

INITIAL STATEMENT OF REASONS

Section 1859.76. New Construction Additional Grant for Site Development Costs.

Specific Purpose of the Regulation

To extend for two years (until January 1, 2026) the additional grant for general site development available to school districts under the School Facility Program (SFP).

Need for the Regulation

First paragraph after (d)(3): It was necessary to extend until “no later than January 1, 2026” the additional grant for general site development. This additional grant helps school districts cover the extra costs for items such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields. The two-year extension provides the additional grant on a continual basis with no interruption and is necessary to prevent school districts from experiencing funding shortfalls in completing new construction projects as planned. Without this amendment, the general site development additional grant will be inoperative and may require school districts to reduce the scope of work for their school projects.

No alternatives were considered because the general site development grant is a supplement to the new construction base grant. However, there has been no evidence to show that this additional grant is needed to complete the projects.

Anticipated Benefits and Economic Impact of the Proposed Regulation

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 which 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 this 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 the 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. Further, the proposed regulation provides a positive impact to the creation of jobs, the creation of new businesses, and the expansion of businesses in California. It is not anticipated that the proposed regulation will result in the elimination of existing businesses or jobs within California.

Technical Documents Relied Upon

The State Allocation Board's Action item, dated September 27, 2023, entitled "Additional Grant for General Site Development."

Alternatives to the Proposed Regulatory Action that would be as Effective and Less Burdensome to Private Persons

The SAB finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation 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.

Alternatives to the Proposed Regulatory Action that would Lessen any Adverse Economic Impact on Small Business

The SAB has determined that the proposed regulation will not have a negative impact on small businesses.

Finding of Significant Adverse Economic Impact on Businesses

The SAB has determined that the adoption of the proposed regulation will not have a negative economic impact on businesses/small businesses because they are not required to directly comply with or enforce the regulation, nor will they be disadvantaged by the regulation. In fact, the demand on the manufacturing and construction-related industries could potentially stimulate the creation of businesses/small businesses in these areas.

Impact on Local Agencies or School Districts

The SAB has determined that the proposed regulation 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 regulation.

ECONOMIC IMPACT ASSESSMENT OF REGULATIONS *“Additional Grant for General Site Development”*

Proposed State Allocation Board Regulations

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. The Office of Administrative Law approved this regulatory amendment on an emergency basis with an effective date of December 18, 2023.

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.

Description of Regulations to Implement Law

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.

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the 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.

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.

The proposed amendment is summarized 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 additional grant for general site development shall be suspended no later than January 1, 2026 unless extended by the SAB.

Anticipated Benefits of the Proposed Regulation

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 which 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 this 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 the 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. Further, the proposed regulation provides a positive impact to the creation of jobs, the creation of new

businesses, and the expansion of businesses in California. It is not anticipated that the proposed regulation will result in the elimination of existing businesses or jobs within California.

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.

Impact to California Businesses and Jobs

There is a positive economic impact to California businesses 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 projects;
- 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.

The number of school districts that receive funding under the SFP are many and are at different stages in the construction process. Nevertheless, with all the construction activity and funding flowing into the economy, it is reasonable and logical that the extent of the regulation will have a positive impact to job creation and business expansion/creation, which is why it is difficult to quantify the number of jobs and businesses.

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 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 amendment.