

INITIAL STATEMENT OF REASONS

Section 1859.2. Definitions.

Specific Purpose of the Regulation

To update the revision dates of Form SAB 50-06 and the Grant Agreement master templates.

Need for the Regulation

The State Allocation Board (SAB) adopted proposed regulatory amendments that would amend parts of the School Facility Program (SFP) Regulations, the Form SAB 50-06, and the Grant Agreement master templates. It was necessary to amend the Form SAB 50-06 and the Grant Agreement master templates in order to align the documents with the California Court of Appeals' decision relating to the SAB's historical practice of collecting financial hardship savings. By doing this, the revision dates for both documents must be changed.

Section 1859.70.2. Funding of Previously Ineligible Projects.

Specific Purpose of the Regulation

To delete a sentence pertaining to project savings.

Need for the Regulation

The SAB adopted proposed regulatory amendments that would amend parts of the SFP Regulations, the Form SAB 50-06, and the Grant Agreement master templates. It was necessary to delete this sentence in order to align with the California Court of Appeals' decision relating to the SAB's historical practice of collecting financial hardship savings.

Section 1859.103. Savings.

Specific Purpose of the Regulation

To delete existing language pertaining to project savings.

Need for the Regulation

The SAB adopted proposed regulatory amendments that would amend parts of the SFP Regulations, the Form SAB 50-06, and the Grant Agreement master templates. It was necessary to delete the existing language in order to align with the California Court of Appeals' decision relating to the SAB's historical practice of collecting financial hardship savings.

Section 1859.104. Program Reporting Requirements.

Specific Purpose of the Regulation

To provide guidance to school districts by adding a new subsection that specifies another component of program reporting requirements for projects.

Need for the Regulation

The SAB adopted proposed regulatory amendments that would amend parts of the SFP Regulations, the Form SAB 50-06, and the Grant Agreement master templates. It was necessary to add a new subsection to remind school districts that they are required to report the expenditure of project savings annually until all state and required matching funds have been expended.

Section 1859.169.1. Charter School Project Savings.

Specific Purpose of the Regulation

To repeal this section in its entirety.

Need for the Regulation

The SAB adopted proposed regulatory amendments that would amend parts of the SFP Regulations, the Form SAB 50-06, and the Grant Agreement master templates. It was necessary to repeal this section in its entirety in order to align with the California Court of Appeals' decision relating to the SAB's historical practice of collecting financial hardship savings.

Section 1859.184.1. Application Process for Districts with Financial Hardship Approval.

Specific Purpose of the Regulation

To delete a portion of existing language in subsection (d).

Need for the Regulation

The SAB adopted proposed regulatory amendments that would amend parts of the SFP Regulations, the Form SAB 50-06, and the Grant Agreement master templates. It was necessary to delete a portion of existing language in subsection (d) in order to align with the California Court of Appeals' decision relating to the SAB's historical practice of collecting financial hardship savings.

Section 1859.199. Program Accountability.

Specific Purpose of the Regulation

To delete a sentence pertaining to project savings.

Need for the Regulation

The SAB adopted proposed regulatory amendments that would amend parts of the SFP Regulations, the Form SAB 50-06, and the Grant Agreement master templates. It was necessary to delete this sentence in order to align with the California Court of Appeals' decision relating to the SAB's historical practice of collecting financial hardship savings.

SCHOOL FACILITY PROGRAM FORMS

Expenditure Report, Form SAB 50-06 (Rev. 10/22).

Specific Purpose of the Form

To delete existing language on this Form pertaining to project savings.

Need for the Form

The SAB adopted proposed regulatory amendments that would amend parts of the SFP Regulations, the Form SAB 50-06, and the Grant Agreement master templates. It was necessary to delete existing language under the Instructions on page 1 and the corresponding information/data fields on page 2 of this form in order to align with the California Court of Appeals' decision relating to the SAB's historical practice of collecting financial hardship savings.

Grant Agreement (Rev. 10/22).

