2009 meeting, approved extending the suspension date to "no later than January 1, 2010," which was approved by the OAL and filed with the Secretary of State on September 18, 2009.
- Third One-Year Extension: The SAB, at its November 4, 2009 meeting, approved extending the suspension date to "no later than January 1, 2011," which was approved by the OAL and filed with the Secretary of State on April 8, 2010.

- Fourth One-Year Extension: The SAB, at its June 23, 2010 meeting, approved extending the suspension date to “no later than January 1, 2012,” which was approved by the OAL and filed with the Secretary of State on April 27, 2011.
- Fifth Two-Year Extension: The SAB, at its July 12, 2011 meeting, approved extending the suspension date to “no later than January 1, 2014,” which was approved by the OAL and filed with the Secretary of State on December 28, 2011.
- Sixth One-Year Extension: The SAB, at its May 22, 2013 meeting, approved extending the suspension date to “no later than January 1, 2015,” which was approved by the OAL, filed with the Secretary of State on October 30, 2013, and took effect January 1, 2014, due to Senate Bill (SB) 1099, Chapter 295, Statutes of 2012.
- Seventh One-Year Extension: The SAB, at its August 20, 2014 meeting, approved extending the suspension date to “no later than January 1, 2016,” which was approved by the OAL, filed with the Secretary of State on February 9, 2015, and took effect on April 1, 2015, due to SB 1099, Chapter 295, Statutes of 2012.
- Eighth One-Year Extension: The SAB, at its May 27, 2015 meeting, approved extending the suspension date to “no later than January 1, 2017,” which was approved by the OAL and filed with the Secretary of State on December 21, 2015.
- Ninth One-Year Extension: The SAB, at its May 25, 2016 meeting, approved extending the suspension date to “no later than January 1, 2018,” which was approved by the OAL and filed with the Secretary of State on December 12, 2016.
- Tenth One-Year Extension: The SAB, at its June 5, 2017 meeting, approved extending the suspension date to “no later than January 1, 2019,” which was approved by the OAL and filed with the Secretary of State on December 20, 2017.
- Eleventh Five-Year Extension: The SAB, at its June 27, 2018 meeting, approved extending the suspension date to “no later than January 1, 2024,” which was approved by the OAL and filed with the Secretary of State on December 18, 2018.

OPSC has been involved in an on-going analysis of the SFP new construction base grants for purposes of determining whether the general site development allowance was included in the base grant amounts. The preliminary analysis resulted in discrepancies between the previous funding program, the State School Building Lease-Purchase Program (LPP) and the SFP. It is reasonable to conclude that when the LPP converted to the SFP, general site development was not considered in the base grants.

The proposed regulatory amendment continues to be extended until a complete analysis of the new construction base grant can be conducted. The analysis must determine whether the extra costs associated with the additional grant for general site development, (such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities and permanent playground equipment, and athletic fields), are included in the SFP per-pupil base grant. There has not been conclusive evidence to show that this additional grant is not needed to complete the projects.

OPSC performed a search on whether the proposed regulatory amendment is consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that there are no other programs or regulations in existence that would not only provide the additional grant for general site development, but would extend the additional grant for general site development for any length of time. Therefore, the proposed regulatory amendment is determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory amendment assists school districts in covering the costs for items such as landscaping, finish grading,

driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields in order to complete their projects.

Financial Impact

For the 2024 calendar year, OPSC anticipates nine new construction projects will request approximately \$10.0 million for the general site development grant and for the 2025 calendar year, nine new construction projects will request approximately \$12.1 million. These dollar amounts are based on new construction funding applications currently sitting on OPSC's Workload List and Applications Received Beyond Bond Authority List and are projected to be presented for SAB approval in calendar years 2024 and 2025. In addition, these applications have not yet been processed and, therefore, the project counts and requesting funding amounts may change. Charter School Facilities Program projects and Facility Hardship/Rehabilitation and Seismic Mitigation Program (SMP) projects could be eligible for the general site development grant. Facility Hardship/Rehabilitation and SMP projects are health and safety projects and are presented to the SAB on an on-going basis.

Anticipated Benefits of the Proposed Regulations

Extending the SFP general site development grant for two years will have a positive impact on California businesses providing landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields, including the companies that supply the materials for these improvements. Without this proposed regulatory amendment, school districts might be required to reduce the scope of work for some school projects.

The State of California benefits from this regulation as it assists 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. This regulation will have a positive impact to various business, manufacturing, and construction-related industries such as architecture, engineering, trades and municipalities, along with the creation of an unknown amount of [temporary or permanent] jobs.

