FINDING OF EMERGENCY

The State Allocation Board (SAB) finds that an emergency exists, and that the proposed regulations are necessary for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

Specific Facts Showing the Need for Immediate Action

Immediate action is needed to extend until July 1, 2011 the SAB's authority to help prevent school bond preliminary apportionments from expiring during the State's current fiscal crisis. These emergency amendments will extend for six months three School Facility Program (SFP) regulation sections which become inoperative on January 1, 2011. The proposed emergency regulations will help to carry out the Legislature's intent for the following school facility project preliminary apportionments to remain viable in order for California pupils to have safe and adequate new schools.

Extending these sections until July 1, 2011 will allow the SAB to continue "inactive" status for projects with approved preliminary apportionments in the:

- Critically Overcrowded Schools (COS) Program; 33 projects totaling $167 million, and
- Charter School Facilities Program (CSFP); 38 projects totaling $523.2 million.

The inactive status relieves the school districts from certain statutory and regulatory requirements until the State can provide its share of the project funding and allow the projects to move forward toward completion.

COS Program. The COS Program was established by Assembly Bill 16, Chapter 33, Statutes of 2002, to provide funding to relieve overcrowding on severely impacted sites.

At the October 2004 meeting, Proposition 55 COS Preliminary Apportionments were made for 496 projects totaling $1.8 billion. As a result of the State's fiscal crisis, the Board granted "inactive" status to 344 of the projects that had not converted to Final Apportionments as of December 17, 2008. Of these 344 projects, 311 have since met the requirements to convert to a Final Apportionment and have been placed on the Unfunded List, leaving 33 inactive COS Preliminary Apportionments which will be extended by the proposed amendments, representing $167 million in State school bond funding.

Without the amendments, these inactive COS apportionments will be reactivated and school districts would have approximately ten months to secure other means of financing to convert to Final Apportionments, or their preliminary apportionments will be rescinded.

CSFP Program. Three legislative acts and voter approvals have funded the program with a cumulative total of $900 million in State bond funds:

- The CSFP was established by Assembly Bill (AB) 14, Chapter 935, Statutes of 2002, and was funded with $100 million through the passage of Proposition 47.
- Senate Bill 15, Chapter 587, Statutes of 2004, authorized an additional $300 million which was funded by the passage of Proposition 55.
- AB 127, Chapter 35, Statutes of 2006, authorized an additional $500 million which was funded through the passage of Proposition 1D at the November 7, 2006 General Election.

At the February 2005 SAB meeting, Proposition 55 Preliminary Charter School Apportionments were made for 28 projects totaling $276.8 million. At the May 2008 SAB meeting, Proposition 1D Preliminary Charter School Apportionments were made for 29 projects for a total of $462.6 million. As a result of the State's fiscal crisis, the Board granted "inactive" status to 41 of the projects representing $584.2 million that had not yet converted to Final Apportionments as of December 17, 2008. Currently, 38 inactive Preliminary Charter School Apportionments remain which will be extended by the proposed amendments, representing $523.2 million in school bond funding.

Without these amendments, the Proposition 55 inactive Preliminary Charter School Apportionments will be reactivated and will have approximately 14 months to secure other means of financing to convert to Final Apportionments, or their preliminary apportionments will be rescinded. The Proposition 1D inactive Preliminary Charter School Apportionments would be reactivated and have approximately three years and five months to convert to Final Apportionments (with a possible one-year extension) or their preliminary apportionments will be rescinded.

Financial Hardship Re-Review Requirement. The Financial Hardship (FH) Program implements Education Code Section 17075.15 to assist those districts that cannot afford to fund their portion of the SFP project. A school district meeting the FH criteria (Regulation Section 1859.81) is eligible for the State to pay up to 100 percent of the district's share of new construction or modernization project costs. Without FH status, districts must contribute 50 percent of new construction project costs or 40 percent of modernization project costs. Districts are required under Education Code Section 17075.10(b) to make all reasonable efforts to fund their share of their project's cost.

The SAB, at its May 26, 2010 meeting, adopted emergency regulatory amendments to the SFP Regulations to waive the requirement for the OPSC to re-review the FH determinations of approved SFP projects which have remained on the Unfunded List for over 180 days due to the State's inability to provide AB 55 loans. The amendments were approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on October 4, 2010. The proposed emergency amendments expired on January 1, 2011 by their own terms.

There are currently 56 approved but unfunded school district projects with Financial Hardship (FH) status. These emergency amendments would extend until July 1, 2011 the waiver of the requirement to re-review FH determinations, allowing these districts to continue to rely upon the State and local project funding amounts already approved by the SAB, rather than undergo a re-review. Re-reviews involve an evaluation of local school district finances which could increase or decrease the district's financial contribution to total project costs. Without this extension, FH determinations for these projects must be re-reviewed after the projects have been on the Unfunded List (Lack of AB 55 Loans) for six months. These school districts, with financial difficulties and still without their State apportionments, risk losing these school projects if the FH re-review is triggered and changes the amount of what the district could provide towards the project.

