

INITIAL STATEMENT OF REASONS

Section 1859.90.2. Priority Funding Process.

Specific Purpose of the Regulation

To align unexpected funding sources with the current structure of the Priority Funding Process.

Need for the Regulation

Subsection (e): It was necessary to set forth the allocation process for unexpected funding sources from new construction and modernization projects.

Assembly Bill (AB) 130, Chapter 44, Statutes of 2021 [Committee on Budget. Education Finance: Education Omnibus Budget Trailer Bill] was signed by the Governor on July 9, 2021 and included a one-time General Fund appropriation in the amount of \$250 million. The SAB has been charged with allocating the one-time General Fund appropriation to eligible new construction and modernization projects until June 30, 2022. In order to maintain the Priority Funding Process and to align future unexpected funding sources with the current structure of the Priority Funding Process, it is necessary to set forth how that allocation process will work.

The Priority Funding Process is a process by which school districts submit certification requests for projects that have received unfunded approvals and are sitting on the Unfunded List (Lack of AB 55 Loans). Priorities in Funding certification requests are submitted twice a year during two specific 30-day filing periods, are good for six months, and the requests indicate a school district's desire to convert a project's unfunded approval to an apportionment in date order received. For example, one of the 30-day filing periods for school districts to submit certification requests began May 12, 2021 and ended June 10, 2021. The certification requests received during this 30-day filing period are valid from July 1, 2021 through December 31, 2021 for school district projects to be eligible for cash from the Spring 2022 General Obligation Bond sale. The next 30-day filing period for school districts to submit certification requests began November 10, 2021 and ended December 9, 2021. The certification requests received during this 30-day filing period are valid from January 1, 2022 through June 30, 2022 for their projects to be eligible for cash from the Fall 2022 General Obligation Bond sale.

In addition to the method of providing funding to convert unfunded approvals as noted above, the one-time \$250 million General Fund appropriation is an opportunity for cash to be allocated quicker than expected to the first \$250 million in projects placed on the Unfunded List (Lack of AB 55 Loans) and well before the statutory June 30, 2022 deadline. Projects participating in the November 2021 Priority Funding Process normally receive apportionments from the Spring 2022 bond sale. By using the \$250 million for these projects, \$250 million from the Spring bond sale will be unallocated. OPSC will then ask school districts receiving unfunded approvals in January through May 2022 if they wish to receive funding sooner than the Fall Bond sale and requiring those school districts to submit a request outside the normal request time period. By providing the \$250 million as early as the January 2022 SAB meeting, allows for that funding to be allocated quicker and allows for the application of cash from the Spring Bond sale to fund projects further down the Unfunded List (Lack of AB 55 Loans) thereby maintaining the integrity of the Priority Funding Process as well as equity amongst school district projects.

The Office of Administrative Law (OAL) approved the emergency regulations with an effective date of October 28, 2021 and had a concern that new subsection (e) provided the SAB with too much discretion and required additional criteria by which the SAB can reference and therefore waive the 30-calendar day provision. As part of the Administrative Procedure Act process, OAL

requested that the SAB approve additional language that would provide the clarity needed to address the SAB's ability to waive the 30-calendar day filing provision.

At its December 7, 2021 meeting, the SAB adopted proposed regulatory amendments that addressed OAL's concern. These proposed amendments will be processed through the Administrative Procedure Act to become part of the rulemaking file and become permanent regulations.

OPSC performed a search on whether the proposed regulatory amendments were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that there are no other programs or regulations in existence that allow the SAB to allocate General Fund appropriations for the funding of school construction. Therefore, the proposed regulatory amendments are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory amendments will maintain equity amongst school district projects and the integrity of the SFP funding process.

Anticipated Benefits and Economic Impact of the Proposed Regulations

The proposed regulatory amendments promote transparency because the process of funding SFP projects with unexpected cash proceeds from sources other than bond funds will be clarified in regulation. There are additional benefits associated with these proposed regulatory amendments. School districts can submit certification requests to convert projects with unfunded approvals to apportionments sooner rather than waiting for a future sale of General Obligation Bonds. Because school districts can receive funding so quickly, manufacturing and construction-related industries such as architecture, engineering, trades and municipalities may expand based on the demand on these industries. This is a positive impact on the state's economy and may also create an unknown number of jobs. Further, it is unlikely that the proposed amendments will eliminate new and/or existing businesses, including the elimination of jobs, within California.