Specific Purpose of the Form

To include conforming language changes that align with statute (Senate Bill 820, Chapter 110, Statutes of 2020) and to delete existing language pertaining to project savings.

Need for the Form

The SAB adopted proposed regulatory amendments that would amend parts of the SFP Regulations, the Form SAB 50-06, and the Grant Agreement master templates. It was necessary to 1) add new language that align with statute which changes the collection agency for amounts due to the State for audit findings from the California Department of Education to the Office of Public School Construction (OPSC); and 2) delete existing language in order to align with the California Court of Appeals' decision relating to the SAB's historical practice of collecting financial hardship savings.

Anticipated Benefits and Economic Impact of the Proposed Regulations

The proposed regulatory amendments promote transparency by implementing the California Court of Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings as outlined in Regulation Section 1859.103. In the case of *San Bernardino City Unified School District v. State Allocation Board*, California Court of Appeal, Third Appellate District, case C092003 (from Sacramento Superior Court case 34-2019-80003183), the Court ruled in favor of the San Bernardino City Unified School District thereby necessitating amendments to parts of the SAB's SFP Regulation Section 1859.103. This also included any other references to the return of SFP savings throughout the SFP Regulations, Form SAB 50-06, and the Grant Agreement master templates. Further, the Court ordered the SAB to declare that school districts can retain financial hardship savings.

OPSC is implementing the California Court of Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings as outlined in Regulation Sections 1859.70.2, 1859.103, 1859.104, 1859.169.1, 1859.184.1, 1859.199, Form SAB 50-06, and the Grant Agreement master templates. The proposed regulatory amendments are to make the regulations consistent and compatible with existing State laws and regulations. The California Court of Appeals' interpretation of Regulation Section 1859.103 pertaining to project savings

supersedes the SAB's previous interpretation and the proposed regulatory amendments align the regulations with the court's interpretation.

Technical Documents Relied Upon

The SAB's Action item, dated October 21, 2022, entitled "Proposed Regulatory Amendments to the School Facility Program."

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 regulations or would be as effective and less burdensome to affected private persons than the proposed regulations or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The alternative to these proposed regulatory amendments would be that the SAB and OPSC do not implement the California Court of Appeals' decision and be in violation of the Court's decision.

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

The SAB has determined that the proposed regulatory amendments 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 regulatory amendments will not have an economic impact on businesses/small businesses because they are not required to directly comply with or enforce the regulations, nor will they be disadvantaged by the regulations. Implementation of the proposed regulatory amendments aligns with the California Court of Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings as outlined in Regulation Sections 1859.70.2, 1859.103, 1859.169.1, 1859.184.1, 1859.199, including the Form SAB 50-06 and the Grant Agreement master templates. The California Court of Appeals' interpretation of Regulation Section 1859.103 pertaining to project savings supersedes the SAB's previous interpretation.

Impact on Local Agencies or School Districts

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, school districts or Charter Schools to incur additional costs in order to comply with the proposed regulatory amendments.

Office of Administrative Law Regulations, Title 1, Section 20(c)(1)

Because the SAB's School Facility Program Forms are cumbersome documents, it would be unduly expensive and otherwise impractical to publish the Forms in the California Code of Regulations. Therefore, it is not necessary to publish the Forms in the California Code of Regulations.

Office of Administrative Law Regulations, Title 1, Section 20(c)(2)

The SAB's School Facility Program Forms are made available upon request and through our website and continue to be made available upon request and through our website.

ECONOMIC IMPACT ASSESSMENT OF REGULATIONS

“Proposed Regulatory Amendments to the School Facility Program”

Proposed State Allocation Board Regulations

At its October 26, 2022 meeting, the State Allocation Board (SAB) adopted proposed regulatory amendments that would amend parts of the SFP Regulations, the Form SAB 50-06, and the Grant Agreement master templates. This is a result of the California Court of Appeals’ decision related to the SAB’s historical practice of collecting financial hardship savings.

