

## **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. This 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.

Recent proactive regulatory amendments changed the manner by which State apportionments are made by the SAB. At its May 26, 2010 SAB meeting, the Board adopted an alternative method of providing State apportionments to projects by prioritizing projects that demonstrated the ability to submit a fund release request within 90 days from receipt of a State apportionment. The alternative method was called a "Priority Funding Round." The SAB's Unfunded List was approximately \$1.368 billion and \$408.3 million was available for apportionment from recent successful bond sales. The SAB deemed it necessary to allow school districts having 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 was and continues to be in direct alignment with the Governor's directive.

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

There was no opposition to the Priority Funding Round by school districts or stakeholders at the May 26, 2010 SAB public meeting or during the AB 1302 notice period. The emergency regulations that implemented the Priority Funding Round were approved by the Office of Administrative Law (OAL) on June 24, 2010 (OAL File No. 2010-0617-06E) and clarification to the text was approved by the OAL on July 1, 2010 (OAL File No. 2010-0701-01E). With the emergency regulations in effect, the SAB was able to fund 78 school construction projects in the amount of \$408.14 million at its August 4, 2010 meeting.

With the success of the Priority Funding Round, the SAB, at its August 25, 2010 meeting, adopted emergency regulatory amendments that would allow the Board to establish future Priority Funding Rounds. Again, no opposing public comments were made at this public meeting; in fact, comments were stated at the public meeting that requested the continuance of Priority Funding Rounds. The proposed emergency amendments would authorize the SAB to establish 30-calendar day application filing periods by announcing the filing periods at specific SAB public meetings through Board action items. Through this type of action, all school districts that have projects on the Unfunded List will be provided the opportunity to participate each time the SAB establishes a Priority Funding Round application filing period. The purpose is to provide remaining State bond funds (whether it is actual cash from remaining bond funds or bond sales and/or from future successful bond sales) to those projects that are construction-ready. At the August 25, 2010 meeting, the SAB made \$53.51 million available for the next proposed Priority Funding Round. Again, this action continues to be in direct alignment with the Governor's directive, and vital to the State's economic recovery.

It is extremely important to note that these proposed emergency regulations need to be in effect as soon as possible. The State of California is in a time of severe financial crisis. Future Priority Funding Rounds will 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 calendar days and begin the construction process in order to stimulate the economy and create jobs. The SAB will consider an item at its October 6, 2010 meeting that establishes a 30-calendar day filing period beginning October 7, 2010 and ending November 8, 2010 for school districts to submit requests to participate in this Priority Funding Round. There is approximately \$71.86 million available for this purpose.

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. Budget Letter #10-09 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. In addition, it should be noted that the STO is not statutorily required to sell general obligation bonds, but it has been a standard operating procedure.

## **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, 17074.16, 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.

At its August 25, 2010 meeting, the SAB approved proposed emergency regulations which would authorize it to establish 30-calendar day application filing periods during public meetings. Applicant school district representatives must submit a signed written statement within the 30-calendar day filing period agreeing to the specific criteria of the priority funding round. Applicant districts must within 90 calendar days of the SAB approval of the State apportionment submit and have in the possession of the OPSC the Form SAB 50-05 fund release request, with an original signature, or else the project shall be rescinded without further Board action. By participating in a priority funding round, a school district waives the right to an 18-month timeline to submit its fund release request [Education Code Section 17076.10(d)].

The proposed emergency regulations will authorize the SAB to take proactive steps to assist in the financial recovery of our State. The SAB will be authorized to establish future Priority Funding Rounds in which projects with unfunded approvals can be converted to State apportionments, which will re-prioritize district school construction projects that can request, within 90 calendar days, their project funds to begin the construction process in order to immediately help stimulate the State's economy.

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

Existing Regulation Section 1859.90.2, "Local Bond Reimbursement Fund Releases," will be renumbered as Section 1859.90.3.

Proposed adoption of Regulation Section 1859.90.2, "Priority Funding Round Process," authorizes the SAB to establish future 30-calendar day application filing periods to distribute available State school bond funding to school districts that request an apportionment. School districts must submit and have in the possession of the OPSC the original signature Form SAB 50-05, "Fund Release Authorization," within 90 calendar days of the Board's approval of the apportionment; failure to make this submittal within 90 calendar days will result in rescission of the project without further Board action. School districts wishing to participate must provide a written statement signed by an authorized district representative within the 30 calendar day filing period that contains all of the following:

- Request to convert the unfunded approval to an apportionment; and
- Concurrence with the 90 calendar day time limit on fund release; and
- Acknowledgement that failure to submit a valid, original signature Form SAB 50-05, and that it be in the physical possession of the OPSC, within the 90 calendar 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 apportionment returns to unfunded approval status with a new unfunded approval date. The new unfunded approval date will be determined by the Board at the same public meeting at which the priority funding round is approved. The district will not be required to re-submit the application and no further application review will be required.

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 a priority funding round pursuant to Section 1859.90.1 or 1859.90.2, 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 a priority funding round pursuant to Section 1859.90.1 or 1859.90.2, 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.