There is a public health and safety impact assigned to the regulation. School site occupants, especially young children, will have less risk of injury and safer ingress and egress when driveways and walkways are wide, level, and extensive; when finish grading is thorough; when play facilities are of high quality on safe ground cover material; and athletic fields are well-designed with safe playing surfaces, adequate protective fences, and appropriate walkways.

The proposed regulatory amendment is therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of this regulatory amendment will have a positive impact on public health and safety at K-12 public schools because school site occupants will have less risk of injury for the reasons noted above.

Summary of the Proposed Regulatory Amendment

The proposed emergency regulation change was adopted by the SAB at its September 27, 2023 meeting to extend the additional grant for general site development for two years (until January 1, 2026). The proposed additional grant for general site development costs utilizes the continuing availability of new construction funding through the Bond Funds and the General Fund Proceeds both identified on page 2. The Office of Administrative Law approved this regulatory amendment on an emergency basis with an effective date of December 18, 2023.

A summary of the proposed regulation is as follows:

Existing Regulation Section 1859.76 provides new construction additional grants for specific types and amounts of site development costs. The proposed amendment provides that the general site development shall be suspended no later than January 1, 2026 unless otherwise extended by the SAB.

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

As stated on page 3, OPSC has been involved in an on-going analysis of the SFP new construction base grants for purposes of determining whether the general site development allowance was included in the base grant amounts. The preliminary analysis resulted in discrepancies between the previous funding program, the LPP and the SFP. It is reasonable to conclude that when the LPP converted to the SFP, general site development was not considered in the base grants. Therefore, the proposed regulatory amendment continues to be extended until a complete analysis of the new construction base grant can be conducted. The analysis must determine whether the extra costs associated with the additional grant for general site development (such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities and permanent playground equipment, and athletic fields), are included in the SFP per-pupil base grant. There has not been conclusive evidence to show that this additional grant is not needed to complete the projects. School districts may be eligible for the additional grant when building new schools and for additions to existing school sites where additional acreage is required.

After conducting a review, OPSC, on behalf of the SAB, has concluded that this is the only regulation on this subject area, and therefore, the proposed regulation is neither inconsistent nor incompatible with existing State laws and regulations. The proposed regulatory amendment is 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 amendment does 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, school districts, or charter schools to incur additional costs in order to comply with the proposed regulatory amendment.

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 amendment creates no costs to any local agency, school district, or charter school 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 amendment creates 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 by extending for two years the SFP general site development grant. This will continue to provide the funds to school districts building new construction projects to contract with businesses and suppliers for necessary landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields, thus supporting jobs in these construction-related industries. The proposed regulation:

- Continues to be extended until a complete analysis of the new construction base grant can be conducted. The analysis must determine whether the extra costs associated with the additional grant for general site development, (such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities and permanent playground equipment, and athletic fields) are included in the SFP per-pupil base grant. There has not been conclusive evidence to show that this additional grant is not needed to complete the project.
- Extends this additional grant until “no later than January 1, 2026”; and
- Creates an unknown amount of [temporary or permanent] jobs in landscaping, concrete, asphalt, finishing, playground and athletic field equipment, and other construction trades, along with stimulating the economy.

This regulation affects various business, manufacturing, and construction-related industries, such as architecture, engineering, trades and municipalities, which continues to promote the stimulation of the economy and helps to support job creation. Therefore, the proposed regulatory amendment 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 regulatory amendment 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 this regulatory amendment. School site occupants, especially young children, will have less risk of injury and safer ingress and egress when driveways and walkways are wide, level, and extensive, when finish grading is thorough, when play facilities are of high quality on safe ground cover material, and athletic fields are well-designed with safe playing surfaces, adequate protective fences, and appropriate walkways.
- 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 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 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 amendment.

EFFECT ON SMALL BUSINESSES

It has been determined that the proposed regulatory amendment will not have an impact on small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. Although the proposed regulation only applies to school districts and charter schools for purposes of funding school facility new construction projects, the demand on the manufacturing and construction-related industries could potentially stimulate the creation of small business 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 April 22, 2024. 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 3rd Street, 4th Floor
West Sacramento, CA 95605

E-mail Address: 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 (279) 946-8459. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Michael Watanabe, Deputy Executive Officer, at (279) 946-8463.

ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulation 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 regulation 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 Web site at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations> then scroll down to School Facility Program, Pending Regulatory Changes, and click on the links named 45-day Public Notice, Initial Statement of Reasons and Proposed Regulatory Text.

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. No alternatives were considered because the general site development grant is a supplemental grant to the new construction base grant. The proposed regulatory amendment continues to be extended until a complete analysis of the new construction base grant can be conducted.

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.