

September 28, 2018

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

TITLE 2. STATE ALLOCATION BOARD

NOTICE TO RE-ADOPT SCHOOL FACILITY PROGRAM REGULATION SECTION 1859.51(e)

Enclosed are proposed emergency regulatory amendments to School Facility Program (SFP) Regulation Section 1859.51(e) that were adopted by the State Allocation Board (SAB) at its meeting on January 24, 2018. This regulation was approved as an emergency regulation by the Office of Administrative Law (OAL) on April 16, 2018 and it is proposed for re-adoption pursuant to Government Code Section 11346.1(h). The emergency regulatory amendments are attached and can be accessed on the Office of Public School Construction's (OPSC) website at www.dgs.ca.gov/opsc.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established the School Facility Program (SFP) through Senate Bill 50, Chapter 407, Statutes of 1998. 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 OAL and filed with the Secretary of State on October 8, 1999.

At its January 24, 2018 meeting, the SAB adopted proposed emergency regulations relating to the processing of new construction funding applications, which would require school districts to submit new construction eligibility updates in order to support the projects on OPSC's workload list. OPSC has projects dating back to 2013 on its workload list that have not been processed. This was due to the lack of bond authority at that time and direction/action of the SAB. As a result of new funding available and per SAB direction, OPSC has begun processing the applications. New applications continue to be submitted; however, there will be a significant length of time before they are processed as OPSC works on the applications previously received first. The proposed regulations will streamline the process by allowing OPSC to notify school districts 90 days in advance that it will be reviewing the school districts' projects and the school districts will need to prepare and/or gather data to update eligibility information when OPSC processes their new construction funding applications.

As noted in the introductory paragraph above, attached to this Notice are the proposed emergency regulatory amendments. You may also review the proposed emergency regulatory language on OPSC's website at www.dgs.ca.gov/opsc. Copies of the emergency regulatory text will be mailed to any person requesting this information by using the OPSC contact information set forth below. The proposed emergency 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.

OPSC, on behalf of the SAB, will be submitting the emergency regulatory amendments to the OAL in October 2018 for re-adoption as an emergency regulation.

SUBMISSION OF COMMENTS

Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the OAL, the adopting agency provide a Notice of the Proposed Emergency Action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulations to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6.

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed emergency regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OAL within five days after the SAB submits the emergency regulations to the OAL for review.

Please reference submitted comments as regarding “Re-adoption of School Facility Program Regulation Section 1859.51(e),” addressed to:

Reference Attorney

Mailing Address: Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

E-mail Address: staff@oal.ca.gov

Fax No.: (916) 323-6826

For the status of the SAB submittal to the OAL for review, and the end of the five-day written submittal period, please consult the website of 1) the OAL at www.oal.ca.gov under the heading “Emergency Regulations,” and 2) OPSC at www.dgs.ca.gov/opsc under the Tab “Resources,” “Laws and Regulations,” then click on “SFP Pending Regulatory Changes.”

Pursuant to Title I, Section 55, a copy of written comments regarding the proposed regulatory action that is submitted to OAL should be sent to the State Allocation Board/OPSC or the comments will not be considered. Comments may be submitted to:

Lisa Jones, Regulations Coordinator

Mailing Address: Office of Public School Construction
707 Third Street, 6th 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 Emergency 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.

FINDING OF EMERGENCY

The State Allocation Board (SAB) finds that an emergency exists, and that the proposed regulations are necessary for immediate action to avoid serious harm to the public peace, health, safety, or general welfare, pursuant to Government Code Section 11342.545.

Specific Facts Showing the Need for Immediate Action

Immediate action is needed to approve the proposed regulations relating to the processing of new construction funding applications. At its meeting on January 24, 2018, the SAB approved proposed regulations to require school districts to update their new construction eligibility when the Office of Public School Construction (OPSC) begins processing school districts' new construction funding applications.

OPSC has projects dating back to 2013 on its workload list that have not been processed. This was due to the lack of bond authority at that time and direction/action of the SAB to create an Applications Received Beyond Bond Authority List. The purpose of the list was to inform stakeholder and legislative discussions centered around potential statewide general obligation bond proposals to continue the program. Because statute requires the processing of applications based on the date order received, stakeholders also desired a list to maintain this order. Most of the projects on OPSC's workload list consist of these projects. As a condition of obtaining a position on these lists, school districts were required to attach a resolution stating acknowledgment that the placement of the application on the list was not a guarantee of funding.