The proposed amendments are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory amendments aligns with the statute, maintains the integrity of the Priority Funding Process as well as maintains equity amongst school district projects.

Technical Documents Relied Upon

The State Allocation Board's Action items, dated September 22 and December 7, 2021 entitled "Emergency Regulations to Allocate Monies Appropriated From General Fund." (Both Board items have the same title.)

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 to take no action and not provide transparency in the process of apportioning the \$250 million General Fund appropriation charged to the SAB from the Legislature. Further, without the proposed regulatory

amendments, the integrity of the Priority Funding Process could be compromised as well as equity amongst school district projects.

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 a negative 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. Proceeding with the implementation of the proposed regulatory amendments aligns with the statute, maintains the integrity of the Priority Funding Process as well as maintains equity amongst school district projects.

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.

ECONOMIC IMPACT ASSESSMENT OF REGULATIONS
“Proposed Amendments to the Charter School Facilities Program”

Proposed State Allocation Board Regulations

At its September 22, 2021 meeting, the SAB adopted proposed regulatory amendments that would allow it to waive the priority funding request deadlines for projects that are impacted by proceeds from funding sources other than bond funds that become available unexpectedly. Projects for which the priority funding request deadline is waived are still subject to the other provisions of the priority funding process, including the 90-day apportionments and occurrences of non-participation.

Although the Office of Administrative Law (OAL) approved the emergency regulations with an effective date of October 28, 2021, OAL had a concern that new subsection (e) provided the SAB with too much discretion and required additional criteria by which the SAB can reference and therefore waive the 30-calendar day provision. As part of the Administrative Procedure Act process, OAL requested that the SAB approve language that would provide the clarity needed to address the SAB's ability to waive the 30-calendar day filing provision.

At its December 7, 2021 meeting, the SAB adopted proposed regulatory amendments that addressed OAL's concern. These proposed amendments will be processed through the Administrative Procedure Act to become part of the rulemaking file and become permanent regulations.

Background and Problem Being Resolved

Assembly Bill (AB) 130, Chapter 44, Statutes of 2021 [Committee on Budget. Education Finance: Education Omnibus Budget Trailer Bill] was signed by the Governor on July 9, 2021 and included a one-time General Fund appropriation in the amount of \$250 million. The SAB has been charged with allocating the one-time General Fund appropriation to eligible new construction and modernization projects until June 30, 2022. In order to maintain the Priority Funding Process and to align future unexpected funding sources with the current structure of the Priority Funding Process, it is necessary to set forth how that allocation process will work.

The Priority Funding Process is a process by which school districts submit certification requests for projects that have received unfunded approvals and are sitting on the Unfunded List (Lack of AB 55 Loans). Priorities in Funding certification requests are submitted twice a year during two specific 30-day filing periods, are good for six months, and the requests indicate a school district's desire to convert a project's unfunded approval to an apportionment in date order received. For example, one of the 30-day filing periods for school districts to submit certification requests began May 12, 2021 and ended June 10, 2021. The certification requests received during this 30-day filing period are valid from July 1, 2021 through December 31, 2021 for school district projects to be eligible for cash from the Spring 2022 General Obligation Bond sale. The next 30-day filing period for school districts to submit certification requests began November 10, 2021 and ended December 9, 2021. The certification requests received during this 30-day filing period are valid from January 1, 2022 through June 30, 2022 for their projects to be eligible for cash from the Fall 2022 General Obligation Bond sale.

