

## **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**

Prior to December 17, 2008, the process for making State apportionments and providing fund releases for the School Facility Program (SFP) was relatively simple. Fund release requests were accommodated on a regular basis due to the ability to borrow cash from the State's Pooled Money Investment Account (PMIA) in advance of bond sales. After December 17, 2008, the State's 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. Essentially, the PMIB's action placed the Office of Public School Construction (OPSC) on notice that fund release requests would not be able to proceed and the action further impeded the SAB's ability to make State apportionments even though there was available bonding authority. Due to the unprecedented circumstance of the State's inability to provide cash for projects that were supported by bonding authority, the SAB took multiple actions, commencing in January 2009, that ensured regulations and processes were adjusted in an attempt to minimize the impact to school district projects. These actions included:

- Emergency Regulations declaring prior SAB-approved apportionments inactive until cash became available;
- The creation of an Unfunded List for approved projects; and
- Prompt action to make State apportionments and/or reactivate unfunded approvals once cash became available.

In 2009, bond sales provided \$2.627 billion to the SFP, which made it possible for the SAB to reactivate previously inactive apportionments and make State apportionments to projects that had received unfunded approvals on the Unfunded List. Once the SAB makes State apportionments, the school districts have 18 months to submit a Fund Release Authorization (Form SAB 50-05) for the project. However, many school districts are not in a position to immediately submit a fund release request. Fund release requests have decreased from an average of approximately \$265 million per month from April through July 2009 to approximately \$38.7 million per month from August 2009 through April 1, 2010. At this rate of release, the current bond proceeds will not be completely disbursed until September 2014. The current practice for making State apportionments is through regulation and is based on the date a complete application is received for processing and placed on the SAB's Unfunded List, and the cash availability due to bond sales. This current system does not give consideration as to whether or not the school district is actually ready or able to proceed with the construction of the project. It should be noted that the cash available for a State apportionment could remain in an account for 18 months while the school districts decide whether a project will move forward. This current approach does limit the ability to prioritize school construction projects, stimulate the economy, and create jobs.

At its April 28, 2010 meeting, the cash available for the SAB to make apportionments was \$1.377 billion. The SAB provided State apportionments in the amount of \$960.7 million, which reactivated projects with unfunded approvals from the SAB's Unfunded List, and left remaining State funds in the amount of \$415 million available for apportionment.

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

At the same meeting, the OPSC presented an item for discussion that provided three options: 1) Take no Action: Continue to make Apportionments Sequentially from the Unfunded List; 2) Award Conditional Apportionments to all Projects on the Unfunded List; and 3) Prioritize Apportionments to Projects that are Ready to Submit Fund Releases. These options were discussed and the SAB determined that the most efficient and effective way to quickly disburse the remaining \$415 million\* would be to implement Option #3, which would be a one-time funding mechanism for construction-ready projects. In addition, the SAB established the Priorities in School Construction Sub-Committee in order to address the following concerns associated with Option #3: 1) consider the impact to various types of projects [such as financial hardship, small school districts, facility hardship, etc.]; 2) be mindful not to create underground regulations, and be very clear that the SAB's actions will not set a new precedent; and 3) if it appears that implementing Option #3 will take too long, the SAB would like to revisit the other options. On May 12, 2010, the Priorities in School Construction Sub-Committee met and discussed the issues outlined above including other challenges and concerns that were brought forward. There were nine specific issues related to Option #3; eight of the issues reached consensus and one issue did not reach consensus.

The SAB, at its May 26, 2010 meeting, adopted proposed emergency regulatory amendments to the School Facility Program (SFP) Regulations to promote an alternative method of prioritizing projects that demonstrate the ability of submitting a fund release request within two to three months from receipt of a State apportionment. Currently, the SAB's Unfunded List is approximately \$1.368 billion; there is only \$408.3 million available for apportionment. As stated earlier in this Finding of Emergency, some school districts may not have the ability to proceed with their projects and in order to achieve the results, it is necessary to allow school districts that have true construction-ready projects to apply for the remaining State funds in order to create jobs associated with the trades and construction industry thereby stimulating the State's economy, which is in direct alignment with the Governor's directive (please refer to the attached Governor's Press Release).

