

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, May 26, 2010

FINANCIAL HARDSHIP REGULATIONS AND UNFUNDED REVIEWS

PURPOSE OF REPORT

To present options of emergency regulatory amendments to the School Facility Program (SFP) regulations for the Financial Hardship Program that clarifies when the Office of Public School Construction (OPSC) is required to conduct unfunded reviews under the current regulations.

BACKGROUND

The current SFP regulations require that a re-review of available funding be conducted for any financial hardship project that has been included on an unfunded list for more than 180 calendar days to determine if additional district funds are available as contribution on the district's projects. Staff presented this requirement to the Board at the February and April 2010 State Allocation Board (SAB) meetings. The Board did not require the re-review for those financial hardship projects that were on the unfunded list for more than 180 days. Consequently, those projects were funded and not re-reviewed. Additionally, the Board requested staff to prepare options that would not harm districts during the State's inability to release funds during the current fiscal crisis. Staff is presenting these regulation amendment options to address the Board's concerns.

AUTHORITY

A financial hardship review is only valid for 180-day period. Regardless of the cause, if a project is unable to move forward or not funded in that period, a district must re-establish their financial hardship status. This ensures the California Education Code Section 17075.10(b) requirement that a district is making all reasonable effort to fund their matching share of their project.

California Education Code Section 17075.10(B) requires that the district has made all reasonable efforts to impose all levels of local debt capacity and development fees, and that the school district is unable to participate in the program pursuant to this chapter except as set forth in this article.

SFP Regulation Section 1859.81(d) states that if the district submits Form SAB 50-04 within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to 1859.81(a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

STAFF COMMENTS

For purposes of providing clarification to the regulation, Staff will propose regulations that define the nature of the unfunded list. It will provide clarity to existing regulation and the requirement of a re-review when there is a non-fiscal crisis (one example is when New Construction bonding authority has been exhausted and an unfunded list is created). It will also provide the option to waive the requirement for projects affected by the State's inability to provide AB 55 loans to fund projects.

The current regulations do not distinguish between the traditional "unfunded" list and the one necessitated by the current fiscal crisis. Therefore, to provide options to the Board, Staff will present emergency regulation amendments that define an unfunded list created by the lack of AB 55 loans (See Attachment A). This creates a distinct list to address the current crisis, rather than the traditional "unfunded list" which refers to an informational list of unfunded projects. The current budget crisis relates to bonding authority from Proposition 47 (Bond Act of 2002), Proposition 55 (Bond Act of 2004), and Proposition 1D (Bond Act of 2006).

STAFF COMMENTS (cont.)

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 Budget Letters issued by the Department of Finance 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.

At the January 28, 2009 SAB meeting, the Board requested Staff to seek input from stakeholders and the school community at an Implementation Committee meeting and provide recommendations regarding the implementation of unfunded approvals. At the March 11, 2009 SAB meeting the Board approved the creation of an unfunded list to process applications to the SAB for unfunded approval up to available bonding authority. Therefore, projects were first added to the unfunded list (Lack of AB 55 Loans) at the March 25, 2009 SAB meeting.

Staff would like to advise the Board that the bonding authority for SFP New Construction is anticipated to be exhausted within the next few months. Subsequently, an unfunded list will be created that will not be associated with the Unfunded List (Lack of AB 55 Loans) and therefore any projects included on this new unfunded list for more than 180 days will be subject to the re-review described in SFP Regulation Section 1859.81.

RECOMMENDATIONS

1. Waive the unfunded financial hardship re-review requirement for projects added to the unfunded list due to the State's inability to provide AB 55 loans. This unfunded list was created in March 2009 and references any projects added to that list since. 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 this and all emergency SFP regulations for another year.
2. Adopt the proposed emergency regulations as shown on the Attachment A and begin the regulatory process.
3. Authorize the Executive Officer to file these emergency regulations with the Office of Administration Law on an emergency basis.

This Item was approved by the State Allocation Board on May 26, 2010.

ATTACHMENT A
OPTION #1 – PROPOSED AMENDMENTS TO THE
SCHOOL FACILITY PROGRAM REGULATIONS
State Allocation Board Meeting, May 26, 2010

To amend Regulation Section 1859.2

Section 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

“Academic Achievement” means to improve one’s ability to engage in academic endeavors and to accomplish study in core curriculum areas such as reading, writing, mathematics, fine arts, science, vocational education, technology, history or social science.

“Act” means the Leroy F. Greene School Facilities Act of 1998.

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“Unfunded List” means an information list of unfunded projects, with the exception of the unfunded list defined below as “Unfunded List (Lack of AB 55 Loans)”.

“Unfunded List (Lack of AB 55 Loans)” means an information list of unfunded projects that was created due to the State’s inability to provide interim financing from the Pooled Money Investment Account (AB 55 loans) to fund school construction projects as declared in the Department of Finance Budget Letter #33 issued on December 18, 2008.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.75, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17073.25, 17074.10, 17074.30, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17078.72(k), 17079, 17079.10, 17280, 56026, and 101012(a)(8), Education Code; Section 53311, Government Code; and Section 1771.5, Labor Code.

To amend Regulation Section 1859.81

Section 1859.81. Financial Hardship.