Once Proposition 51 passed in 2016, the SAB did begin discussions about how to re-start a program that had been largely dormant for four years. As part of its fiduciary responsibility, the SAB first addressed the issue of accountability to taxpayers before allowing any additional applications to be processed in order to receive funding. Not only was the SAB concerned with this element of the program, but the Governor indicated in his press conference in which he revealed the proposed 2017/18 State Budget that ". . . As the State Allocation Board and the Office of Public School Construction begin to consider allocation of Proposition 51 resources, it is important to address some of the shortcomings within the existing program . . . To ensure appropriate usage of all School Facilities Program bond funds . . . , the Administration will work with the State Allocation Board and the Office of Public School Construction to revise policies and regulations to implement front-end grant agreements . . .". In January 2017, the SAB indicated that as a Board the grant agreements were important and necessary to move the School Facility Program (SFP) forward. The proposed regulations for the processing of new construction funding applications could not have been submitted to the SAB for approval before now, as the accountability mechanism (grant agreements) for the SFP needed to be implemented.

As a result of new funding available through Proposition 51, OPSC has begun processing these applications and new applications continue to be submitted. However, there was and there will continue to be, a significant length of time before they are processed as OPSC works on the applications previously received first. At its meeting on June 5, 2017 the SAB approved the policy to require school districts requesting new construction funding to submit new construction eligibility updates for the enrollment year in which the application is processed by OPSC. This is necessary because projects submitted four years ago, may or may not have a current need to house pupils in applications submitted many years prior. The SAB has the fiduciary responsibility [Education Code Sections 17070.35 (a)(3) and (a)(4)] to ensure that taxpayer dollars are spent on projects that are necessary and not on projects that were submitted four or five years ago that may no longer have a current need based on shifting enrollment and facility needs in a school district.

As was discussed in the June 2017 SAB agenda item, Education Code Section 17071.75(a)(2) provides that school districts applying to receive funding for new construction shall calculate enrollment projections for the fifth year beyond the fiscal year in which the application is made. Statute did not contemplate that there would be projects sitting on a list for four or five years. Because of this, the SAB cannot process projects as usual without looking to update the process to examine and/or analyze a project's validity [in this context "validity" means a district has a demonstrated need for new classroom capacity in the form of new construction eligibility, based on current year enrollment data] from this point on. The process must change in order to make the SAB accountable for Proposition 51 bond funds; otherwise, the SAB could be providing new construction funds to projects resulting in empty facilities; meaning no students occupying the facilities. Additionally, one could argue that the unoccupied buildings could be considered gifts of public funds, which violates statute [Education Code Sections 17072.10 and 17072.35]. With the process change, OPSC would notify school districts that it will be reviewing the school districts' projects and the school districts would need to prepare and/or gather data to update eligibility information when OPSC processes their new construction funding applications.

The impact of the Board's proactive decision to require new construction eligibility updates can already be seen, as over \$11 million in requests for new construction funding that was ineligible was prevented from being awarded. As a result of requiring updated new construction eligibility, the following school district projects were either withdrawn or the grant requests were reduced:

No Program Eligibility				
District	County	School	Application Number	\$ Value of Grant Adjustment
Kingsburg Joint Union Elementary	Fresno	Lincoln Elementary	50/62240-00-002	\$ (1,156,700.00)
Kingsburg Joint Union Elementary	Fresno	Roosevelt Elementary	50/62240-00-003	\$ (1,156,700.00)
Kingsburg Joint Union Elementary	Fresno	Washington Elementary	50/62240-00-004	\$ (1,156,700.00)
Kingsburg Joint Union Elementary	Fresno	Rafer Johnson Jr. High	50/62240-00-005	\$ (2,312,226.00)
Kingsburg Joint Union Elementary	Fresno	Reagan Elementary	50/62240-00-006	\$ (1,156,700.00)
Corona-Norco Unified	Riverside	Centennial High	50/67033-00-039	\$ (358,041.00)
Mission Union Elementary	Monterey	Mission Elementary	50/66084-00-002	\$ (1,009,436.00)
Greenfield Union	Kern	Plantation Elementary	50/63503-00-017	\$ (289,175.00)
Solvang Elementary	Santa Barbara	Solvang Elementary	50/69336-00-002	\$ (244,680.00)
				\$ (8,840,358.00)
Amended Pupil Grant Requests				
Corona-Norco Unified	Riverside	Louis VanderMolen Elementary	50/67033-00-038	\$ (208,206.00)
Windsor Unified	Sonoma	Brooks Elementary	50/75358-00-015	\$ (1,308,692.00)
Lagunita Elementary	Monterey	Lagunita Elementary	50/66076-00-002	\$ (419,471.00)
Mendota Unified	Fresno	New Elementary	50/75127-00-004	\$ (60,823.00)
Grossmont Union High	San Diego	Merit Academy	50/68130-12-006	\$ 59,676.00
Lake Elementary	Glenn	Lake Elementary	50/62596-00-001	\$ (647,989.00)
				\$ (2,585,505.00)
				<u>\$ (11,425,863.00)</u>

If the proposed amendments are not approved on an emergency basis, and if the regulations are not approved as written for projects submitted on or after June 6, 2017, there may be a gap in time where school districts are not required to update new construction eligibility for the year in which the application is processed. This will result in bond funds being awarded to ineligible projects.

