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

The proposed emergency regulatory amendments change the Financial Hardship (FH) review procedure in the School Facility Program (SFP) Regulations in order to protect school districts from unforeseen changes in their SAB-approved State bond funding for FH projects, resulting from the State's current fiscal crisis.

These regulatory amendments are needed on an emergency basis to stabilize SAB-approved funding determinations for school districts with FH status. The proposed amendments waive the requirement for the Office of Public School Construction (OPSC) to re-review the FH status of approved school facility projects which have remained on an Unfunded List for over 180 days due to the State's inability to provide AB 55 loans. Without the proposed amendments, school districts with SAB-approved FH funding determinations will face complete re-reviews of their district finances every six months, which could cause large changes in their earlier SAB-approved funding determinations, and jeopardize their school facility project budgeting, financing, and contracting.

Purpose and Authority for the FH Program. The FH Program is authorized by Education Code Section 17075.15. It allows school districts that have verified financial difficulties, despite making reasonable efforts to impose all levels of local debt capacity and developer fees, to participate in the SFP even if they cannot afford their share of an approved school facility project. Without FH status, school districts are required to provide 50 percent of new construction project costs or 40 percent of modernization project costs. If a thorough review of a school district's finances supports an SAB approval of FH status, then State bond funds will pay up to 100 percent of the school district's share of new construction or modernization costs.

Under the existing SFP Regulations, FH determinations are only valid for 180 days from the SAB-approval date. This was not a problem when State school bond funding was available for timely apportionments to FH school districts to move their projects forward, making FH re-reviews by the OPSC unnecessary.

However, the State's current fiscal crisis has caused the SAB to provide unfunded approvals to school facility projects since March 25, 2009. It is very difficult for school districts with FH status to move their projects forward when the State cannot apportion school bond funds for the projects. School districts with SAB-approved FH funding determinations are therefore subject to complete district financial re-reviews every six months, with unpredictable changes to the earlier State bond funding determinations. Such uncertainty undermines local school district project planning.

There are currently 98 approved unfunded FH projects on the Unfunded List, which commits $184.3 million of State bond funds, with additional FH projects scheduled for future monthly SAB meetings. It cannot be determined how much this State bond commitment will change as these and future FH projects reach their 180-day re-review requirement. The proposed amendments will waive the re-review requirement for all the FH projects added to the Unfunded List since its creation on March 25, 2009.

Specific Facts Showing the Need for Immediate Action (cont.)

Without the proposed amendments, many approved but unfunded FH school facility projects may never reach completion because of the uncertainty of the State bond funding and the requirement for financial re-reviews every six months. These will be lost opportunities to help stimulate the State's economy and to create various jobs associated with the construction industry.

These regulations will sunset January 1, 2011, at which time the Board will have the option to declare the fiscal crisis has ended or extend the SFP emergency regulations for another year.

Economic Background. In response to the State's fiscal crisis, on December 17, 2008 the Pooled Money Investment Board (PMIB) took action to halt disbursing cash from AB 55 loans [Pooled Money Investment Account (PMIA) loans] for capital projects, including the construction of public schools. The PMIB took this action to preserve the necessary cash resources to pay the day-to-day operational needs of the State.

In addition, on December 18, 2008, the Department of Finance issued Budget Letter #33 that directed all State entities that have expenditure control and oversight of General Obligation Bond programs to cease authorizing any new grants for bond projects. Budget Letter #33 also stated that no future AB 55 loans or higher amount of AB 55 loan renewals would be approved until the budget crisis is resolved in a manner sufficient to allow the State to resume issuing bonds. Subsequent Department of Finance Budget Letters further reinforced this action. Due to the condition of the PMIA, the traditional process of funding school construction projects from AB 55 loans will not continue. Future projects will be funded on a cash basis by upfront proceeds of future General Obligation Bond sales.

Authority and Reference Citations

Authority: Sections 17070.35, 17075.15, 17078.72 and 17592.73 of the Education Code.

Reference: Sections 17071.75, 17075.10, 17075.15 and 17079.20 of the Education Code, and Section 53311 of the Government 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 (OAL) and filed with the Secretary of State on October 8, 1999.

The SAB, at its March 25, 2009 meeting, commenced adding approved but unfunded SFP projects to the Unfunded List due to the State's inability to provide loans from the PMIA Account (AB 55 loans) to fund school construction projects.

The SAB, at its May 26, 2010 meeting, adopted emergency regulatory amendments to specifically define an "Unfunded List (Lack of AB 55 Loans)" and to waive the requirement for the OPSC to re-review FH determinations of approved school facility projects that have remained on the Unfunded List for over 180 days due to the State's inability to provide AB 55 loans. This waiver applies to all projects added to the Unfunded List since March 25, 2009. These regulations will sunset January 1, 2011.

A summary of the proposed emergency regulatory amendments is as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed emergency amendments add the definition of “Unfunded List (Lack of AB 55 Loans),” meaning an information list of unfunded projects created due to the State’s inability to provide financing from the PMIA (AB 55 loans) to fund school construction projects, as declared in the Department of Finance Budget Letter #33 issued on December 18, 2008. This Unfunded List is differentiated from any other unfunded list.

Existing Regulation Section 1859.81 permits school districts to qualify for Financial Hardship (FH) status in order to receive additional State funding for school facility projects, upon meeting specific financial criteria. The proposed emergency amendments:

- designate as subsection “(e)” the existing criteria about FH reviews remaining valid for 180 days or having to re-establish FH status, and
- add new subsection “(f)” waiving the requirement for FH status to be re-reviewed if the project has been on the “Unfunded List (Lack of AB 55 Loans)” for more than 180 calendar days. Projects added to any other unfunded list shall be subject to the FH review detailed in Regulation Section 1859.81(e). This subsection (f) shall become inoperative January 1, 2011, at which time the Board will have the option to extend the SFP emergency regulations for another year or declare the State’s fiscal crisis is over.

<u>Mandate on Local Agencies or School Districts</u>

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.

<u>Cost Estimate</u>

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.