

March 10, 2023

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO AMEND  
REGULATION SECTIONS 1859.2, 1859.90, 1859.90.2,  
ALONG WITH THE GRANT AGREEMENT TEMPLATES,  
TITLE 2, CALIFORNIA CODE OF REGULATIONS,  
RELATING TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

REGULATION SECTIONS PROPOSED FOR AMENDMENTS:

- 1859.2, 1859.90, AND 1859.90.2

PROPOSED AMENDMENTS TO THE FOLLOWING DOCUMENT:

- *Grant Agreement*, (Rev. 09/22), which is incorporated by reference and referenced in Regulation Section 1859.2

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 and 17078.64 of the Education Code. The proposal interprets and make specific reference Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.41, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.75, 17071.76, 17072.10, 17072.12, 17072.30, 17072.18, 17072.33, 17073.10, 17073.25, 17074.10, 17074.15, 17074.16, 17074.30, 17075.10, 17075.15, 17076.10, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17078.72(k), 17079, 17079.10, 17280, 56026 and 101012(a)(8) of the Education Code; Section 53311 of the Government Code; and Sections 1771.3 in effect on January 1, 2012 through June 19, 2014 and 1771.5 of the Labor 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 meeting on September 21, 2022, the SAB approved proposed regulations, on an emergency basis, that would shorten the fund release deadlines with the direct Apportionment process for purposes of more efficiently distributing the General Fund proceeds, or any other available proceeds, to those projects that would be able to quickly use the funds. The Governor signed into law Assembly Bill (AB) 181, Chapter 52, Statutes of 2022, the Committee on Budget: Education Finance: Education Omnibus Budget Trailer Bill, on June 30, 2022. The bill appropriated, for the 2022/23 fiscal year, \$1.3 billion in one-time General Fund dollars to the SAB for allocation to eligible SFP projects, specifically new construction and modernization projects. In addition to the \$1.3 billion, the Legislature has declared its intent to appropriate an additional \$2,060,500,000 from the General Fund in the 2023/24 fiscal year and an additional \$875 million from the General Fund in the 2024/25 fiscal year for the same purposes, funding eligible new construction and modernization projects under the SFP until December 31, 2025. The Office of Administrative Law (OAL) approved the emergency regulations, filed them with the Secretary of State, with an effective date of November 7, 2022.

Attached to this Notice is the specific regulatory language of the proposed regulatory action, along with the proposed amendments to the Grant Agreement master templates. The proposed regulations 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

The problem being resolved is not a problem but a funding opportunity in which projects that are construction ready are able to receive an Apportionment outside the Priority Funding process. As stated above, AB 181, Chapter 52, Statutes of 2022 [Committee on Budget: Education Finance: Education Omnibus Budget Trailer Bill] was signed by the Governor on June 30, 2022 and included a one-time General Fund appropriation in the amount of \$1.3 billion. The SAB has been charged with allocating the one-time General Fund appropriation to eligible SFP new construction and modernization projects. In addition to the \$1.3 billion, the Legislature has declared its intent to appropriate an additional \$2,060,500,000 from the General Fund in the 2023/24 fiscal year and an additional \$875 million from the General Fund in the 2024/25 fiscal year for the same purposes, funding eligible new construction and modernization projects under the SFP until December 31, 2025.

### *Current Priority Funding Process*

The Priority Funding Process is a process by which school districts submit certification requests for cash for projects that have received unfunded approvals and are sitting on the Unfunded List (Lack of AB 55 Loans). Priority 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. For example, one of the 30-day filing periods for school districts to submit certification requests began May 11, 2022 and ended June 9, 2022. The certification requests received during this 30-day filing period are valid from July 1, 2022 through December 31, 2022 for school district projects to be eligible for cash from the Fall 2022 General Obligation Bond sale. The next 30-day filing period for school districts to submit certification requests began November 9, 2022 and ended December 8, 2022. The certification requests received during this 30-day filing period are valid from January 1, 2023 through June 30, 2023 for their projects to be eligible for cash from a Spring 2023 General Obligation Bond sale.

### *Direct Apportionment Process*

In addition to the method of providing funding to convert unfunded approvals as noted above, the one-time \$1.3 billion General Fund appropriation is an opportunity for cash to be allocated quicker than expected for those projects that are construction ready. This process would allow the SAB to apportion funds on an on-going monthly basis.

OPSC performed a search on whether the proposed regulations 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 in an efficient manner. Therefore, the proposed regulations are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulations provides an efficient mechanism for providing apportionments to projects outside the typical Priority Funding timelines, while ensuring an equitable and streamlined process for school construction projects, as well as maintaining 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 is clarified in regulation. School districts will benefit because the General Fund appropriation will be made available to the SAB for Apportionments to school districts on an on-going basis. 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. Overall, proceeding with the implementation of the proposed regulations provides an efficient mechanism for quickly using cash resources by providing apportionments to projects outside the typical Priority Funding timelines, while ensuring an equitable and streamlined process for school construction projects, as well as maintaining the integrity of the SFP funding process.

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 SFP funding process, as well as maintains equity amongst school district projects.