SFP new construction eligibility is based on enrollment projections. Enrollment projections are used primarily because of the length of time it takes to build a school so that it can be built in anticipation of projected enrollment growth. In the process of justifying project eligibility in later

years, some districts may show a decline in their projection. Others may have added classroom capacity with local funds that would decrease the amount of unhoused pupils in the district, thus reducing the need for new classrooms.

The SAB action also addressed current and future application submittals and added the same requirement, which is to require eligibility updates for all projects. However, to ensure transparency in the process, and in order to fulfill the SAB's obligation to administer the SFP in accordance with the Administrative Procedures Act, regulations are necessary for the applications submitted on and after June 6, 2017. Immediate approval will ensure that all applications are processed with equity and fairness, and with responsibilities to the bond funds. The regulations also provide a mechanism for returning applications that do not respond timely. This will allow OPSC to continue processing the next application in line and to proactively process projects for advancement to the next available SAB meeting.

Failure to approve the proposed regulations as emergency regulations means that projects submitted on and after June 6, 2017 may not be required to submit updated new construction eligibility resulting in inequity amongst applications, and the potential to waste bond dollars on unnecessary projects.

Because of these reasons, it is necessary to implement the proposed regulations as soon as possible to maintain equity in the SFP and to protect taxpayer dollars.

Background and Problem Being Resolved

The proposed regulations will address the processing of new construction funding applications. As stated above, OPSC has projects dating back to 2013 on its workload list that have not been processed. This was due to the lack of bond authority at that time and direction/action of the SAB. As a result of new funding available and per SAB direction, OPSC has begun processing the applications. New applications continue to be submitted; however, there will be a significant length of time before they are processed as OPSC works on the applications previously received first. The proposed regulations will streamline the process by allowing OPSC to notify school districts 90 days in advance that it will be reviewing the school districts' projects and the school districts will need to prepare and/or gather data to update eligibility information when OPSC processes their new construction funding applications.

The proposed emergency regulations are therefore determined to be consistent and compatible with existing State laws and regulations. An early effective date in implementing the proposed regulations will benefit the State's general welfare by requiring school districts to submit updated new construction eligibility information in order to support their new construction project(s) while maintaining the date-order integrity of submitted applications.

Authority and Reference Citations

Authority: Section 17070.35 of the Education Code.

Reference: Sections 17052, 17070.51, 17071.25, 17071.75, 17071.76, 17072.20, 17077.40, 17078.72, 17079.20, 42268, and 42270, Education Code.

Mandate on Local Agencies or School Districts

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require school districts to incur additional costs in order to comply with the proposed regulations.

Cost Estimate

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact that might result from the proposed regulatory action and it has been determined that:

- There will be no costs or savings to the State.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to local agencies or school districts except for the required school district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.

Request for Re-Adoption

OPSC has demonstrated that it has proceeded with diligence to comply with Government Code Section 11346.1(h) by submitting the Certificate of Compliance [OAL File #2018-0814-01C] rulemaking file to the OAL on August 14, 2018. The OAL has approved that File by making the emergency regulations permanent, with the exception of Regulation Section 1859.51(e), which was withdrawn by OPSC.

The emergency circumstances for Regulation Section 1859.51(e) remain unchanged since the initial adoption on April 16, 2018.

Amend Regulation Section 1859.51

Section 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the Form SAB 50-03, will be adjusted as follows:

. . .

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts using a fifth-year projection or a tenth-year projection, except decreases as provided in (j) below. For all funding requests received by OPSC on or after June 6, 2017, OPSC will notify the School District in writing that OPSC is scheduled to begin processing the School District's Form SAB 50-04 and that the School District shall submit the Form SAB 50-01 for the current enrollment year. OPSC may return the Form SAB 50-04 to the School District for failure to submit the Form SAB 50-01 within 90 calendar days of OPSC's notification. Form SAB 50-01 filed on or after November 1 must include the current enrollment year.:

~~(1) Utilizing a fifth-year projection.~~

~~(2) Utilizing a tenth-year projection.~~

. . .

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17052, 17070.51, 17071.25, 17071.75, 17071.76, 17072.20, 17077.40, 17078.72, 17079.20, 42268, and 42270, Education Code.