

March 7, 2025

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO AMEND
REGULATION SECTION 1859.90,
TITLE 2, CALIFORNIA CODE OF REGULATIONS,
RELATING TO THE LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

REGULATION SECTION PROPOSED FOR AMENDMENTS:

- 1859.90

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 section under the authority provided by Section 17070.35 of the Education Code. The proposal interprets and make specific reference Sections 17072.12, 17072.30, 17074.15, 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 meeting on September 25, 2024, the SAB adopted proposed regulatory amendments, on an emergency basis, that would allow the SAB to extend the fund release requirements up to 18 months for projects specifically pertaining to a school facility located on a military installation that is the recipient of a federal grant that requires a local matching share. The authority for the SAB to extend the fund release timeline, not to exceed 18 months, is already allowed in statute. OPSC submitted the emergency regulations to the Office of Administrative Law (OAL) and the OAL approved the emergency regulations and filed them with the Secretary of State with an

effective date of November 1, 2024. Subsequently, OPSC identified the need to make clarifying language changes. The SAB, at its January 22, 2025 meeting, adopted clarifying amendments that the applicant school district must have received an invitation for federal funding to be considered for the extended fund release deadline of up to 18 months and the SAB must consider whether additional time is needed for the school district to align with federal timelines

Attached to this Notice is the specific regulatory language of both proposed regulatory actions; the amendments delineated in single underline were adopted by the SAB at its September 25, 2024 meeting; the amendments delineated in italics, strikethrough, and single/double underline were adopted by the SAB at its January 22, 2025 meeting. 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 Department of Defense (DOD) established the Public Schools on Military Installations (PSMI) program in 2010 to administer an appropriation designated for the construction, renovation, repair, or expansion of elementary and secondary public schools on military installations in order to address capacity needs or facility condition deficiencies. The DOD assessed the condition and capacity of public schools on military installations as part of the PSMI program. It developed a priority list of these schools with the most serious condition and/or capacity deficiencies. The PSMI program provides federal funding of 80 percent of project costs to school districts and the school district provides the local matching share of 20 percent of the project cost.

The SAB established the DOD Subcommittee at its April 2012 meeting. The purpose of this Subcommittee was to consider funding options to assist all California school districts with DOD schools in meeting their 20 percent matching share requirement. At the June 2012 DOD Subcommittee meeting OPSC presented an analysis of the potential SFP funding options that school districts could pursue to meet the 20 percent match requirement. The Subcommittee's recommendations were presented to the SAB at the August 2012 SAB meeting. These recommendations included consideration of SFP Regulation changes for DOD projects, such as providing preliminary apportionments and recommending to the Legislature that future bond funds be made available specifically for DOD schools. The SAB chose to recommend that the Legislature provide funding for schools on military installations in California in a future bond proposal to cover the total need for these types of projects.

In 2018, the DOD continued an ongoing assessment of the condition and capacity of schools on military installations. Based on the assessment, the DOD developed an updated priority list. As new federal funds have been appropriated, the Office of Local Defense Community Cooperation (OLDCC) which administers these federal funds, has continued to invite California school districts to participate in the PSMI program.

The problem being resolved is not a problem but a unique opportunity in which school districts are invited to participate in the PSMI program and receive federal funding as long as they submit verification to the OLDCC that local matching funds are available to leverage and receive

final approval for federal funding. Funding from the SFP is a significant supporting component in each school district's proposal to access this federal funding opportunity. Since 2012, the SAB and OPSC have provided support to school districts invited to participate in the PSMI program. SAB approvals have provided approximately \$78.9 million in state funding for 19 projects on ten school sites which has leveraged over \$365 million in federal funding for these types of projects across the State of California. Including the September 2024 actions, SAB approvals have provided \$103.8 million in state funding which is expected to leverage more than \$702 million in federal funding.

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 extend the fund release requirements to 18 months for the SFP. 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 provides the ability for a school district that has a school facility on a military installation that has been invited to participate in the PSMI program to meet the SFP fund release requirements while aligning with federal timelines. This ensures equity that public schools on military installations receive new and/or modernized school facilities. It also ensures the prudent use of State funds while maintaining the integrity of the SFP.

Anticipated Benefits of the Proposed Regulations

There are benefits associated with the proposed regulatory amendments. The SAB will have the flexibility to provide an extended fund release deadline, if necessary, to school districts that have a school facility located on a military installation that is the recipient of a federal grant requiring a local matching share. It can be challenging for school districts to align fund release deadlines under the SFP with the elongated timelines of federal projects on military installations, even with active guidance from OPSC. The extended fund release timeline of 18 months is already allowed in statute. There is a positive impact on the state's economy, as well as the creation of an unknown number of jobs, by facilitating the ability for school districts to succeed with these projects and obtain 80 percent federal funding. Once school districts request the release of state funds, manufacturing and construction-related industries such as architecture, engineering, trades and municipalities may expand based on the demand on these industries.

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 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 is as follows:

Existing Regulation Section 1859.90 aligns the direct Apportionment process with the timelines of the existing Priority Funding process in order for school districts to submit a valid Form SAB 50-05 and Grant Agreement within 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. The proposed regulatory amendments provide the ability to extend the fund release deadlines, not to exceed 18 months, for a school district that has a school facility located on a military installation that is the recipient of a federal grant that requires a local matching share. It

also allows the SAB the flexibility in determining whether to authorize an 18-month fund release deadline by considering whether additional time is needed for the district to align with federal timelines.

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

Participation in the PSMI program is by invitation. School districts with a school facility located on a military installation that is the recipient of a federal grant that requires a local matching share can receive federal funding as long as they submit verification to the OLDCC that local matching funds are available to leverage and receive final approval for federal funding. Funding from the SFP is a significant supporting component in each school district's proposal to access this federal funding opportunity. Since 2012, the SAB and OPSC have provided support to school districts invited to participate in the PSMI program. SAB approvals have provided approximately \$78.9 million in state funding for 19 projects on ten school sites which has leveraged over \$365 million in federal funding for these types of projects across the State of California. Including the September 2024 actions, SAB approvals have provided \$103.8 million in state funding which is expected to leverage more than \$702 million in federal funding.

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 or school districts 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 or school district 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 SAB will have the flexibility to provide an extended fund release deadline, if necessary, to school districts that have a school facility located on a military installation that is the recipient of a federal grant requiring a local matching share. It can be challenging for school districts to align fund release deadlines under the SFP with the elongated timelines of federal projects on military installations, even with active guidance from OPSC. The extended fund release timeline of 18 months is already allowed in statute. There is a positive impact on the state's economy, as well as the creation of an unknown number of jobs, by facilitating the ability for school districts to succeed with these projects and obtain 80 percent federal funding. Once school districts request the release of state funds, manufacturing and construction-related industries such as architecture, engineering, trades and municipalities may expand based on the demand on these industries.

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 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. Additionally, the proposed regulatory amendments maintain the integrity of the SFP 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 SAB will have the flexibility to provide an extended fund release deadline, if necessary, to school districts that have a school facility located on a military installation

that is the recipient of a federal grant requiring a local matching share. The extended fund release timeline of 18 months is already allowed in statute. 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.

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 and local education agencies for purposes of funding school facility projects. 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 21, 2025 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, email 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, 4th 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, Deputy Executive Officer, 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 the SAB take no action, thus leaving school districts with public schools on military installations without a way to leverage federal funding, as well as state funding (matching share), to address the facility condition deficiencies and/or capacity needs.

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.