

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, August 25, 2010

PRIORITIES IN SCHOOL CONSTRUCTION FUNDING REGULATIONS

PURPOSE OF REPORT

To present proposed regulations to give the State Allocation Board (Board) authority to set additional priority funding rounds as needed.

BACKGROUND

At the May 2010 meeting, the Board authorized the creation of the 2010 Priority Funding round using \$408.3 million in available bond funds. The Priority Funding round was created as a way to allow the Board to facilitate school construction projects and stimulate our State's economy through the creation of a funding mechanism that would allow districts ready to submit a *Fund Release Authorization* (Form SAB 50-05) the opportunity to receive funding and move forward with their projects.

The Priority Funding Round was very successful and the outreach was effective. The Office of Public School Construction (OPSC) received requests from 157 school districts for 500 of the 611 projects on the unfunded approval list (82 percent). The requests totaled \$1,612,222,537 which greatly exceeded the \$408.3 million available for apportionment. The Board made 78 apportionments totaling \$408,143,077.

AUTHORITY

School Facility Program (SFP) Regulation Section 1859.129(b)(2) and 1859.197 (b)(2) state that, "if the district is requesting an Apportionment pursuant to Section 1859.90.1, the Board will require that this time limit be reduced to no more than 90 days from the date of the apportionment.

Education Code Section 17070.35(a) states, "In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following:

- (1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter...
- (2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary..."

Government Code Section 15503 states, "Whenever the board is required to make allocations or apportionments under this part, it shall prescribe rules and regulations for the administration of, and not inconsistent with, the act making the appropriation of funds to be allocated or apportioned. The board shall require the procedure, forms, and the submission of any information it may deem necessary or appropriate. Unless otherwise provided in the appropriation act, the board may require that applications for allocations or apportionments be submitted to it for approval."

Budget Letter 10-09 requires that if there are insufficient bond proceeds, departments and agencies are responsible for prioritizing the projects that will be funded consistent with the prioritization criteria outlined (including job creation). It also indicates that if bond proceeds are not managed efficiently, additional bonds may not be sold for the program.

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STAFF COMMENTS

During the one month Priority Funding request period 82 percent of the applications on the unfunded approvals list submitted an apportionment request exhibiting the initial success of the funding round. It will not be until November 2, 2010 in which the Board will know the true success of the program. This will ultimately be determined by the percentage of the 78 apportioned applications that submit fund release requests to the OPSC within the required timeframe.

The OPSC has received feedback from school districts and other interested parties requesting that the Board continue to utilize Priority Funding rounds in the future. Based on the initial success of the Priority Funding round, districts desire to participate in such a program, and due to the State's current financial crisis the OPSC believes a mechanism should be put in place authorizing the Board to create future Priority Funding rounds as needed.

Current SFP regulations authorize one specific Priority Funding round. The regulations will sunset on December 31, 2010. At this time it is uncertain how much funding will be available with each future bond sale; however, it is apparent there is a need and want for future Priority Funding rounds. Regulations must be added to allow for additional funding cycles. The attachment to this item provides regulation changes allowing the Board to approve future Priority Funding Rounds on an as needed basis.

RECOMMENDATIONS

1. Adopt the proposed amendments to the regulations as shown on the Attachment and begin the regulatory process.
2. Authorize the Executive Officer to file these regulations with the Office of Administrative Law on an emergency basis.

This Item was approved by the State Allocation Board on August 25, 2010.

ATTACHMENT
State Allocation Board Meeting, August 25, 2010

Section 1859.90.23. Local Bond Reimbursement Fund Releases.

When a school district uses local bond funds

. . . .

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.63 and 17072.35, Education Code.

Section 1859.90.2. Priority Funding Round Process.

The Board may establish future priority funding rounds, as necessary, to distribute available funds to districts who request an Apportionment during specific 30 calendar day filing periods as determined by the Board. Any funds not apportioned as of a specified priority funding round shall remain available for any other applicable School Facilities Program project apportionments by the Board. During any priority funding round the Board will require that a district must submit the Form SAB 50-05 within 90 calendar days of the Apportionment. Projects that apply for any specific priority funding round for which the OPSC does not physically receive an original signature copy of the Form SAB 50-05 within the 90 calendar day time limit shall be rescinded without further Board action. In order to be considered for an Apportionment, the district must provide a written statement signed by an authorized district representative within the 30 calendar day filing period that contains all of the following:

- (a) Request to convert the unfunded approval to an Apportionment; and,
- (b) Concurrence with the 90 calendar day time limit on fund release; and
- (c) Acknowledgement that a valid, original signature Form SAB 50-05 must be submitted and physically received by the OPSC within the 90 calendar day time limit and failure to do so will result in the rescission of the Apportionment without further Board action; and
- (d) 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 "rescinded" shall mean 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 time each priority funding round is approved. The district will not be required to re-submit the application and no further application review will be required.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17072.12, 17072.30, 17074.16, 17076.10, 17077.40, 17077.42 and 17077.45, Education Code.

