

## 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 an additional specific term that is essential to these regulations.

#### **Need for the Regulation**

It was necessary to define the term "inactive apportionment" to prevent school district project apportionments from expiring. By defining this term, it is understood that the statutory requirements for State Allocation Board (SAB)-approved apportionments are suspended until such time State financing becomes available.

### Section 1859.90. Fund Release Process.

#### **Specific Purpose of the Regulation**

To specify when the Office of Public School Construction (OPSC) will be able to release State bond funds during the State's financial crisis.

#### **Need for the Regulation**

It was necessary to set forth when the OPSC will release State bond funds during this unprecedented time. Under normal circumstances, the SAB apportions State bond funds to school districts and those school districts submit the Form SAB 50-05, which is a request to release State bond funds for the construction or modernization of their school facility projects, to the OPSC. The OPSC utilizes cash from the Pooled Money Investment Account (PMIA) to release State funds for school construction projects that have been approved by the SAB. On December 17, 2008, the Pooled Money Investment Board (PMIB) took action to temporarily halt disbursing cash from the State's PMIA for capital projects, including school construction projects, because of the State's financial situation. When the State Treasurer's Office (STO) sells bonds, the STO notifies the OPSC how much money is available to fund school construction projects.

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

#### **Specific Purpose of the Regulation**

To set forth criteria for the suspension of the 18-month time limit for school districts to request the release of State funds for SAB-approved apportionments, upon SAB approval of an "inactive apportionment" for the project.

## Need for the Regulation

Education Code Section 17076.10(d) specifies that if a school district has received an apportionment but has not met the criteria to have State funds released within 18 months, the apportionment will be rescinded. 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.

### SUMMARY OF PUBLIC COMMENTS AT JANUARY 14, 2009 MEETING AND RESPONSE

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

Mr. Duffy said his organization supports the proposed regulations, and he commented upon the State's current fiscal crisis, the PMIB's action to temporarily halt disbursements for bond-funded projects, and its impact upon school districts. He opined that the State has an obligation to fund school district projects that have received SAB apportionments, and that financial hardship school district projects should be funded quickly. He said C.A.S.H. has done a survey of school districts which have entered into contracts and now cannot receive their fund releases. Mr. Duffy was aware of 23 school projects expecting a State share of over \$200 million, which will face difficulties because of the halt to fund releases.

Mr. Duffy opined that the bond market is extremely tight - - that one school district had to pay a premium of 12 percent in order to sell local bonds. He said C.A.S.H. is advising districts to be cautious at the present time. He recommended that the Board consider health and safety priorities, and districts in financial hardship, for prioritization when funding is again available. Mr. Duffy asked the Board to be sensitive to financial hardship districts because the halt to State bond fund releases can threaten their general fund and even risk receivership.

Mr. Duffy said that C.A.S.H. has suggested a number of additional areas for study to Mr. Rob Cook. Mr. Duffy opined that "the Constitution in California says we fund schools first," and that the PMIB should prioritize funding for school projects. He said that C.A.S.H. desires the Board to continue reviewing school projects and giving unfunded approvals, and that the proposed regulations be broadly applied to cover "new construction, modernization, career technical education, joint-use, charter, and other programs."

Mr. Duffy stated his belief that 101 school districts currently have SAB-approved apportionments for which they are expecting State funds of \$1.2 billion - - about \$800 million for Los Angeles Unified School District and about \$400 million for the 100 other districts. Mr. Duffy thanked the Board and Mr. Rob Cook, Executive Officer, for their work on this subject. Finally, Mr. Duffy asked to help Mr. Cook with phraseology in a letter to school districts concerning local financing, and especially to assure that financial hardship districts are not harmed.

The SAB thanked Mr. Duffy and indicated it would consider his comments. The Board discussed giving unfunded project approvals during the halt to bond fund disbursements, and commenced giving unfunded approvals at its March 25, 2009 and subsequent monthly meetings. The Board discussed and at its next two meetings took action to approve emergency regulations for the State's fiscal crisis to cover all the programs mentioned by Mr. Duffy. The OPSC is continuing to contact school districts to assess the impact of the PMIB's temporary halt to fund releases. The prioritization of fund releases was discussed by the Board at this meeting and is under ongoing discussion. Finally, the Board discussed and clarified phraseology for a letter for distribution to all school districts concerning local financing, as mentioned by Mr. Duffy.

**Mr. Dave Walrath, representing the Small School District Association**

Mr. Walrath did not comment upon the proposed regulations, but thanked the Board for reviewing his comments. He stated that for financial hardship districts, and especially small financial hardship districts, facility projects are a significant portion of their budgets, so the halt to bond fund releases is very hard on them. He said small school districts are out of borrowable resources, and the State's proposed midyear budget would defer \$2.8 billion dollars that school districts had expected to receive in April (2009). He said cash flow and revenue cuts to school districts would slash a projected 16 to 18 percent of this year's expected operating revenues. He said small financial hardship districts need relief as fast as possible, and asked that they get priority once funds are freed up by the PMIB, perhaps by setting aside a reservation of funds specifically for financial hardship. Mr. Walrath expressed his hope that new federal funding mechanisms could reopen the State's ability to sell bonds.

The SAB thanked Mr. Walrath and indicated it would consider his comments.