#### Summary of the Proposed Regulatory Amendments

A summary of the proposed regulatory amendments, including the Grant Agreement templates, are as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. These definitions provide clarity to OPSC and school districts on program concepts and requirements. The proposed amendment reflects the revision date for the Grant Agreement templates.

Existing Regulation Section 1859.90 specifies the process for school districts to request the release of funds for SAB-approved apportionments and requires that the requests be submitted within 18 months of the SAB apportionment approval. The proposed regulatory amendments align the direct Apportionment process with the timelines of the existing Priority Funding process by eliminating the 18-month timeline to submit a valid Form SAB 50-05 and Grant Agreement and changing it to 180 days to request the release of funds for non-financial hardship school districts and 365 days for those school districts approved with financial hardship status. In addition to these amendments, the language referencing inactive apportionments is being removed because the SAB is providing actual Apportionments backed with General Fund and General Obligation Bond proceeds on hand. It is highly unlikely that the SAB will be in need of inactive apportionments as the SAB can provide unfunded approvals as an alternative. The language referenced to the Pooled Money Investment Board (PMIB) is being removed as the SFP has not received financing in advance of bond sales from the PMIB in 13 years and there is no indication that this will be a source of funds in the near future. Leaving this language in this section is not necessary for the direct Apportionment process and removing it does not prevent the SAB from using funds from the PMIB in the future.

Existing Regulation Section 1859.90.2 authorizes the SAB to establish 30-calendar day certification filing period to distribute available State school bond funding to school districts that request to convert an unfunded approval to an apportionment. The proposed amendment in subsection (a)(5) removes "18-month" in order to align with the proposed changes in Section 1859.90 above, as well as correct a cross reference.

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 proposed amendments make subtle changes that align themselves with the amended direct Apportionment process.

Overall, the proposed regulations address the shortened direct Apportionment 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 proposed regulations do not supersede the Priority Funding Process; rather, the proposed regulations streamline the funding process when cash proceeds are made available to fund projects under the SFP that are not dependent on the timing and occurrence of bond sales. However, in the event that bond funds are readily available, the proposed regulations allow for the shortened direct Apportionment process to apply to those funds as well.

#### 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

As stated on page 2 above, AB 181, Chapter 52, Statutes of 2022 [Committee on Budget: Education Finance: Education Omnibus Budget Trailer Bill] was signed by the Governor on June 30, 2022 and included a one-time General Fund appropriation in the amount of \$1.3 billion. The SAB has been charged with allocating the one-time General Fund appropriation to eligible SFP new construction and modernization projects. In addition to the \$1.3 billion, the Legislature has declared its intent to appropriate an additional \$2,060,500,000 from the General Fund in the 2023/24 fiscal year and an additional \$875 million from the General Fund in the 2024/25 fiscal year for the same purposes, funding eligible new construction and modernization projects under the SFP until December 31, 2025.

The Priority Funding Process is a process by which school districts submit certification requests for cash for projects that have received unfunded approvals and are sitting on the Unfunded List (Lack of AB 55 Loans). Priority 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. For example, one of the 30-day filing periods for school districts to submit certification requests began May 11, 2022 and ended June 9, 2022. The certification requests received during this 30-day filing period are valid from July 1, 2022 through December 31, 2022 for school district projects to be eligible for cash from the Fall 2022 General Obligation Bond sale. The next 30-day filing period for school districts to submit certification requests will begin November 9, 2022 and will end December 8, 2022. The certification requests received during this 30-day filing period are valid from January 1, 2023 through June 30, 2023 for their projects to be eligible for cash from a Spring 2023 General Obligation Bond sale.

In addition to the method of providing funding to convert unfunded approvals as noted above, the one-time \$1.3 billion General Fund appropriation is an opportunity for cash to be allocated quicker than expected for those projects that are construction ready. This process would allow the SAB to apportion funds on an on-going monthly basis.

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.

#### Document Incorporated by Reference

*Grant Agreement*, (Rev. 09/22), referenced in Regulation Section 1859.2 and is incorporated by reference.

#### 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 is clarified in

regulation. School districts will benefit because the General Fund appropriation will be made available to the SAB for Apportionments to school districts on an on-going basis. 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 number and may also create an unknown of jobs.

The proposed regulations and the Grant Agreement master templates are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory amendments will not have a negative impact to various business, manufacturing, and construction-related industries such as architecture, engineering, trades and municipalities. In addition, the proposed regulations will not negatively impact the creation of jobs, the creation of new businesses, and the expansion of businesses in California. It is not anticipated that the proposed regulations will result in the elimination of existing businesses or jobs within California.

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

- The proposed regulatory amendments promote transparency because the process of funding SFP projects with unexpected cash proceeds from sources other than bond funds is clarified in regulation. School districts will benefit because the General Fund appropriation will be made available to the SAB for Apportionments to school districts on an on-going basis. 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 number and may also create an unknown 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 April 24, 2023 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, 4<sup>th</sup> Floor  
West Sacramento, CA 95605

E-mail Address: [lisa.jones@dgs.ca.gov](mailto: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, Proposed Regulatory Text, and the Grant Agreement master templates.

## 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 the SAB take no action and be in violation of the statute.

## 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.