

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 additional specific words and terms that are essential to these regulations.

Need for the Regulation

It was necessary to provide definitions for specific words and terms that are used extensively in these regulations as it eliminates the need for restating definitions at every instance of use.

"Inactive Preliminary Apportionment." It was necessary to add this definition applicable to the Critically Overcrowded School Facilities Program (COS Program) in order to temporarily suspend the time period for conversion to final apportionments, and help prevent preliminary apportionments from being rescinded due to the time limit expiring to convert to final apportionments.

"Inactive Preliminary Charter School Apportionment." It was necessary to add this definition applicable to the Charter School Facilities Program (CSFP) in order to temporarily suspend the time period for conversion to final charter school apportionments, and help prevent preliminary charter school apportionments from being rescinded due to the time limit expiring to convert to final charter school apportionments.

Each definition requires SAB approval, and applies to preliminary apportionments:

- approved prior to December 17, 2008, and
- for which a complete request to convert to a Final Apportionment has not been made, and
- for which the time limit to apply for Final Apportionment will expire on or after December 17, 2008.

The date of December 17, 2008 was used because that was when the Pooled Money Investment Board (PMIB) acted to temporarily halt disbursements for capital projects, including the construction of public schools.

Section 1859.121. Joint-Use Project Application Submittals and Apportionments.

Specific Purpose of the Regulation

To clarify that Joint-Use Program apportionments are subject to the availability of financing provided by the PMIB for bond-funded projects.

Need for the Regulation

The proposed amendment responds to the PMIB's action on December 17, 2008 to temporarily halt disbursements for capital projects, including the construction of public schools. It was necessary to clarify in the

School Facility Program (SFP) Regulations that school bond funding for the Joint-Use Program could be apportioned only if available through the PMIB.

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

Specific Purpose of the Regulation

This proposed new section to the SFP Regulations will help prevent school bond Preliminary Apportionments to school districts under the COS Program from expiring during the State's current fiscal crisis.

Need for the Regulation

It was necessary to adopt new Regulation Section 1859.148.2 to allow the SAB to determine a State fiscal emergency or crisis exists, for the purpose of finding Preliminary Apportionments under the COS Program to be "Inactive," as defined in Section 1859.2.

This finding would suspend, as of December 17, 2008, the time period for an applicant to convert to a Final Apportionment. This period to convert is four years from the date of the Preliminary Apportionment plus a possible one-time one-year extension, as set forth in Education Code Section 17078.25(a) and (b). Once the SAB finds that State bond funds are available for the project, the balance of this time period to convert to a Final Apportionment shall resume, as it existed on December 17, 2008. This regulation section will sunset on January 1, 2010, in order to assure that its application is limited solely to the current fiscal crisis.

Section 1859.164.2. Preliminary Charter School Apportionment Fund Release.

Specific Purpose of the Regulation

To clarify that CSFP apportionments are subject to the availability of financing provided by the Pooled Money Investment Board (PMIB) for bond-funded projects.

Need for the Regulation

The proposed amendment responds to the PMIB's action on December 17, 2008 to temporarily halt disbursements for capital projects, including the construction of public schools. It was necessary to clarify in the SFP Regulations that school bond funding for the CSFP could be apportioned only if available through the PMIB.

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

Specific Purpose of the Regulation

The proposed emergency amendments to the School Facility Program (SFP) Regulations will help prevent school bond Preliminary Apportionments to school districts under the CSFP from expiring during the State's current fiscal crisis.

Need for the Regulation

It was necessary to adopt new Regulation Section 1859.166.2 to allow the SAB to determine a State fiscal emergency or crisis exists, for the purpose of finding Preliminary Apportionments under the CSFP to be "Inactive," as defined in Section 1859.2.

This finding would suspend, as of December 17, 2008, the time period for an applicant to convert to a Final Charter School Apportionment. This period to convert is four years from the date of the Preliminary Charter School Apportionment plus a possible one-time one-year extension, as set forth in Education Code Section 17078.25(a) and (b). Once the SAB finds that State bond funds are available for the project, the balance of this time period to convert to a Final Charter School Apportionment shall resume, as it existed on December 17, 2008. This regulation section will sunset on January 1, 2010, in order to assure that its application is limited solely to the current fiscal crisis.

Section 1859.197. Fund Release Process.

Specific Purpose of the Regulation

To clarify that Career Technical Education Facilities Program (CTEFP) apportionments are subject to the availability of financing provided by the PMIB for bond-funded projects.

Need for the Regulation

The proposed amendment responds to the PMIB's action on December 17, 2008 to temporarily halt disbursements for capital projects, including the construction of public schools. It was necessary to clarify in the SFP Regulations that school bond funding for CTEFP applicants requiring a loan for their entire matching share of project costs, the early release of ten percent of the grant amount to the applicant could be apportioned only if available through the PMIB.

SUMMARY OF PUBLIC COMMENTS AT JANUARY 28, 2009 MEETING AND RESPONSE

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

Mr. Duffy said C.A.S.H. supports the regulations as proposed [with the Board deferring until next month's meeting proposed subsections 1859.129(b)(1)(A) and 1859.197(e)].

In addition, Mr. Duffy commented upon school districts with approved financial hardship status. He said they would like some flexibility in the six-month window for approved financial hardship status, and also regarding the need to return to the Board 18 months after they've been approved, which he said under the current regulations requires them to bring an appeal to the Board. He said C.A.S.H. is suggesting that the district would simply write a letter to the Executive Officer and not have to go through an appeal. He also said C.A.S.H. suggests that financial hardship districts be given every latitude possible to be able to do financings and interfund borrowings.

The SAB thanked Mr. Duffy and indicated that it would consider his comments. A Board member noted that the financial hardship regulations have been under consideration at the Implementation Committee for some time, and requested that possible regulatory amendments be brought forward for the Board to consider.

Mr. Ernie Silva, representing Gateway Community Charters

Mr. Silva thanked the Board for the proposed regulations, which he said gave a level of comfort to the charter school community that we can make it through the State's current fiscal crisis.

The Board thanked Mr. Silva for his comments.

DOCUMENTS RELIED UPON AND STATEMENTS REGARDING THE RULEMAKING

Technical Documents Relied Upon:

The State Allocation Board's Action Item, dated January 28, 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.