

VICE-CHAIR  
BOB DUTTON

MEMBERS  
ELAINE KONTOMINAS ALQUIST  
KEVIN DE LEÓN  
JEAN FULLER

## CALIFORNIA LEGISLATURE



SECRETARY OF THE SENATE  
GREGORY SCHMIDT  
DEPUTY SECRETARIES  
SHERON VIOLINI  
DINA HIDALGO  
GLENDA SMITH  
BOB RUFFNER  
COMMITTEE ASSISTANT  
JANE LEONARD BROWN

## SENATE RULES COMMITTEE

DARRELL STEINBERG  
CHAIR

April 16, 2012

Debra Cornez, Director  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, California 95814-4339

Dear Director Cornez,

We respectfully request that you conduct a priority review, per Government Code Section 11349.7, of item 22 in State Allocation Board *Form 50-04, Application for Funding*, incorporated by reference in California Code of Regulations title 2, section 1859.2. This regulation, known as the "60 Percent Commensurate" regulation, requires certification that the School Facility Program project cost estimate, developed by the architect of record or the design professional, indicates that the estimated costs for construction of the school facility project are at least 60 percent of the total grant amount provided by the State and the district's matching share.

It has come to our attention that the regulation may lack reference to law, a required standard assessed in an OAL review as set forth in Government Code Section 11349.1. In addition to a possible lack of reference to law, this regulation may actually contradict Education Code section 17070.63(c) which provides that school districts *shall* retain any project savings achieved by the district's "efficient and prudent expenditure" of funds and use those savings for other "high priority capital outlay purposes."

Of further concern is it appears that the State Allocation Board may have received inaccurate information when considering the adoption of this regulation in June, 1999. Subsequently, the OAL was provided the same, possibly inaccurate, information when conducting its original review of the regulation in 1999.

The attached *Final Statement of Reasons*, submitted to the OAL in 1999 by the Office of Public School Construction on behalf of the State Allocation Board, describes the reason for the regulation "to prevent districts from circumventing the intent of the law in regard to grant

2012 APR 17 AM 2:35  
OFFICE OF  
ADMINISTRATIVE LAW

Debra Cornez  
April 16, 2012  
page two

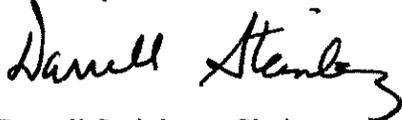
apportionments and the use of project savings.” The document goes onto provide, under “Example 1,” the types of uses of savings that are “not eligible” under the School Facility Program. The ineligible savings uses listed include swimming pools, enhanced athletic field development and enhanced non-teaching station facilities.

We do not find any reference in law that prohibits capital outlay from including swimming pools and enhanced athletic fields. While there may be merit in considering legislation to limit the use of project savings, the law does not currently provide such a limit. On the contrary, the law states that “*any savings*” obtained by the district “*shall*” be used for other high priority capital outlay purposes.

Furthermore, please see the attached State Allocation Board transcript dated June, 1999, pp. 30-31. In his presentation to the board, Mr. Hancock, assistant executive officer to the State Allocation Board, states that the 60 Percent Commensurate regulation was necessary because some school districts used savings for “areas not approvable under the program.”

We believe Mr. Hancock’s statement to the board justifying the 60 Percent Commensurate regulation may have been inaccurate for reasons previously stated.

Sincerely,

A handwritten signature in black ink that reads "Darrell Steinberg". The signature is written in a cursive style with a large, sweeping flourish at the end.

Darrell Steinberg, Chair  
Senate Rules Committee

cc: Senator Alan Lowenthal, Chair, Senate Education Committee

Attachments

## FINAL STATEMENT OF REASONS

Title 2. Administration  
Division 2. Financial Operations  
Chapter 3 Department of General Services  
Subchapter 4. Office of Public School Construction  
Group 1. State Allocation Board  
Subgroup 5.5 Regulations relating to the Leroy F. Greene School Facilities Act of 1998

### Application For Funding, Form SAB 50-04 (Rev. 10/99)

#### Specific purpose of the regulation

To amend the *Application For Funding, Form SAB 50-04*, to require that all requests for new construction funding include a cost estimate for the work in the plans and specifications and any deferred items of construction that is at least 60 percent of the state and district funding for the project. To amend the form to make non-substantive changes.

#### Need for the regulation

Regulation Section 1859.103 provides that a district may expend the savings not needed for a project on other high priority, capital facility needs of the district. Several situations have surfaced that allow districts to receive an excessive amount of project savings, thereby diverting significant amounts of proposition 1A funding to purposes not otherwise eligible under the SFP.

On June 23, 1999, the State Allocation Board (SAB) adopted an amendment to the instructions on the *Application For Funding, Form SAB 50-04*, which adds a requirement that the plans and specifications (P & S) must include a cost estimate for the construction work represented in the P & S that is at least 60% of the total grant amount and the district's matching share. The SAB instructed the OPSC to file this amendment as an emergency to immediately prevent districts from circumventing the intent of the law in regard to grant apportionments and the use of project savings.

