

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

Section 1859.2. Definitions.

Specific Purpose of the Regulation

To provide the meaning of specific words and terms that are essential to these regulations.

Need for the Regulation

It was necessary to define "Unfunded List (Lack of AB 55 Loans)," to mean an information list of unfunded projects because this list was 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. It was necessary to amend the definition of "Unfunded List" in order to clarify that it excludes "Unfunded List (Lack of AB 55 Loans)."

Section 1859.81. Financial Hardship.

Specific Purpose of the Regulation

To amend until "July 1, 2011" the waiver of the requirement for the Office of Public School Construction (OPSC) to re-review the Financial Hardship (FH) determinations of approved School Facility Program (SFP) projects that have remained on the "Unfunded List (Lack of AB 55 Loans)" for over 180 days due to the State's inability to provide AB 55 loans. The waiver applies to all projects added to this list since its creation on March 25, 2009.

Need for the Regulation

Subsection 1859.81(f). The extension of the sunset date until July 1, 2011 will benefit approved but unfunded school district projects with FH status. There were 56 such projects at the outset of 2011. Approval of the emergency amendments allows school districts with FH determinations to continue to rely upon the State and local project funding amounts already approved by the SAB, rather than undergo a re-review. The extension continues the waiver of the requirement for the OPSC to re-review the FH determinations for these projects. Re-reviews involve an evaluation of local school district finances which could increase or decrease the district's financial contribution to total project costs.

This waiver of FH re-reviews was adopted by the SAB at its May 26, 2010 meeting, and readopted at its December 15, 2010 meeting, because the State's ongoing fiscal crisis and inability to provide loans from the Pooled Money Investment Account have caused unintended difficulties for school districts with FH status which have received unfunded project approvals since March 25, 2009. Without this waiver, FH reviews and funding determinations remain valid for 180 days under the SFP Regulations, during which time the FH district must fund its project and move it forward.

However, without their State bond funding, many FH districts could not fund their projects and move them forward in 180 days, triggering a re-review of their local district finances and FH status. A redetermination could significantly change the local district's project financing. The emergency regulatory amendments respond to the State's current fiscal crisis and inability to release apportionments to some of the school districts with approved FH status.

This subsection (f) provided that it would become inoperative January 1, 2011, but that the Board had the option to extend the SFP emergency regulations or declare the State's fiscal crisis over. The Board did not believe that the State's fiscal crisis was over, and it opted to extend the sunset date until July 1, 2011 so that it could continue to evaluate the State's fiscal condition, and to allow for future successful State bond sales which could fund these FH projects, thereby removing the need to further extend this waiver of FH re-reviews.

Section 1859.148.2. Inactive Preliminary Apportionments Under a State of California Fiscal Crisis.

Specific Purpose of the Regulation

1. To extend until July 1, 2011 the SAB's authority to find preliminary apportionments "inactive" during the State's current fiscal crisis, thereby helping to prevent school bond preliminary apportionments under the Critically Overcrowded School Facilities Program (COS Program) from expiring during the State's current fiscal crisis.
2. To extend until July 1, 2011 the SAB's authority to remove "inactive" status from preliminary apportionments, without which the school district can never receive its reserved State bond funding. The SAB's action to end "inactive" status restores the statutory timelines for school districts to complete their projects and convert to final apportionments.

Need for the Regulation

This Section allows 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," but this Section becomes inoperative on January 1, 2011. Because the State's fiscal crisis is continuing, the SAB found it necessary to extend its authority until "July 1, 2011" to help prevent COS Program apportionments from expiring. The extension of the SAB's authority is also necessary so that it can reinstate inactive preliminary apportionments when State financing again becomes available for bond-funded projects.

The authority in this Section has permitted the SAB to find preliminary apportionments "inactive," thereby suspending, as of December 17, 2008, the time period for the funding applicant to convert to a final apportionment, and helping to prevent the preliminary apportionments from expiring.

Background. The SAB acted to help school districts continue to meet statutory and regulatory requirements during the State's current fiscal crisis, following the Pooled Money Investment Board (PMIB) action on December 17, 2008 to temporarily halt the disbursement of funds from the State's Pooled Money Investment Account for capital projects, including the construction of public schools. The members of the PMIB were forced by fiduciary responsibility to temporarily freeze infrastructure bond funds for public works projects. However, school districts with previously approved preliminary apportionments (reservations of bond funding) were still required to move their projects forward and convert to final apportionments within time limits as set forth in Education Code Section 17078.25(a) and (b).

At its January 28, 2009 meeting, the SAB adopted emergency SFP regulatory amendments to help prevent school bond preliminary apportionments from expiring during the State's fiscal crisis. The amendments authorized the SAB to find preliminary apportionments as "inactive" under the COS Program.

The PMIB cessation of school bond funding caused many school districts to want “inactive” status for their projects because without the State school bond funding for the projects, they were left financially unable to move forward with construction, thus risking the rescission of the preliminary apportionments for failure to convert to final apportionments. The Office of Administrative Law (OAL) approved the emergency regulations in OAL File No. 2009-0414-03E, and final Certification of Compliance in OAL File No. 2009-0929-03C.

In June and July 2009, the SAB approved “inactive” status for a total of \$1.263 billion of COS Program preliminary apportionments (344 projects), helping to protect the projects from having their preliminary apportionments expire. The SAB approving “inactive” status for the preliminary apportionments suspended the time period for converting to final apportionments. (This period is four years from the date of the preliminary apportionment plus an allowable one-year extension upon SAB approval.) The time period will resume as it existed on December 17, 2008 when the SAB finds that State financing is available for bond-funded projects.