It is extremely important to approve these proposed regulations on an emergency basis and have them in effect as soon as possible. The State of California is in a time of severe financial crisis. The policies and regulations that are currently in place do not allow the SAB the flexibility to take proactive steps to assist in the financial recovery of our State. The proposed emergency regulations will re-prioritize apportionments for school construction projects to those projects that can request fund releases within 90 days and begin the construction process in order to stimulate the economy and create jobs. Furthermore, on April 27, 2010, the Department of Finance (DOF) issued Budget Letter #10-09, which specifically relates to general obligation bond funded programs/projects, and stipulates that cash need estimates will be requested by the DOF and the State Treasurer's Office (STO) twice a year prior to each spring and fall sale period. It further stipulates that State funds previously received should be expended prior to the sale of additional bonds. This new method of funding general obligation bond-funded projects will have a considerable negative impact on the SFP, since State apportionments will not be made in anticipation of bond sales; only when bond sales have been successful and the cash estimate has been submitted to the DOF and the STO showing a need or demand for the cash. It should be noted that the STO is not statutorily required to sell general obligation bonds, but it has been a standard operating procedure.

\*The \$415 million was reduced to \$408.3 million due to the SAB's action on another item in the May 26, 2010 SAB Agenda.

## **Authority and Reference Citations**

Authority: Section 17070.35 of the Education Code and Section 15503 of the Government Code.

Reference: Sections 17070.35, 17072.12, 17072.30, 17074.15, 17076.10, 17077.40, 17077.42, and 17077.45 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 (OAL) and filed with the Secretary of State on October 8, 1999.

The SAB, at its May 26, 2010 meeting, adopted proposed emergency regulatory amendments to the School Facility Program (SFP) Regulations to promote an alternative method of prioritizing projects that demonstrate the ability of submitting a fund release request within two to three months from receipt of a State apportionment. Currently, the SAB's Unfunded List is approximately \$1.368 billion; there is only \$408.3 million available for apportionment.

The proposed amendments are summarized as follows:

Existing Regulation Section 1859.90.1, "Local Bond Reimbursement Fund Releases," will be renumbered as 1859.90.2.

Proposed adoption of Regulation Section 1859.90.1, "Priority Funding Round Process," will establish a one-time priority funding round to distribute \$408.3 million to school districts who request an apportionment during a 30-day filing period beginning May 27, 2010 and ending June 28, 2010. For projects in the Priority Funding Round, school districts must submit the Form SAB 50-05, "Fund Release Authorization," within 90 days of the Board's approval of the apportionment; failure to make this submittal within 90 days will result in project rescission without further Board action. School districts wishing to participate must provide a written statement signed by an authorized district representative within the 30-day filing period that contains all of the following:

- Request to convert the unfunded approval to an apportionment;
- Concurrence with the 90-day time limit on fund release;
- Acknowledgement that failure to submit a valid Form SAB 50-05 within the 90-day time limit will result in the rescission of the apportionment without further Board action; and
- Acknowledgement that by participating in the priority funding round, the district is waiving its right to a standard 18 month timeline for fund release submittal.

For the purposes of this section, the word "rescinded" means that the project will be placed at the end of the Unfunded List with an unfunded approval date of November 2, 2010. The district will not be required to re-submit the application and no further application review will be required.

### **Informative Digest/Policy Overview Statement** (cont.)

Any funds not apportioned as of August 25, 2010 shall remain available for any other applicable SFP project apportionments by the Board. This regulation section shall become inoperative December 31, 2010.

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. For Type II Joint-Use projects that are not part of a qualifying SFP Modernization project, the school district has 18 months from the date the Division of the State Architect (DSA) and California Department of Education (CDE)-approved plans were submitted to the OPSC to submit a completed Form SAB 50-05 or the apportionment will be rescinded without further Board action. The proposed amendment specifies that if the district applies for an apportionment through the Priority Funding Round, the 18-month time limit for submittal of the Form SAB 50-05 will be reduced to no more than 90 days from the date the Board approves the apportionment.

Existing Regulation Section 1859.197 sets forth the criteria for fund releases under the Career Technical Education Facilities Program (CTEFP). For CTEFP projects with reserved funds pursuant to Section 1859.193(d), the school district has 18 months from the date the DSA and CDE-approved plans were submitted to the OPSC to submit a completed Form SAB 50-05 or the apportionment will be rescinded without further Board action. The proposed amendment specifies that if the district applies for an apportionment through the Priority Funding Round, the 18-month time limit for submittal of the Form SAB 50-05 will be reduced to no more than 90 days from the date the Board approves the apportionment.

### **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.