Example 1: Pupil grants are calculated to provide classrooms plus all necessary support facilities for a specific number of pupils. Plans for some projects are being submitted that do not provide the number of teaching stations for the pupils that justified the grants or do not include support facilities. By eliminating these facilities a large amount of artificial savings is created. Some districts are proposing to use these project savings on items such as swimming pools, enhanced athletic field development, enhanced non-teaching station facilities and other facilities or development not eligible under the SFP. The SAB is not opposed to using savings for these items, but not at the expense of providing adequate teaching stations and support facilities for the pupils who generated the grants. The *Application For Funding, Form SAB 50-04*, already requires the applicant district to identify the grade level and number of classrooms in the project in sections two and three, respectively. Adding the 60% requirement will ensure that adequate facilities are constructed with the grant amount provided by the state and the district's matching share.

Example 2: A school district receives a new construction grant to provide classrooms for 600 elementary pupils which requires that 24 teaching stations be provided within a grant amount of \$3,120,000. The district is currently leasing a large number of relocatable classrooms and proposes to buy them out at a cost of \$40,000 each, which equals \$960,000. If this were allowed under current regulations, the district would realize project savings of \$2,160,000. The OPSC does not believe that it was the intent of the law to allow a windfall of savings such as this. In this example, 60% of the grant amount is \$1,872,000.

The 60% requirement for modernization projects has already been included as an amendment to the final regulations that were submitted to the Office of Administrative Law on June 15, 1999.

During the public comment period staff identified six non-substantive clerical errors and changes that require amending page 1 of 4 of the Form 50-04. These changes have been included in the certification request and are identified by underline and strikeout in paragraph 1, sentence two and three, paragraph 3, sentence three, paragraph 4, sentence eight and paragraph 5, sentence three and six.

**Technical documents relied upon**

None

**Section 1859.21. SFP Application For Funding**

**Section 1859.50. Calculations to Determine New Construction Baseline Eligibility**

**Section 1859.70. General**

**Section 1859.74.1. Site Acquisition Guidelines**

**Section 1859.76. Additional Grant for Site Development Costs**

**Section 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs**

**Section 1859.100. Restricted On-going and Major Maintenance Fund**

**Section 1859.101. Districts that are Exempt from the Specified Annual Deposit**

**Section 1859.102. Maintenance Plan**

**Specific purpose of the regulation**

To amend the date referenced in these regulations for the *Application For Funding*, Form SAB 50-04 (Rev. 10/99)

**Need for the regulation**

It is necessary to amend all regulations that reference a form when the form is being amended.

**Technical documents relied upon**

None

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.

**Alternatives to the proposed regulatory actions that would lessen any adverse economic impact on small business.**

The SAB determined that the proposed regulations do not affect small businesses.

## TRANSCRIPT

1 ASSEMBLY MEMBER WILDMAN: Aye.

2 ASSEMBLY MEMBER FIREBAUGH: Aye.

3 KAREN MCGAGIN: Aye.

4 DUWAYNE BROOKS: Aye.

5 SENATOR ALPERT: Aye.

6 SENATOR JOHNSTON: Aye.

7 CHAIR PORINI: Aye. Opposed? Next item?

8 MR. HANCOCK: Madam Chair, the last item on  
9 Tab 12, page 331, has to do with a recommendation for a  
10 change to the regulations for new construction  
11 projects. We referred to it as a commensurate  
12 requirement simply because we are trying to define a  
13 method by -- a definition that would require the cost  
14 of a new construction project funded by the Board under  
15 the school facilities program to have a relationship to  
16 the amount of grants that are distributed for that  
17 project.

18 In this particular case, we are suggesting that  
19 the definition on page 332 of -- part way down in the  
20 underlined portions, which would be the change to our  
21 regulation, that that definition be 60 percent of the  
22 total grants provided. In other words, the work in the  
23 plans and specs should represent 60 percent or more of  
24 the total grants. This is done for a similar reason  
25 that we had under the modernization program where there

SPECIAL

000148.

30

1 were some concerns that some of the projects were --  
2 represented only a very small portion of the grants and  
3 the remaining money was being claimed as savings for  
4 use in other areas not approvable under the program.

This then would be a suggestion to adopt a regulation  
similar for the new construction program.

7 CHAIR PORINI: All right. Are there any  
8 questions or comments by members? Is there anyone in  
9 the audience who wants to testify on this issue? Okay.  
10 Do I have a motion?

11 ASSEMBLY MEMBER FIREBAUGH: I'll move it.

12 CHAIR PORINI: We have a motion.

13 DUWAYNE BROOKS: I second.

14 CHAIR PORINI: And a second. All those in favor  
15 indicate with aye.

16 ASSEMBLY MEMBER WILDMAN: Aye.

17 ASSEMBLY MEMBER FIREBAUGH: Aye.

18 KAREN MCGAGIN: Aye.

19 DUWAYNE BROOKS: Aye.

20 SENATOR ADRIEN: Aye.

21 SENATOR JOHNSTON: Aye.

22 CHAIR PORINI: Aye. Opposed?

23 MR. DUTTON: Madam Chair, that is the end of the  
24 agenda for today. However, I would like to direct the  
25 Board's attention to the items behind the yellow cover

SPECIAL

000149