

January 7, 2022

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO AMEND
REGULATION SECTION 1859.90.2,
TITLE 2, CALIFORNIA CODE OF REGULATIONS,
RELATING TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

REGULATION SECTION PROPOSED FOR AMENDMENTS:

- 1859.90.2

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-referenced regulation section, contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend the above-referenced regulation sections under the authority provided by Section 17070.35 of the Education Code. The proposal interprets and make specific reference Sections 17070.41, 17071.75, 17072.12, 17072.30, 17073.10, 17074.16, 17076.10, 17077.40, 17077.42 and 17077.45 of the Education Code.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law and filed with the Secretary of State on October 8, 1999.

At its September 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 permanent regulations.

Attached to this Notice is the specific regulatory language of the proposed regulatory action, along with the proposed regulatory amendments. The proposed regulation can also be reviewed on OPSC's website at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>. Copies of the proposed regulatory amendments will be mailed to any person requesting this information by using OPSC's contact information set forth below in this Notice. The proposed regulation amends the SFP Regulations under the California Code of Regulations, Title 2, Chapter 3, Subchapter 4, Group 1, State Allocation Board, Subgroup 5.5, Regulations relating to the Leroy F. Greene School Facilities Act of 1998.

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 will maintain equity amongst school district projects and the integrity of the SFP funding process.

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 Amendments

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.

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.

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 ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of 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.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Executive Officer of the SAB has made the following initial determinations relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- The proposed regulatory amendments create no costs to any local agency, school district, or charter school requiring reimbursement pursuant to Section 17500 et seq., or beyond those required by law, except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- The proposed regulatory amendments create no costs or savings to any State agency beyond those required by law.
- The SAB has made an initial determination that there will be no impact on housing costs.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact to Businesses and Jobs in California

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 be created and/or 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 be created and/or 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.

EFFECT ON SMALL BUSINESSES

It has been determined that the proposed regulatory amendments will not have a negative impact on small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. The proposed regulatory amendments only apply to school districts, charter schools, and local education agencies for purposes of funding school facility projects. However, 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 may include new [small] businesses, or the expansion of [small] businesses, which is a positive impact on the state's economy and may also create an unknown number of jobs.

SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at OPSC no later than February 21, 2022 end of day. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Lisa Jones, Regulations Coordinator

Mailing Address: Office of Public School Construction
707 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 Regulatory Action may be directed to Ms. Lisa Jones at (279) 946-8459. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Michael Watanabe, Chief of Administrative Services, at (279) 946-8463.

ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulation substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulations should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulation with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in ~~strikeout~~/underline.
2. A copy of this Notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received they will be added to the rulemaking file. The file is available for public inspection at OPSC during normal working hours. Items 1 through 3 are also available on OPSC's Internet Web site at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations> then scroll down to School Facility Program, Pending Regulatory Changes, and click on the links named 45-day Public Notice, Initial Statement of Reasons and Proposed Regulatory Text.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. 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.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the website listed above.