Background and Problem Being Resolved

Regulation Section 1859.103 was created through SB 50, Chapter 407, Statutes of 1998, and provided that school districts could use the State’s share of any savings not needed for a project on other capital facility needs of the school district. Savings was deemed to be any portion of the SFP adjusted grant, including a school district’s required matching share, not needed to complete the project. School districts could declare savings at any time.

For projects that received financial hardship funding, in lieu of contributing 100 percent of their required matching share, the savings needed to be used to reduce SFP financial hardship grants within the school district for a period of three years, after which the savings would be returned by the school district. The intent of this section was to allow a school district time to apply the savings towards a future financial hardship project.

What is being resolved now is the implementation of the California Court of Appeals’ decision invalidating the SAB’s historical practice of collecting financial hardship savings as outlined in Regulation Section 1859.103 above. In the case of *San Bernardino City Unified School District v. State Allocation Board*, California Court of Appeal, Third Appellate District, case C092003 (from Sacramento Superior Court case 34-2019-80003183), the Court ruled in favor of the San Bernardino City Unified School District thereby necessitating amendments to parts of the SAB’s SFP Regulation Section 1859.103. This also included any other references to the return of any SFP savings throughout the SFP Regulations, Form SAB 50-06, and the Grant Agreement master templates. The Court ordered the SAB to declare that school districts can retain financial hardship savings.

OPSC is implementing the California Court of Appeals’ decision that invalidates the SAB’s historical practice of collecting financial hardship savings as outlined in Regulation Sections 1859.70.2, 1859.103, 1859.104, 1859.169.1, 1859.184.1, 1859.199, Form SAB 50-06, and the Grant Agreement master templates. The proposed regulatory amendments make the regulations consistent and compatible with existing State laws and regulations. The California Court of Appeals’ interpretation of Regulation Section 1859.103 pertaining to project savings supersedes the SAB’s previous interpretation.

Description of Regulations to Implement Law

The Leroy F. Greene School Facilities Act of 1998 established, through SB 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.

At its October 26, 2022 meeting, the SAB adopted proposed regulatory amendments that would amend parts of the SFP Regulations, an associated form, and the Grant Agreement master templates. This is a result of the California Court of Appeals' decision related to the SAB's historical practice of collecting financial hardship savings.

Anticipated Benefits of the Proposed Regulations

The proposed regulatory amendments promote transparency by implementing the California Court of Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings as outlined in Regulation Section 1859.103. In the case of *San Bernardino City Unified School District v. State Allocation Board*, California Court of Appeal, Third Appellate District, case C092003 (from Sacramento Superior Court case 34-2019-80003183), the Court ruled in favor of the San Bernardino City Unified School District thereby necessitating amendments to parts of the SAB's SFP Regulation Section 1859.103. This also included any other references to the return of any SFP savings throughout the SFP Regulations, Form SAB 50-06, and the Grant Agreement master templates. Further, the Court ordered the SAB to declare that school districts can retain financial hardship savings.

OPSC is implementing the California Court of Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings as outlined in Regulation Sections 1859.70.2, 1859.103, 1859.104, 1859.169.1, 1859.184.1, 1859.199, Form SAB 50-06, and the Grant Agreement master templates. The proposed regulatory amendments are to make the regulations consistent and compatible with existing State laws and regulations. The California Court of Appeals' interpretation of Regulation Section 1859.103 pertaining to project savings supersedes the SAB's previous interpretation.

Summary of the Proposed Regulatory Amendments

The SFP Regulations are being amended to revise the revision date for the Form SAB 50-06 and the Grant Agreement master templates; to remove existing language in five regulation sections that conform to the California Court of Appeals' decision related to the SAB's historical practice of collecting financial hardship savings; and in one regulation section provide guidance to school districts that they are required to report the expenditure of project savings annually until all state and required matching funds have been expended. The proposed amendments are as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments revise the revision date for the Form SAB 50-06 as well as the revision date for the Grant Agreement master templates. These are considered non-substantive changes.

