

## **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**

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 financial situation. The Office of Public School Construction (OPSC) utilizes cash from the PMIA to release State funds for school construction projects that have been approved by the SAB. Essentially, that means that until further notice the OPSC will be unable to release State funds for approved school construction projects. This action also impedes the SAB's ability to make apportionments even though there is available to the SAB \$5.3 billion in bond authority.

The OPSC reviewed the programs it administers, on behalf of the SAB, to ensure that school districts can continue to meet statutory and regulatory requirements during this unprecedented financial crisis. On January 14, 2009, the SAB adopted proposed emergency regulations to help prevent School Facility Program (SFP) project apportionments from expiring. The SAB has apportioned approximately \$2.4 billion (State's share; \$2.4 billion districts' share) for a total cost of about \$4.8 billion for 849 school construction projects in 250 school districts across the State of California for which funds have not been released. As a result, projects are on hold, contracts have been cancelled, work has been stopped, workers have been idled, and school districts risk substantial financial penalties and even insolvency.

The proposed emergency regulations enable 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(d). When State financing again becomes available for bond-funded projects, the 18-month time limit will resume and school districts will be able to move forward with their projects.

### **Authority and Reference Citations**

Authority: Sections 17070.35 and 17078.64 of the Education Code.

Reference: Sections 17070.35, 17072.12, 17072.30, 17072.32, 17074.15, 17074.16, 17076.10, 17077.40, 17077.42 and 17077.45 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.

Because the members of the PMIB were forced by fiduciary responsibility to take the December 17, 2008 action temporarily freezing infrastructure bond funds for public works projects (including school construction projects), the 18-month time limit clock on SAB-approved apportionments continued to tick. The SAB felt strongly that action on the Board's part was necessary to help alleviate school district project apportionments from expiring.

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 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.

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, upon SAB approval of an "Inactive Apportionment" for the project, and with the suspension lasting 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.

### **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.