At its meeting on September 23, 2009 the SAB extended the sunset date for this regulation section from January 1, 2010 until January 1, 2011. The OAL approved this emergency regulation in OAL File No. 2009-1216-01E, and final Certification of Compliance in OAL File No. 2010-0309-01C.

Section 1859.166.2. Inactive Preliminary Charter School Apportionments Under A State of California Fiscal Crisis.

Specific Purpose of the Regulation

1. To extend until July 1, 2011 the SAB’s authority to find preliminary charter school apportionments “inactive” during the State’s current fiscal crisis, thereby helping to prevent school bond preliminary charter school apportionments under the Charter School Facilities Program (CSFP) from expiring during the State’s current fiscal crisis.
2. To extend until July 1, 2011 the SAB’s authority to remove “inactive” status from preliminary charter school apportionments, without which the school district or charter school can never receive its reserved State bond funding. The SAB’s action to end “inactive” status restores the statutory timelines for school districts/charter schools to complete their projects and convert to final apportionments.

Need for the Regulation

This Section allows the SAB to determine a State fiscal emergency or crisis exists for the purpose of finding preliminary charter school apportionments under the CSFP to be “inactive,” but this Section becomes inoperative on January 1, 2011. Because the State’s fiscal crisis is continuing, the SAB found it necessary to extend its authority until “July 1, 2011” to help prevent CSFP preliminary charter school apportionments from expiring. The extension of the SAB’s authority is also necessary so that it can reinstate inactive preliminary charter school apportionments when State financing again becomes available for bond-funded projects.

The authority in this Section has permitted the SAB to find preliminary charter school apportionments “inactive,” thereby suspending, as of December 17, 2008, the time period for the funding applicant to convert to a final apportionment, and helping to prevent the preliminary charter school apportionments from expiring.

Background. The SAB acted to help school districts/charter schools continue to meet statutory and regulatory requirements during the State’s current fiscal crisis, following the Pooled Money Investment Board (PMIB) action on December 17, 2008 to temporarily halt the disbursement of funds from the State’s Pooled Money Investment Account for capital projects, including the construction of public schools. The members of the PMIB were forced by fiduciary responsibility to temporarily freeze infrastructure bond funds for public works projects. However, school districts with previously approved preliminary apportionments (reservations of bond funding) were still required to

move their projects forward and convert to final apportionments within time limits as set forth in Education Code Section 17078.25(a) and (b).

At its January 28, 2009 meeting, the SAB adopted emergency SFP regulatory amendments to help prevent school bond preliminary charter school apportionments from expiring during the State's fiscal crisis. The amendments authorized the SAB to find preliminary charter school apportionments as "inactive" under the CSFP.

The PMIB cessation of school bond funding caused many school districts/charter schools to want "inactive" status for their projects because without the State school bond funding for the projects, they were left financially unable to move forward with construction, thus risking the rescission of the preliminary charter school apportionments for failure to convert to final apportionments. The OAL approved the emergency regulations in OAL File No. 2009-0414-03E, and final Certification of Compliance in OAL File No. 2009-0929-03C.

In June and July 2009, the SAB approved "inactive" status for a total of \$609.1 million of CSFP preliminary charter school apportionments (43 projects), helping to protect the projects from having their preliminary charter school apportionments expire. The SAB approving "inactive" status for the preliminary charter school apportionments suspended the time period for converting to final apportionments. (This period is four years from the date of the preliminary apportionment plus an allowable one-year extension upon SAB approval.) The time period will resume as it existed on December 17, 2008 when the SAB finds that State financing is available for bond-funded projects.

At its meeting on September 23, 2009 the SAB extended the sunset date for this regulation section from January 1, 2010 until January 1, 2011. The OAL approved this emergency regulation in OAL File No. 2009-1216-01E, and final Certification of Compliance in OAL File No. 2010-0309-01C.

SUMMARY OF PUBLIC COMMENTS AT THE DECEMBER 15, 2010 MEETING AND RESPONSE

Mr. David Walrath, representing the California Charter School Association

Mr. Walrath stated his support for extending the regulations for one year, and commented that this would provide the time to craft an alternative program that would be fair to all projects post-Pooled Money Investment Account, and that the extension would allow additional time for charter projects to be perfected. The Board thanked Mr. Walrath and considered his comments. The Board approved to extend the regulations for six months; this action would not prohibit the SAB from transferring the COS funds.

Mr. Lyle Smoot, representing the Los Angeles Unified School District

Mr. Smoot stated that his District was in support of extending the Critically Overcrowded School (COS) Facilities Program regulations because the District has several COS projects underway and is in need of additional time. The Board thanked Mr. Smoot and considered his comments. The Board approved to extend the regulations for six months; this action would not prohibit the SAB from transferring the COS funds.

Mr. Thomas Duffy, representing the Coalition for Adequate School Housing (C.A.S.H.)

Mr. Duffy expressed support for moving the \$211 million from the COS category to the New Construction category and that an item be brought back to the Board addressing the status of any remaining COS projects. The Board thanked Mr. Duffy and considered his comments. The Board approved to extend the regulations for six months; this action would not prohibit the SAB from transferring the COS funds.

Technical Documents Relied Upon

The State Allocation Board's Action Item, dated December 15, 2010, entitled "Fiscal Crisis Regulations."

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 Action that would Lessen any Adverse Economic Impact on Small Business

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

Finding of Significant Adverse Economic Impact on Businesses

The SAB has determined that the adoption of the regulations will not affect businesses, including small businesses, because they are not required to comply with or enforce the regulations, nor will they be disadvantaged by the regulations.

Impact on Local Agencies or School Districts

The SAB has determined that the proposed 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 regulations.