Existing Regulation Section 1859.70.2 sets forth specific criteria allowing new construction projects that included classrooms that were considered ineligible for State funding due to the construction contract being signed in excess of 180 days prior to submittal of an Approved Application to participate and request State funding under the SFP. The proposed amendment removes an existing sentence pertaining to project savings. This is in alignment with the California Court of Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings.

Existing Regulation Section 1859.103 identifies SFP project savings and establishes when and how the savings may be utilized. It also specifies how interest earned on financial hardship projects will be treated. Further, it identifies another component for which project savings may be used towards and provides an exception to the required use of savings that reduces the

financial hardship grant for apportionments made for district-owned site acquisition. The proposed amendments remove existing language pertaining to project savings. This is in alignment with the California Court of Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings.

Existing Regulation Section 1859.104 sets forth the program reporting requirements for school districts receiving funds under the School Facility Program, including progress reports and expenditure reports. This section also requires recipients of Overcrowding Relief Grant (ORG) Program apportionments to submit a certification that replaced portables were removed from the eligible site and from K-12 service. The proposed amendment adds a new subsection that provides guidance to school districts reminding them that they are required to report the expenditure of project savings annually until all state and required matching funds have been expended.

Existing Regulation Section 1859.169.1 requires that State funds remaining at the completion of charter school projects must be returned to the State. The proposed amendments repeal this section in its entirety. This is in alignment with the California Court of Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings.

Existing Regulation Section 1859.184.1 sets forth the application process for school districts with financial hardship approval under the ORG Program. This section permits financial hardship school districts in the ORG Program to obtain advance site acquisition funding in order to acquire sites through condemnation proceedings. Financial hardship districts may lack the funds for an advance deposit required before the courts will issue orders for condemnation, thereby failing to demonstrate ownership of the site for purposes of SFP funding. Further, this section includes the criteria for a complete application, determination of site acquisition funding for condemnation actions, and the limitation that no over-apportionment of site acquisition funds for condemnation may be applied as "savings" to construction related costs for purposes of Regulation Section 1859.103. The proposed amendment removes existing language pertaining to project savings. This is in alignment with the California Court of Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings.

Existing Regulation Section 1859.199 identifies the time when a CTEFP project shall be deemed complete, that a completed project is subject to a Program Accountability Expenditure Audit, and that applicant school districts may not retain savings realized by a CTEFP project. The proposed amendment removes an existing sentence pertaining to project savings. This is in alignment with the California Court of Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings.

Existing Form SAB 50-06, *Expenditure Report*, (Revised ~~12/10~~ 10/22), is used by school districts to record the total amount of funding spent on an SFP project (includes State and district shares). The proposed amendments remove existing language under the Instructions on page 1 and the corresponding information/data fields on page 2 of the form that pertain to project savings. This is in alignment with the California Court of Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings.

The existing grant agreement templates include sections relevant to funding provided by the New Construction Program, the Modernization Program, the Charter School Facilities Program, and the Career Technical Education Facilities Program. The grant agreements are entered into for every future funding application that is processed; therefore, each grant agreement will contain the relevant program's sections. The grant agreements were developed to address the Office of Statewide Audits and Evaluation's audit findings by improving program oversight and expenditure accountability. The grant agreement also includes changes that implement the trailer bill language (AB 99, Chapter 15, Statutes of 2017), which the Governor signed into law

on June 27, 2017. The grant agreements serve as binding documents and key resources that define the responsibilities of the state and school districts from the determination of the amount of eligible state funding to the reporting of all project funds, including any savings achieved. This ensures transparency and accountability for the program grants being awarded under the SFP. The grant agreements are in alignment with the amended direct Apportionment process. The proposed amendments 1) include conforming language, pursuant to SB 820 (Chapter 110, Statutes of 2020), which changes the collection agency for amounts due to the State for audit findings from the California Department of Education to the OPSC; and 2) remove existing language pertaining to project savings. This is in alignment with the California Court of Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings.