In addition to the method of providing funding to convert unfunded approvals as noted above, the one-time \$250 million General Fund appropriation is an opportunity for cash to be allocated quicker than expected to the first \$250 million in projects placed on the Unfunded List (Lack of AB 55 Loans) and well before the statutory June 30, 2022 deadline. Projects participating in the November 2021 Priority Funding Process normally receive apportionments from the Spring 2022 bond sale. By using the \$250 million for these projects, \$250 million from the Spring bond

sale will be unallocated. OPSC will then ask school districts receiving unfunded approvals in January through May 2022 if they wish to receive funding sooner than the Fall Bond sale and requiring those school districts to submit a request outside the normal request time period. By providing the \$250 million as early as the January 2022 SAB meeting, allows for that funding to be allocated quicker and allows for the application of cash from the Spring Bond sale to fund projects further down the Unfunded List (Lack of AB 55 Loans) thereby maintaining the integrity of the Priority Funding Process as well as equity amongst school district projects.

OPSC performed a search on whether the proposed regulatory amendments were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that there are no other programs or regulations in existence that allow the SAB to allocate General Fund appropriations for the funding of school construction. Therefore, the proposed regulatory amendments are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory amendments aligns with the statute, will maintain equity amongst school district projects and the integrity of the SFP funding process.

Description of Regulations to Implement Law

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.

At its September 22, 2021 meeting, the SAB adopted proposed regulatory amendments that would allow it to waive the priority funding request deadlines for projects that are impacted by proceeds from funding sources other than bond funds that become available unexpectedly. Projects for which the priority funding request deadline is waived are still subject to the other provisions of the priority funding process, including the 90-day apportionments and occurrences of non-participation.

Although the Office of Administrative Law (OAL) approved the emergency regulations with an effective date of October 28, 2021, OAL had a concern that new subsection (e) provided the SAB with too much discretion and required additional criteria by which the SAB can reference and therefore waive the 30-calendar day provision. As part of the Administrative Procedure Act process, OAL requested that the SAB approve language that would provide the clarity needed to address the SAB's ability to waive the 30-calendar day filing provision.

At its December 7, 2021 meeting, the SAB adopted proposed regulatory amendments that addressed OAL's concern. These proposed amendments will be processed through the Administrative Procedure Act to become part of the rulemaking file and become permanent regulations.

Anticipated Benefits of the Proposed Regulations

The proposed regulatory amendments promote transparency because the process of funding SFP projects with unexpected cash proceeds from sources other than bond funds will be clarified in regulation. There are additional benefits associated with these proposed regulatory amendments. School districts can submit certification requests to convert projects with unfunded approvals to apportionments sooner rather than waiting for a future sale of General Obligation Bonds. Because school districts can receive funding so quickly, manufacturing and construction-related industries such as architecture, engineering, trades and municipalities may

expand based on the demand on these industries. This is a positive impact on the state's economy and may also create an unknown number of jobs.

The proposed amendments are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory amendments aligns with the statute, maintains the integrity of the Priority Funding Process as well as maintains equity amongst school district projects.

Summary of the Proposed Regulatory Amendment

Existing Regulation Section 1859.90.2 authorizes the SAB to establish 30-calendar day certification filing periods to distribute available State school bond funding to school districts that request to convert an unfunded approval to an apportionment. School districts must submit and have in the possession of the OPSC the original signature Form SAB 50-05, "Fund Release Authorization," within 90 calendar days of the Board's approval of the apportionment; failure to make this submittal within 90 calendar days will result in rescission of the project without further Board action. (For the purposes of this Section, the word "rescission" means the apportionment returns to an unfunded approval status with a new unfunded approval date. The district will not be required to re-submit the application and no further application review will be required.) School districts wishing to participate must provide a written statement signed by an authorized district representative within the 30-calendar day filing period that contains all the following:

- Request to convert the unfunded approval to an apportionment; and
- Concurrence with the 90 calendar day time limit on fund release; and
- Acknowledgement that failure to submit a valid, original signature Form SAB 50-05, and that it be in the physical possession of the OPSC, within the 90 calendar day time limit will result in the rescission of the Apportionment without further Board action; and
- Acknowledgement that by participating in the priority funding round, the district is waiving its right to a standard 18 month timeline for fund release submittal.

