

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

On December 17, 2008, the State's Pooled Money Investment Board (PMIB) took action to temporarily halt disbursing cash from the State's Pooled Money Investment Account (PMIA) for capital projects, including school construction projects, because of the State's financial situation. The Office of Public School Construction (OPSC) utilizes cash from the PMIA to release State funds for school construction projects that have been approved by the SAB. Essentially, that means that until further notice the OPSC will be unable to release State funds for approved school construction projects. This action also impedes the SAB's ability to make apportionments even though there is available to the SAB \$5.3 billion in bond authority.

The OPSC reviewed the programs it administers, on behalf of the SAB, to ensure that school districts can continue to meet statutory and regulatory requirements during this unprecedented financial crisis. At its January 28, 2009 meeting, the SAB adopted proposed emergency regulatory amendments to the School Facility Program (SFP) to help prevent school bond apportionments from expiring during the State's current fiscal crisis. The amendments would authorize the SAB to find preliminary apportionments as "inactive" under the:

- Critically Overcrowded School Facilities Program (COS Program) and
- Charter School Facilities Program (CSFP).

Upon the SAB finding that preliminary apportionments are "inactive" for these two programs, it will temporarily suspend the time period for conversion to final apportionments. This period is four years from the date of the preliminary apportionment plus an allowable one-year extension upon SAB approval. The time period will resume as it existed on December 17, 2008 when the SAB finds that State financing is available for bond-funded projects.

As a result of the PMIB cessation of school bond funding, the following projects will not be able to convert to final apportionments until State bond funds are again available:

- 344 COS projects with prior SAB-approved preliminary apportionments of \$1.263 billion, and
- 43 CSFP projects with prior SAB-approved preliminary apportionments of \$609.1 million.

The proposed amendments help prevent these preliminary apportionments from expiring, thereby preserving the ability for school districts and charter schools to convert to final apportionments in the future. Expiration of the apportionments would result in the construction projects being rescinded.

The PMIB action to halt disbursements for bond-funded school construction projects may cause construction delays or stoppages, workers being idled, cancellation of contracts, risk of penalties and civil damages, or even insolvency. The proposed

amendments could help some school districts to avoid some of these negative impacts because their preliminary apportionments would be protected from expiring.

Authority and Reference Citations

Authority: Sections 17070.35, 17075.15, 17078.64, and 17078.72(k) of the Education Code.

Reference: Sections 17076.10, 17077.40, 17077.42, 17077.45, 17078.25, 17078.52, 17078.53, 17078.58, and 17078.72 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 and filed with the Secretary of State on October 8, 1999.

Because the members of the PMIB were forced by fiduciary responsibility to take the December 17, 2008 action temporarily freezing infrastructure bond funds for public works projects (including school construction projects), the time period for school districts to convert their preliminary apportionments to final apportionments continued to tick. The SAB felt strongly that action on the Board's part was necessary to help alleviate school district project preliminary apportionments from expiring.

The proposed amendments to SFP regulation sections are summarized as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments add the definitions of "Inactive Preliminary Apportionment" (pertaining to the COS Program) and "Inactive Preliminary Charter School Apportionment (pertaining to the CSFP)." Each definition requires SAB approval, and applies to preliminary apportionments:

- approved prior to December 17, 2008, and
- for which a complete request to convert to a Final Apportionment has not been made, and
- for which the time limit to apply for Final Apportionment will expire on or after December 17, 2008.

Existing Regulation Section 1859.121 describes the time periods for SAB acceptance and approval of applications for Joint-Use project funding. The proposed amendment clarifies that apportionments are subject to the availability of financing provided by the PMIB for bond-funded projects.

Proposed adoption of Regulation Section 1859.148.2 authorizes the SAB to determine a State fiscal emergency or crisis exists for the purpose of finding Preliminary Apportionments under the COS Program to be "Inactive," as defined in Section 1859.2. This finding would suspend, as of December 17, 2008, the time period for an applicant to convert to a Final Apportionment. This period is four years from the date of the Preliminary Apportionment plus a possible one-year extension, as set forth in Education Code Section 17078.25(a) and

(b). Once the SAB finds that State bond funds are available for the project, the balance of this time period to convert to a Final Apportionment shall resume, as it existed on December 17, 2008. This regulation section will become inoperative on January 1, 2010.

Existing Regulation Section 1859.164.2 describes criteria for charter schools with Preliminary Charter School Apportionments under the CSFP to request the separate advance release of funds for either design costs or site acquisition for their project. The proposed amendment clarifies that apportionments are subject to the availability of financing provided by the PMIB for bond-funded projects.

Proposed adoption of Regulation Section 1859.166.2 authorizes the SAB to determine a State fiscal emergency or crisis exists for the purpose of finding Preliminary Charter School Apportionments under the CSFP to be "Inactive," as defined in Section 1859.2. This finding would suspend, as of December 17, 2008, the time period for an applicant to convert to a Final Charter School Apportionment. This period is four years from the date of the Preliminary Apportionment plus a possible one-year extension, as set forth in Education Code Section 17078.25 (a) and (b). Once the SAB finds that State bond funds are available for the project, the balance of this time period to convert to a Final Apportionment shall resume, as it existed on December 17, 2008. This regulation section will become inoperative on January 1, 2010.

Existing Regulation Section 1859.197 sets forth the criteria for fund releases under the Career Technical Education Facilities Program. The proposed amendment clarifies that for applicants requiring a loan for their entire matching share of project costs, the early release of ten percent of the grant amount to the applicant is subject to the availability of financing provided by the PMIB for bond-funded projects.

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.