California's Fiscal Crisis Impact on State Bond Funds. On December 17, 2008, the State's Pooled Money Investment Board (PMIB) took action to temporarily halt disbursing cash from the State's Pooled Money Investment Account (PMIA) for capital projects, including school construction projects, because of the State's critical financial situation. Because of the PMIB action, the SAB stopped making apportionments for school facility projects and provided unfunded approvals for SFP projects beginning in March 2009.

The SAB's authority to designate preliminary apportionments as "inactive" under the COS Program and the CSFP was approved by the OAL in emergency regulations (OAL Emergency File Number 2009-0414-03E) and filed with the Secretary of State on April 22, 2009. Final Certification of Compliance (OAL File No. 2009-0929-03C) was approved by the OAL on November 9, 2009. This authority helped prevent $1.263 billion in preliminary apportionments, representing 344 projects, from expiring under the COS Program; and $609.1 million in preliminary apportionments, representing 43 projects, from expiring under the CSFP. Due to the PMIB cessation of school bond funding, these projects would not have been able to convert to final apportionments until State bond funds were once again available.

This authority to designate preliminary apportionments as "inactive" was extended for one year until January 1, 2011 as approved by the OAL in emergency regulations (OAL Emergency File Number 2009-1216-10E) and filed with the Secretary of State on December 22, 2009. Final Certification of Compliance (OAL File No. 2010-0309-01C) was approved by the OAL on April 21, 2010.

The proposed amendments continue, until July 1, 2011, the SAB's authority to help prevent preliminary apportionments from expiring thereby preserving the ability for school districts and charter schools to convert to final apportionments in the future.

The PMIB action to halt disbursements for bond-funded school construction projects may cause construction delays or stoppages, workers being idled, cancellation of contracts, risk of penalties and civil damages, or even insolvency. The proposed amendments could help some school districts or charter schools to avoid some of these negative impacts because the preliminary apportionments would be protected from expiring.

Authority and Reference Citations

Authority: Sections 17070.35, 17075.15, 17078.64, 17078.72 and 17592.73 of the Education Code.

Reference: Sections 17071.75, 17075.10, 17075.15, 17078.25, 17078.52, 17078.53 and 17079.20 of the Education Code.

Informative Digest/Policy Overview Statement

Senate Bill 50, Chapter 407, Statutes of 1998, established the School Facility Program which streamlined funding processes, eliminated State oversight, and made school districts more accountable for their projects. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were adopted by the Office of Administrative Law and filed with the Secretary of State on October 8, 1999.

The proposed amendments to SFP regulation sections are summarized as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed emergency amendments add the definition of "Unfunded List (Lack of AB 55 Loans)," meaning an information list of unfunded projects created due to the State's inability to provide financing from the Pooled Money Investment Account (AB 55 loans) to fund school construction projects, as declared in the Department of Finance Budget Letter #33 issued on December 18, 2008. The definition of "Unfunded List" is amended to clarify that it excludes "Unfunded List (Lack of AB 55 Loans)."

Existing Regulation Section 1859.81 permits school districts to qualify for FH status in order to receive additional State funding for school facility projects, upon meeting specific financial criteria. Subsection (f) waives the requirement for FH determinations to be re-reviewed by the OPSC if the project has been on the "Unfunded List (Lack of AB 55 Loans)" for more than 180 calendar days. Subsection (f) becomes inoperative January 1, 2011. The proposed emergency amendments extend the sunset date until July 1, 2011.

Existing Regulation Section 1859.148.2 authorizes the SAB to determine a State fiscal emergency or crisis exists for the purpose of finding Preliminary Apportionments under the COS Program to be "inactive." This finding suspends the time period for an applicant to convert to a Final Apportionment. This period to convert is four years from the date of the Preliminary Apportionment plus a possible one-year extension, as set forth in Education Code Section 17078.25(a) and (b). This regulation section sunsets on January 1, 2011. The proposed emergency amendments extend the sunset date until July 1, 2011.

Existing Regulation Section 1859.166.2 authorizes the SAB to determine a State fiscal emergency or crisis exists for the purpose of finding Preliminary Charter School Apportionments to be "inactive." This finding suspends the time period for an applicant to convert to a Final Charter School Apportionment. This period to convert is four years from the date of the Preliminary Charter School Apportionment plus a possible one-year extension, as set forth in Education Code Section 17078.25(a) and (b). This regulation section sunsets on January 1, 2011. The proposed emergency amendments extend the sunset date until July 1, 2011.

Mandate on Local Agencies or School Districts

The Executive Officer of the SAB has determined that the proposed emergency regulations 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 emergency regulations.

Cost Estimate

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact that might result from the proposed emergency regulatory action and it has been determined that:

- There will be no costs or savings to the State.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts 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.