



March 20, 2009

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS OF SCHOOLS, AND  
OTHER INTERESTED PARTIES

## TITLE 2. STATE ALLOCATION BOARD

### NOTICE OF PROPOSED REGULATORY ACTION

In accordance with Assembly Bill 1302, Chapter 713, Statutes of 2006, enclosed are proposed emergency regulations adopted by the State Allocation Board (SAB) at its meeting on January 14, 2009. These amendments to the School Facility Program (SFP) Regulations will help prevent school bond apportionments from expiring during the State's current fiscal crisis.

The emergency amendments respond to the Pooled Money Investment Board's (PMIB) temporary halt of disbursements for capital projects, including the construction of public schools. The SAB will be authorized to designate apportionments as "inactive" to relieve school districts from meeting the 18-month time limit to qualify for a fund release as set forth in Education Code Section 17076.10 and SFP Regulation Section 1859.90.

The Office of Public School Construction (OPSC), on behalf of the SAB, will be submitting these emergency regulations to the Office of Administrative Law (OAL) during the month of March/April 2009. The following is an overview of the proposed regulatory amendments.

#### 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.

The PMIB on December 17, 2008 temporarily halted disbursing funds from the State's Pooled Money Investment Account for capital projects, including the construction of public schools. This places school districts with apportionments approved by the SAB before December 17, 2008 in jeopardy of not meeting the 18-month time limit to qualify for a fund release. By authorizing the SAB to find apportionments "inactive," the 18-month time limit for school districts to request release of these school bond funds will be temporarily suspended. When State financing again becomes available for bond-funded projects, the 18-month period will resume and school districts can move forward with their projects.

A summary of the proposed regulatory changes follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments add the definition of "Inactive Apportionment," which requires SAB approval, and applies to apportionments approved by the

SAB prior to December 17, 2008, for which State bond funds have not yet been released, and for which the 18-month time limit for the district to request the release of State funds occurs on or after December 17, 2008.

Existing Regulation Section 1859.90 specifies the process for school districts to request the release of funds for SAB-approved apportionments, and requires that their requests be submitted within 18 months of the SAB apportionment approval. The proposed amendments make this Section inapplicable for "Inactive Apportionments" until such time as State bond funds become available. In addition, it is clarified that releases of State funds are subject to the availability of PMIB bond funding.

Proposed adoption of Regulation Section 1859.96 sets forth criteria for the suspension of the 18-month time limit for school districts to request the release of funds for SAB-approved apportionments. The SAB must approve an "Inactive Apportionment" for the project, and the suspension will last from December 17, 2008 until the SAB finds that State bond funds are available for the project. Clarification is also added that apportionments impacted by this Section remain "full and final" pursuant to Education Code Section 17070.63. This regulation section will become inoperative on January 1, 2010.

#### SUBMISSION OF COMMENTS

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 the OPSC no later than March 27, 2009 at 5:00 p.m.

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, and questions concerning the substance of the proposed regulatory action should be addressed to:

Robert Young, Regulations Coordinator

Mailing Address: Office of Public School Construction  
1130 K Street, Suite 400  
Sacramento, CA 95814

E-mail Address: [robert.young@dgs.ca.gov](mailto:robert.young@dgs.ca.gov)

Fax No.: (916) 445-5526

#### AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Robert Young at (916) 445-0083. If Mr. Young is unavailable, these questions may be directed to the backup contact person, Lisa Jones, Supervisor, Regulations Team, at (916) 322-1043.

Amend Regulation Section 1859.2

Section 1859.2. Definitions.

....

"In Escrow, Non-Governmental Entities" means the deposit of signed instrument(s) and/or funds with instructions with a title company or escrow agent to carry out the provisions of an agreement or contract to acquire a specified school parcel or site for a determinable sum, and for a determinable date of acquisition which may be based on the district's receipt of funding from the State.

"Inactive Apportionment" means an apportionment made to a project, based on a finding by the SAB, that meets all of the following criteria: 1) received a SAB apportionment prior to December 17, 2008; 2) State bond funds have not been released for that apportionment; and, 3) the time limit under Education Code Section 17076.10(d) will expire on or after December 17, 2008.

....

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code; Section 15503, Government Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 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, 17072.18, 17072.33, 17073.25, 17074.10, 17074.30, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17078.72(k), 17079, 17079.10, 17280, 56026, and 101012(a)(8), Education Code; Section 53311, Government Code; and Section 1771.5, Labor Code.

Amend Regulation Section 1859.90

Section 1859.90. Fund Release Process.

With the exception of an apportionment made pursuant to Sections 1859.81.1(e) or 1859.81.2, or of an Inactive Apportionment subject to Section 1859.96, the OPSC will release State funds that ~~have been apportioned by the Board~~ has apportioned to the district after submittal, by the district, of the Form SAB 50-05, subject to the availability of financing provided by the Pooled Money Investment Board for bond-funded projects. With the exception of an apportionment made for a Type II Joint-Use Project, not part of a qualifying SFP Modernization project, pursuant to Article 12 of these Regulations, a district must submit the Form SAB 50-05, within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction Adjusted Grant, Modernization Adjusted Grant or Type I or II, part of a qualifying SFP Modernization project, Joint-Use Project apportionment shall be rescinded without further Board action, and the pupils housed in the project, if applicable, will be added back to the district's baseline eligibility. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

If the apportionment was made for a Type II Joint-Use Project, not part of a qualifying SFP Modernization project, pursuant to Article 12 of these Regulations, the district must submit Form SAB 50-05 within 18 months of the date the plans and specifications for the Joint-Use Project that have been approved by the DSA and the CDE are submitted to the OPSC or the apportionment shall be rescinded without further Board action.

Subject to the availability of financing provided by the Pooled Money Investment Board for bond-funded projects, ~~The~~ OPSC will release State funds that have been apportioned by the Board pursuant to Section 1859.81.1(e) to the district within 30 calendar days of the apportionment.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17072.12, 17072.30, 17074.15, 17076.10, 17077.40, 17077.42 and 17077.45, Education Code.

Adopt Regulation Section 1859.96

Section 1859.96. Inactive Apportionments Under a State of California Fiscal Crisis.

In the event of a fiscal emergency or crisis on the part of the State of California, the Board can make a finding that a project has an Inactive Apportionment, as defined in Regulation Section 1859.2, that no longer meets the meaning of Apportionment as defined in Education Code Section 17070.15, and that the 18-month requirement set forth in Education Code Section 17076.10(d) is therefore suspended as of December 17, 2008 and until such time as the Board finds that State bond funds are available for the project when the balance of the 18-month time period which existed on December 17, 2008 shall resume. Once the Board finds that State bond funds are available for the project, the 18-month requirement set forth in Education Code Section 17076.10(d) shall resume but in no case shall that period of time exceed a total of 18 months while the subject project has an Apportionment. Each project will resume where its originating period of time was suspended, as of December 17, 2008. An Apportionment for projects impacted by this Section is full and final, pursuant to Education Code Section 17070.63.

This regulation section shall become inoperative January 1, 2010.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35, 17072.30, 17072.32, 17074.16, and 17076.10, Education Code.