Statutory Authority and Implementation

OPSC is implementing the California Court of Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings as outlined in Regulation Sections 1859.70.2, 1859.103, 1859.104, 1859.169.1, 1859.184.1, 1859.199, Form SAB 50-06, and the Grant Agreement master templates. The California Court of Appeals' interpretation of Regulation Section 1859.103 pertaining to project savings supersedes the SAB's previous interpretation.

Determination of Inconsistency or Incompatibility with Existing State Regulations

Regulation Section 1859.103 was created through SB 50, Chapter 407, Statutes of 1998, and provided that school districts could use the State's share of any savings not needed for a project on other capital facility needs of the school district. Savings was deemed to be any portion of the SFP adjusted grant, including a school district's required matching share, not needed to complete the project. School districts could declare savings at any time.

For projects that received financial hardship funding, in lieu of contributing 100 percent of their required matching share, the savings needed to be used to reduce SFP financial hardship grants within the school district for a period of three years, after which the savings would be returned by the school district. The intent of this section was to allow a school district time to apply the savings towards a future financial hardship project.

What is being resolved now is the implementation of the California Court of Appeals' decision invalidating the SAB's historical practice of collecting financial hardship savings as outlined in Regulation Section 1859.103 above. In the case of *San Bernardino City Unified School District v. State Allocation Board*, California Court of Appeal, Third Appellate District, case C092003 (from Sacramento Superior Court case 34-2019-80003183), the Court ruled in favor of the San Bernardino City Unified School District thereby necessitating amendments to parts of the SAB's SFP Regulation Section 1859.103. This also included any other references to the return of any SFP savings throughout the SFP Regulations, Form SAB 50-06, and the Grant Agreement master templates. The Court ordered the SAB to declare that school districts can retain financial hardship savings.

OPSC is implementing the California Court of Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings as outlined in Regulation Sections 1859.70.2, 1859.103, 1859.104, 1859.169.1, 1859.184.1, 1859.199, Form SAB 50-06, and the Grant Agreement master templates. The proposed regulatory amendments make the regulations consistent and compatible with existing State laws and regulations. The California Court of Appeals' interpretation of Regulation Section 1859.103 pertaining to project savings supersedes the SAB's previous interpretation.

Impact to California Businesses and Jobs

The proposed regulatory amendments promote transparency by implementing the California Court of Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings as outlined in Regulation Section 1859.103. In the case of *San Bernardino City Unified School District v. State Allocation Board*, California Court of Appeal, Third Appellate District, case C092003 (from Sacramento Superior Court case 34-2019-80003183), the Court ruled in favor of the San Bernardino City Unified School District thereby necessitating amendments to parts of the SAB's SFP Regulation Section 1859.103. This also included any other references to the return of SFP savings throughout the SFP Regulations, Form SAB 50-06, and the Grant Agreement master templates. Further, the Court ordered the SAB to declare that school districts can retain financial hardship savings.

The California Court of Appeals' interpretation of Regulation Section 1859.103 pertaining to project savings supersedes the SAB's previous interpretation.

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

- The proposed regulatory amendments promote transparency by implementing the California Court of Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings as outlined in Regulation Section 1859.103. In the case of *San Bernardino City Unified School District v. State Allocation Board*, California Court of Appeal, Third Appellate District, case C092003 (from Sacramento Superior Court case 34-2019-80003183), the Court ruled in favor of the San Bernardino City Unified School District thereby necessitating amendments to parts of the SAB's SFP Regulation Section 1859.103. This also included any other references to the return of SFP savings throughout the SFP Regulations, Form SAB 50-06, and the Grant Agreement master templates. Further, the Court ordered the SAB to declare that school districts can retain financial hardship savings.
- There are benefits to public health and welfare because the Court of Appeals' decision stipulates that school districts are no longer required to return project savings from projects that are approved with financial hardship status.
- There is no impact to the State's environment from the proposed regulatory amendments.