

REPORT OF THE EXECUTIVE OFFICER  
State Allocation Board Meeting, September 23, 2009

FISCAL CRISIS REGULATIONS

PURPOSE OF REPORT

To consider emergency amendments to School Facility Program (SFP) regulation sections relating to the State of California's current fiscal crisis as these regulation sections will become inoperative January 1, 2010.

DESCRIPTION

In early 2009 and due to the State's fiscal crisis, the State Allocation Board (SAB) adopted emergency regulations that would allow the SAB to make findings that certain apportionments are "inactive" to relieve school districts from meeting various statutory requirements. The emergency regulations pertained to the New Construction/Modernization Program, the Critically Overcrowded Schools and Charter School Facilities Programs, and the Career Technical Education Facilities and Joint-Use Programs.

At the March 25, 2009 SAB meeting, the Board made a finding that a fiscal crisis exists and at the July 22, 2009 SAB meeting, the Board declared that 441 projects representing \$743.8 million were "Inactive Apportionments."

The regulation sections will become inoperative January 1, 2010 and this date applies to the Board's authority to make such findings.

All actions required under the Career Technical Education Facilities and Joint-Use Programs will be executed before the sunset date. No action is needed on these regulations.

Since the Pooled Money Investment Board freeze, the SAB has only made unfunded approvals. Unfunded approvals do not obligate school districts to meet deadlines that are required when apportionments are made.

AUTHORITY

- Education Section 17070.35(a) states "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 administrative of this chapter. . . .
  - (2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary.  
...."
- Government Code Section 15503 states "Whenever the board is required to make allocation 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.

(Continued on Page Two)

AUTHORITY (cont.)

- SFP Regulation Section 1859.2 defines an Inactive Apportionment as “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 17075.10(d) will expire on or after December 17, 2008.”
- SFP Regulation Section 1859.2 defines an Inactive Preliminary Charter School Apportionment as “an apportionment for a project, based on a finding by the SAB, that meets all of the following criteria: 1) received a Preliminary Charter School Apportionment prior to December 17, 2008; 2) a complete request to convert a Preliminary Charter School Apportionment to a Final Charter School Apportionment has not been made; 3) the time limit under Education Code Section 17078.25(a) or (b) and 17078.52(c)(3) will expire on or after December 17, 2008.”
- SFP Regulation Section 1859.96 allows the SAB to make a finding that certain apportionments are “inactive” to relieve school districts from meeting the 18-month time limit for the release of their SAB-approved apportionments as stipulated in Education Code Section 17076.10.
- SFP Regulation Sections 1859.148.2 and 1859.166.2 allow the SAB to make a finding that preliminary apportionments under the Critically Overcrowded Schools and the Charter School Facilities Programs are “inactive.” This action temporarily suspends the time period for conversion to a Final Apportionment under these two programs. The regular time period is four years from the date of the preliminary apportionment plus an allowable one-year extension upon the Board’s approval.

STAFF COMMENTS

The OPSC Staff has reviewed the SFP affected regulation sections and is presenting the following options below:

OPTIONS

## Option 1 – Extend the Regulations for One Year

Amend the affected SFP regulation sections by extending the date one year from January 1, 2010 to January 1, 2011 and authorize the Executive Officer to file the regulations on an emergency basis with the Office of Administrative Law.

## Pros:

- Continues to provide the Board with the flexibility to make future findings until January 1, 2011, if necessary.
- Enables the Board to restart the statutory time clock requirement once State bond funds become available.

Con: N/A

(Continued on Page Three)

OPTIONS (cont.)

Option 2 – Sunset the Regulations

The Board takes no action and the affected SFP regulation sections become inoperative January 1, 2010.

Pro:

- Does not negate the Board’s finding for the current “Inactive Apportionments” when the regulations become inoperative.

Cons:

- The Board would not have the regulatory authority to restart the statutory time clock requirement once State bond funds become available for the projects currently found to have “Inactive Apportionments.”
- If future fiscal crises arise, the OPSC staff would need to present new regulations to the Board for approval.

RECOMMENDATION

Approve Option 1.

BOARD ACTION

In considering this item, the State Allocation Board approved Option 1 and the conforming regulatory text amendments shown as Option 1.

**OPTION 1**  
(Extend the Regulations One Year)

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, 20~~10~~11.

Note: Authority cited: Section 17070.35, Education Code.

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

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

In the event the Board determines there is 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 Preliminary Apportionment, as defined in Regulation Section 1859.2, that no longer meets the meaning of Preliminary Apportionment as defined in Education Code Section 17078.10(c), and that the four-year period with a possible one time one-year extension requirement set forth in Education Code Section 17078.25(a) and (b) 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, the balance of four-year period with a possible one time one-year extension period which existed on December 17, 2008 shall resume. Once the Board finds that State bond funds are available for the project, the four-year period with a possible one time one-year extension requirement set forth in Education Code Section 17078.25(a) and (b) shall resume but in no case shall that period of time exceed a total of four-year period with a possible one time one-year extension while the subject project has a Preliminary Apportionment. Each project will resume where its originating period of time was suspended, as of December 17, 2008.

This regulation section shall become inoperative January 1, 20~~10~~11.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Section 17078.25, Education Code.

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

In the event the Board determines there is 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 Preliminary Charter School Apportionment, as defined in Regulation Section 1859.2, that no longer meets the meaning of Preliminary Charter School Apportionment as defined in Education Code Section 17078.52(c)(3), and that the four-year period with a possible one time one-year extension requirement set forth in Education Code Section 17078.25(a) and (b) 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, the balance of four-year period with a possible one time one-year extension period which existed on December 17, 2008 shall resume. Once the Board finds that State bond funds are available for the project, the four-year period with a possible one time one-year extension requirement set forth in Education Code Section 17078.25(a) and (b) shall resume but in no case shall that period of time exceed a total of four-year period with a possible one time one-year extension while the subject project has a Preliminary Charter School Apportionment. Each project will resume where its originating period of time was suspended, as of December 17, 2008.

This regulation section shall become inoperative January 1, 20~~10~~11.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.52 and 17078.53, Education Code.