Section 1859.129. Time Limit on Apportionment.

- (a) If the district received an apportionment for a Type I Joint-Use Project or a Type II, part of a qualifying SFP Modernization project, Joint-Use Project, the district is subject to the time limit on the apportionment as outlined in Education Code Section 17076.10.
- (b) If the district received an apportionment for a Type II Joint-Use Project, not part of a qualifying SFP Modernization project, the district:

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- (1) Has one year from the date of that apportionment to submit the plans and specifications to the OPSC for the Joint-Use Project that have been approved by the DSA and the CDE (plans only), otherwise the apportionment will be rescinded without further Board action. If, upon review by the OPSC, the final Division of the State Architect approved plans create a reduction in square footage that is greater than or equal to five percent of the square footage contained in the preliminary plans, a commensurate reduction to the apportionment pursuant to Section 1859.125 shall be taken to the next available State Allocation Board meeting.
- (A) In the event the Board determines there is a fiscal emergency or crisis on the part of the State of California, the Board can make a finding that a project has an Inactive Apportionment, as defined in Regulation Section 1859.2, and that the districts' ability to submit completed plans to the DSA has been impacted, and therefore the district will no longer be able to meet the approval requirement in Education Code Section 17077.45(c). In the event the Board makes that determination and finding, the Board may suspend the 12-month period for a period not to exceed 12 months beyond the time period as required in (b)(1). Once the suspension period has concluded, each project will resume where its originating period of time was suspended. Regulation Section 1859.129(b)(1)(A) shall become inoperative January 1, 2010.
- (2) 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. If the district is requesting an Apportionment pursuant to Section 1859.90.1 or 1859.90.2, the Board will require that this time limit be reduced to no more than 90 days from the date of the apportionment.
- (3) Is subject to substantial progress time limit on the apportionment as outlined in Subdivision (b) of Education Code Section 17076.10.

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

Reference: Sections 17076.10, 17077.40, 17077.42 and 17077.45, Education Code.

Section 1859.197. Fund Release Process.

The OPSC will release State funds that have been apportioned by the Board pursuant to Sections 1859.195 and 1859.196 after submittal by the applicant of the Form SAB 50-05.

- (a) If an apportionment was made for a Career Technical Education Facilities Project, the applicant must submit a Form SAB 50-05 within 18 months of the Apportionment as outlined in Education Code Section 17076.10 or the apportionment shall be rescinded without further Board action.
- (b) If Career Technical Education Facilities funds were reserved for the applicant pursuant to Section 1859.193(d) of these Regulations, the applicant:
 - (1) Has one year from the date of apportionment to submit the CDE plan approval and DSA-approved plans and specifications, as required, to the OPSC for the Career Technical Education Facilities Project, otherwise the apportionment shall be rescinded without further Board action.
 - (2) Has 18 months from the date the CDE plan approval and DSA-approved plans and specifications, as needed, are submitted to the OPSC to submit a completed Form SAB 50-05 or the apportionment shall be rescinded without further Board action. If the district is requesting an apportionment pursuant to Section 1859.90.1 or 1859.90.2, the Board will require that this time limit be reduced to no more than 90 days from the date of the apportionment.

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- (c) If the applicant requires a loan for the entire matching share requirement pursuant to Section 1859.194(b) of these Regulations:
 - (1) Subject to the availability of financing provided by the Pooled Money Investment Board for bond-funded projects, the OPSC will release ten percent of the Career Technical Education Facilities grant to the applicant within 30 calendar days of the apportionment.
 - (2) The applicant has one year from the date of apportionment to submit the CDE plan approval and DSA-approved plans and specifications, as required, to the OPSC for the Career Technical Education Facilities Project, otherwise the apportionment shall be rescinded without further Board action.
 - (3) The applicant has 18 months from the date in (c)(2) to submit a completed Form SAB 50-05 or the apportionment shall be rescinded without further Board action.
- (d) The applicant is subject to substantial progress time limit on the apportionment as outlined in Education Code Section 17076.10(b).
- (e) In the event the Board determines there is a fiscal emergency or crisis on the part of the State of California, the Board may grant an extension not to exceed 12 months to the time limit prescribed in (b)(1) and (c)(2) above and Section 1859.193(d). Regulation Section 1859.197(e) shall become inoperative January 1, 2010.

Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Sections 17078.72 and 17076.10 Education Code.