Except for Joint-Use Projects and Career Technical Education Facilities Projects, a district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating the requirements of (a), (c), and (d) below:

- (a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district’s financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district’s latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution.

After the initial request for financial hardship status is granted, no further encumbrances will be approved by the OPSC and all prospective revenue made available to the district’s capital facility

accounts shall be deemed available as matching contribution on the subsequent financial hardship review, with the exception of:

- (1) Approved interim housing expenditures.
- (2) Funding to pay for previously recognized multi-year encumbrances approved at the initial financial hardship approval.
- (3) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Federal Renovation Program when the amount expended out of that fund does not exceed the maximum Federal Renovation Grant amount.
- (4) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the School Facilities Needs Assessment Grant Program or Emergency Repair Program when the amount expended out of that fund does not exceed the maximum grant amount apportioned.
- (5) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Career Technical Education Facilities Program when the amount expended out of that fund does not exceed the applicant's share of the maximum grant amount apportioned.
- (6) Funding that is transferred into a Special Reserve Fund and used for the express purpose of the Overcrowding Relief Grant when the amount expended out of that fund does not exceed the amount of the site acquisition and design costs of the project and the district has submitted an approved Form SAB 50-11.
- (7) Funding that is used for the express purpose of reimbursing the State a proportionate share of financial hardship received when there has been a transfer of a special education program and title to the facility. In addition, the funding was used within five years of the title transfer.
- (8) Funding to pay for obtaining a structural report pursuant to Section 1859.82 for an approvable and funded seismic mitigation project.
- (9) All other capital facility funding for a period of three years when no subsequent financial hardship request is made during this period, with the exception of the funding identified in (6). The three-year period begins with the date of the most recent financial hardship new construction or modernization adjusted grant funding apportionment.

When Overcrowding Relief Grant funding is set aside pursuant to (6) and the School District has not submitted, or the OPSC has not accepted, a Form SAB 50-04 for an Overcrowding Relief Grant within three years from the date of deposit into the Special Reserve Fund, or the School District has not met the requirements in Sections 1859.90 or 1859.105, remaining funds plus interest accrued at the Pooled Money Investment Board rate at that time period shall be deemed available as matching contribution on a subsequent financial hardship project or be captured through an audit adjustment pursuant to Section 1859.106.

The financial hardship analysis is subject to approval by the Board.

- (b) From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (b)(7) as follows:
 - (1) Determine the current enrollment of the district by grade level as shown on the latest Form SAB 50-01.
 - (2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted Form SAB 50-06 indicating that the project is 100 percent complete.
 - (3) Subtract (b)(2) from (b)(1).
 - (4) Determine the number of classrooms by grade level reported in Part 1, Line 8 on Form SAB 50-02.

- (5) Multiply the classrooms determined in (b)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.
- (6) Subtract the product determined in (b)(5) from the difference determined in (b)(3) by grade level.
- (7) Divide the difference by grade level determined in (b)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (b)(7) divided by eight rounded up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per classroom in each reporting period for the cost to provide necessary interim housing for the currently unhoused pupils displaced as a result of a SAB approved seismic mitigation project pursuant to Section 1859.82. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing shall be the quotient of the displaced pupils by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

- (c) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:
 - (1) The current outstanding bonded indebtedness of the district issued for the purpose of constructing school facilities in accordance with Education Code Section 17072.35 or 17074.25 as appropriate, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.
 - (2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).
 - (3) It is a County Superintendent of Schools.
 - (4) The district's total bonding capacity at the time of the request for financial hardship status is \$5 million or less.
 - (5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district may be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation that it is unable to afford the full rental amount and any other information satisfactory to the Board that the rental reduction is necessary. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (c)(5)(B) as follows:

- (A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the Form SAB 50-04 that were denied financial hardship status.
- (B) Divide the number by grade level determined in (c)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.
- (d) The district has not signed a contract for acquisition or construction of classrooms that replace existing facility(ies), which were included in the determination of the district's new construction eligibility pursuant to Education Code Section 17071.75, in a locally funded project during the five-year period immediately preceding the district's application for financial hardship assistance. This restriction may be lifted if the Board finds that unforeseen and extenuating circumstances existed that required the district to use local funds to replace the facility(ies).
- (e) If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file Form SAB 50-04 under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit Form SAB 50-04 under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits Form SAB 50-04 within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

- (f) If a district has been included on the "Unfunded List (Lack of AB 55 Loans)" for more than 180 calendar days as a result of the State of California's inability to provide interim financing from the Pooled Money Investment Account (AB 55 loans), the Board may suspend the unfunded review requirement as defined in Regulation Section 1859.81(e). Projects added to any other unfunded list shall be subject to the review detailed in Regulation Section 1859.81(e). Regulation Section 1859.81(f) shall become inoperative January 1, 2011, at which time the Board will have the option to extend the SFP emergency regulations (Regulation Sections 1859.96, 1859.148.2, and 1859.166.2) for another year or declare the State's fiscal crisis is over.

Note: Authority cited: Sections 17070.35, 17075.15, 17078.72 and 17592.73, Education Code.

Reference: Sections 17071.75, 17075.10, 17075.15, and 17079.20, Education Code.