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. At its February 25, 2009 meeting, the SAB adopted proposed emergency regulatory amendments to the School Facility Program (SFP) to help prevent school bond apportionments from expiring during the State's current fiscal crisis.

The proposed emergency regulations help to protect school districts from having their SFP apportionments expire as a result of the PMIB action. The PMIB action places school districts with apportionments approved by the SAB before December 17, 2008 in jeopardy of not meeting the time limits to submit approved construction/specifications plans to the OPSC under the SFP:

- Joint-Use Program, and
- Career Technical Education Facilities Program (CTEFP).

For both programs, the proposed emergency amendments authorize the SAB to suspend for up to 12 months the one-year time limit from date of apportionment/reservation of funds for applicants to submit to the OPSC the necessary project approvals from the Division of the State Architect (DSA) and the California Department of Education (CDE). This will help prevent these projects from being rescinded due to the running of this time limit, and help districts continue to meet statutory and regulatory requirements during this interruption of State bond funding. The proposed amendments will sunset on January 1, 2010.

The proposed amendments would help to prevent apportionments from expiring for the following types of impacted projects:

- five Type II Joint-Use projects totaling $15.8 million in project costs (State share $6.5 million); and
- 139 CTEFP projects totaling $163.3 million in State grants, plus an additional $14.9 million in approved loans for districts' matching shares, as permitted under the CTEFP.

The proposed amendments help prevent these apportionments/reservations of funds from expiring, thereby preserving the ability for school districts to timely submit necessary DSA and CDE plan approvals. Expiration of the apportionments would result in the construction projects being rescinded.

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 to avoid some of these negative impacts because their apportionments/reservations of funds would be protected from expiring.

Authority and Reference Citations

Authority: Sections 17070.35, 17075.15, and 17078.72(k) of the Education Code.

Reference: Sections 17076.10, 17077.40, 17077.42, 17077.45, and 17078.72 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 time period for school districts to submit necessary DSA and CDE plan approvals continued to tick. The SAB felt strongly that action on the Board's part was necessary to help alleviate school district project apportionments/reservations of funds from expiring.

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

Existing Regulation Section 1859.129 sets forth time limits on apportionments under the SFP Joint-Use Program for Type I and Type II Joint-Use projects. Currently, Type II Joint-Use projects that are not part of a qualifying SFP Modernization project must submit the necessary plans and specifications approvals by the DSA and the CDE to the OPSC within one year from the date of apportionment. The proposed amendments authorize the SAB to determine that there is a fiscal emergency or crisis, and find that a project has an "Inactive Apportionment," and that the district's ability to submit completed plans to the DSA has been impacted, and that the district will no longer be able to meet the approval requirement in Education Code Section 17077.45(c), and thereby the SAB may suspend the 12-month time limit for submittal of the DSA and CDE approved plans and specifications for a period not to exceed 12 months. The proposed amendments will sunset on January 1, 2010.

Existing Regulation Section 1859.197 sets forth the criteria for fund releases under the CTEFP. Currently, applicants are allowed one year from the date of apportionment to submit to the OPSC necessary project approvals from the DSA and the CDE. The proposed amendments authorize the SAB to determine that there is a fiscal emergency or crisis and grant up to a 12-month extension of this submittal period for projects apportioned as a reservation of funds. The proposed amendments will sunset 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.