**Mr. Ron Hudson, Deputy Superintendent of the Kings Canyon Unified School District**

Mr. Hudson did not comment upon the proposed regulations, but stated that his district had four school projects under construction now, and were hurt by the halt to fund releases. His district could not meet his community's expectation to complete the projects without the State's share of funding. He asked that as funds are made available for release, funding priority be given for projects such as his that have entered into contracts, issued the notice to proceed, and submitted their requests for fund release prior to December 17, 2008.

The SAB thanked Mr. Hudson and asked that he give the specifics of his case to both Mr. Rob Cook, SAB Executive Officer, and Ms. Jeannie Oropeza, Department of Finance, for possible assistance.

**Mr. Stan Scheer, Superintendent of Schools at Murrieta Valley Unified School District**

Mr. Scheer did not comment upon the proposed regulations, but described two major school construction projects in his district, one complete and the other 70 percent complete, for which high costs are being incurred due to the State's halt in fund releases. He said his district is incurring \$30,000 to \$50,000 per month in legal fees, and anticipating delay claims for \$10 million to \$15 million. Meanwhile, his district's general fund is getting cut \$7 million this year and \$10 million next year. He asked for any possible assistance to help relieve their legal costs.

The SAB thanked Mr. Scheer and asked that he give the specifics of his case to both Mr. Rob Cook, SAB Executive Officer, and Ms. Jeannie Oropeza, Department of Finance, for possible assistance.

**Mr. Richard Gonzalez, representing Richard Gonzalez and Associates**

Mr. Gonzalez did not comment upon the proposed regulations, but asked that the Board continue to review and give unfunded approvals for school construction projects, because this recognizes that a project is viable and can assist the district with contracting and financing. Mr. Gonzalez mentioned one small school district suffering with a \$5 million shortfall due to the PMIB's temporary funding halt, and asked for any possible assistance for districts that have entered into contracts but are being deprived of the State share of project costs needed to pay their contract obligations.

The SAB thanked Mr. Gonzalez and indicated it would consider his comments.

**Ms. Anna Ferrera, representing the County School Facilities Consortia**

Ms. Ferrera said that she represents over 30 County Offices of Education (COEs) throughout the State, and thanked the Board for the relief from deadlines in the proposed regulations. She reminded the Board that COEs are responsible for the most vulnerable students and special education pupils, and asked the Board's consideration and funding flexibility especially for the many COEs which are in financial hardship status.

The SAB thanked Ms. Ferrera and asked her to communicate her ideas for funding flexibility to Mr. Rob Cook, SAB Executive Officer.

**Mr. Wael Elatar, representing the San Bernardino City Unified School District**

Mr. Elatar thanked the Board and the OPSC for the proposed regulatory amendments and stated that his district had 54 school construction projects with financial hardship status, with 34 of them still awaiting fund releases for about \$180 million. He said he agrees with concerns expressed by the C.A.S.H. organization to Mr. Rob Cook, and said he is making suggestions to Mr. Cook to benefit larger school districts with many hardship projects, and requesting a time extension for "substantial progress" for one project which will require eminent domain to acquire the school site.

Finally, Mr. Elatar asked for flexibility during this fiscal emergency for financial hardship projects to borrow from one project fund to another in order to address the immediate needs for some of the projects.

The SAB thanked Mr. Elatar and indicated that it would consider his comments, and advised that such "interfund transfers" would be addressed in a letter to be distributed to all school districts concerning local financing.

**Dr. Stephen Foster, representing the Chawanakee Unified School District**

Dr. Foster did not comment upon the proposed regulations, but thanked the Board and asked for priority funding consideration for its Minarets High School project, which has already cost over \$40 million, and until the release of the State share of the costs, faces substantial litigation and contract issues.

The SAB thanked Dr. Foster and indicated that it would consider his comments.

**Mr. Lyle Smoot, representing the Los Angeles Unified School District (LAUSD)**

Mr. Smoot did not comment upon the proposed regulations, but thanked the Board and advised that his district has a contingency plan which could keep its school facility program going for a short while if it is able to sell some bonds, but that contracts will have to be cancelled if the halt to fund releases takes a year to resolve. The LAUSD is awaiting \$800 million in State fund releases once school bond funding can resume, and it cannot cover that large of an amount on its own.

The SAB thanked Mr. Smoot and asked him to inform the Board at a future meeting about the LAUSD's efforts to enter the capital markets with their own local issuances.

**SAB Response**

There was much discussion by the Board surrounding the financial crisis and its impact on school district projects. Some Board members inquired about who would be responsible for the costs incurred by school districts for halting construction contracts. It was determined that regulatory amendments would be presented for Board approval to address the time limits on apportionments for other School Facility Programs. The Board committed to interact with the PMIB to promote the earliest resumption of school bond funding. The Board discussed potential categories of prioritization for school district project funding

relating to health and safety issues, whether the project funds had been apportioned, and whether contracts had already been awarded. The Board requested that a representative from the State Treasurer's Office attend the next SAB meeting to describe the State's current financial condition and its ability to access the bond market. The Board requested staff to prepare a list of projects impacted by the funding halt, including dollar amount, project type, and category of difficulty regarding health and safety, whether contracts had been awarded, etc.

## **DOCUMENTS RELIED UPON AND STATEMENTS REGARDING THE RULEMAKING**

### **Technical Documents Relied Upon:**

The State Allocation Board's Action Item, dated January 14, 2009, entitled "School Facility Program Financial Crisis Emergency 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.