The proposed amendments address the process of funding SFP projects with funds made available from unexpected cash proceeds from sources other than bond funds outside of the Priority Funding Process. The SAB can waive the 30-calendar day filing provision at a public meeting for those school districts that wish to receive available funding sooner rather than waiting for a future sale of General Obligation Bond funds. The proposed amendments do not supersede the Priority Funding Process; rather, the amendments only address those instances when unexpected funding is made available to fund projects under the SFP.

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

AB 130, Chapter 44, Statutes of 2021 [Committee on Budget. Education Finance: Education Omnibus Budget Trailer Bill] was signed by the Governor on July 9, 2021 and included a one-time General Fund appropriation in the amount of \$250 million. The SAB has been charged with allocating the one-time General Fund appropriation to eligible new construction and modernization projects until June 30, 2022. In order to maintain the Priority Funding Process and to align future unexpected funding sources with the current structure of the Priority Funding Process, it is necessary to set forth how that allocation process will work.

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In addition to the method of providing funding to convert unfunded approvals as noted above, the one-time \$250 million General Fund appropriation is an opportunity for cash to be allocated quicker than expected to the first \$250 million in projects placed on the Unfunded List (Lack of AB 55 Loans) and well before the statutory June 30, 2022 deadline. Projects participating in the November 2021 Priority Funding Process normally receive apportionments from the Spring 2022 bond sale. By using the \$250 million for these projects, \$250 million from the Spring bond sale will be unallocated. OPSC will then ask school districts receiving unfunded approvals in January through May 2022 if they wish to receive funding sooner than the Fall Bond sale and requiring those school districts to submit a request outside the normal request time period. By providing the \$250 million as early as the January 2022 SAB meeting, allows for that funding to be allocated quicker and allows for the application of cash from the Spring Bond sale to fund projects further down the Unfunded List (Lack of AB 55 Loans) thereby maintaining the integrity of the Priority Funding Process as well as equity amongst school district projects.

After conducting a review, the SAB has concluded that these are the only regulations on this subject area, and therefore, the proposed amendments are neither inconsistent nor incompatible with existing State laws and regulations. The proposed regulatory amendments are within the SAB's authority to enact regulations for the SFP under Education Code Section 17070.35 and Government Code Section 15503.

Impact to California Businesses and Jobs

The proposed regulatory amendments promote transparency because the process of funding SFP projects with unexpected cash proceeds from sources other than bond funds will be clarified in regulation. There are additional benefits associated with these proposed regulatory amendments. School districts can submit certification requests to convert projects with unfunded approvals to apportionments sooner rather than waiting for a future sale of General Obligation Bonds. Because school districts can receive funding so quickly, manufacturing and construction-related industries such as architecture, engineering, trades and municipalities may expand based on the demand on these industries. This is a positive impact on the state's economy and may also create an unknown number of jobs. Further, it is unlikely that the proposed amendments will eliminate new and/or existing businesses, including the elimination of jobs, within California.

The proposed amendments are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed

regulatory amendments aligns with the statute, maintains the integrity of the Priority Funding Process as well as maintains equity amongst school district projects.

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

- The proposed regulatory amendments promote transparency because the process of funding SFP projects with unexpected cash proceeds from sources other than bond funds will be clarified in regulation. There are additional benefits associated with these proposed regulatory amendments. School districts can submit certification requests to convert projects with unfunded approvals to apportionments sooner rather than waiting for a future sale of General Obligation Bonds. Because school districts can receive funding so quickly, manufacturing and construction-related industries such as architecture, engineering, trades and municipalities may expand based on the demand on these industries. This is a positive impact on the state's economy and may also create an unknown number of jobs. Further, it is unlikely that the proposed amendments will eliminate new and/or existing businesses, including the elimination of jobs, within California.
- There are continued benefits to the health and welfare of California residents and worker safety. School districts, charter schools, and local educational agencies utilize construction and trades employees to work on school construction projects and although this proposed regulation does not directly impact worker's safety, existing law provides for the availability of a skilled labor force and encourages improved health and safety of construction and trades employees through proper apprenticeship and training. Further, public health and safety is enhanced because a properly paid and trained workforce will build school construction projects that are higher quality, structurally code-compliant and safer for use by pupils, staff, and other occupants on the site.
- There is no impact to the State's environment from the proposed regulatory amendments.

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