

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, January 14, 2009

RELIEF MEASURES UNDERTAKEN BY STATE AGENCIES

PURPOSE OF REPORT

To provide a report of relief measures undertaken by State agencies.

BACKGROUND

Office of Public School Construction

The School Facility Financial Hardship (FH) Program provides 100 percent State funding when districts are unable to meet the matching share requirements of the School Facility Program (SFP). There have been two occasions in which Staff has provided FH districts the ability to seek bridge financing when bond funds were exhausted and there were unfunded approvals that were processed by this board. This was the case in 2001 and in 2006.

Division of the State Architect (DSA)

DSA administrative regulations in Part 1 of Title 24 prescribe that DSA plan approval is valid for one year. This means that construction must commence within one year from date of approval, unless the school district requests an extension of approval, which may be granted by DSA on a yearly basis. Per regulations, DSA can not extend the plan approval beyond four years from the date of initial approval. This provision is intended to limit re-approvals of projects to a reasonable time frame such that projects are not significantly out of compliance with the most current codes (which are updated every three years).

With the bond freeze, DSA believes that there are projects that will have the commencement of construction suspended, and that DSA will be unable to extend the approval due to the four year limitation. These project approvals would be voided, requiring the school district to resubmit the plans and specifications for review and approval.

California Department of Education (CDE)

Projects are required to have the CDE approval prior to submitting an application to the State Allocation Board (SAB) (Education Code Section 17070.50). The CDE plan approval letter is valid for two years and site approvals are valid for five years.

Department of Toxic Substances Control (DTSC)

DTSC does not have any codified mandates that say a school district has to implement actions with any time frame after approval of the Phase I, Preliminary Environmental Assessment (PEA), Removal Action Work plan (RAW), or Remedial Action Plan (RAP). The DTSC follows the ASTM (American Society for Testing and Materials) guidelines that indicate a Phase I is "good" for six months. If the school district did not acquire or begin work on the site within six months of DTSC Phase I approval, DTSC would usually ask the school district to send their consultant out to verify that site conditions had not changed (e.g. illegal disposal, etc.) and send DTSC a letter back confirming the findings.

(Continued on Page Two)

DESCRIPTION

Office of Public School Construction

The OPSC is proposing emergency regulatory relief in a separate item at this Board meeting. In addition, the OPSC is proposing the administrative policy as described in Attachment A that is consistent with the criteria set forth in 2002 and 2006 and will allow school districts to seek financing at their own risk when State funds are not available. Further, this change will allow school districts funding options to move forward on constructing their SFP projects during the State fiscal crisis.

Division of the State Architect

DSA is proposing emergency regulations to Section 4-330 of Part 1, Title 24 which would permit DSA to extend the project approval beyond four years, based on written request by the school district with evidence that the project suspension is pursuant to the bond freeze. Approval may be extended up to one year, not to exceed five years from the initial date of approval.

There have been no significant changes to Title 24 building standards that render this action inconsistent with the original intent of the four year limitation, and the 2010 Title 24 codes (which will be adopted by early 2010) are not expected to present substantial upgrades compared to the current (2007) codes.

California Department of Education

Projects already approved by the SAB will not need additional CDE action as long as the scope of the project remains consistent with that approved by the CDE. If the SAB is unable to approve projects for an extended period, applicants may need to seek a renewal of the CDE approval. CDE has stated that any affected renewals will be evaluated based on the laws and regulation in effect as of December 31, 2008.

The CDE is also working closely with school district business officials in assessing the PMIB actions in the context of other fiscal issues being faced by school districts. The CDE will report to the SAB any significant findings.

Department of Toxic Substances Control

Provided the site does not pose an immediate threat to public health or the environment, DTSC can hold onto PEAs and RAW/RAPs for a while prior to implementation. Depending on the delay time, DTSC may ask the school district to send their consultant out to verify site conditions have not changed in the interim between approval and site activities.

AUTHORITY

Office of Public School Construction

SFP Regulation Section 1859.81 (a) states, "...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 Office of Public School Construction 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..."

(Continued on Page Three)

(Rev. 1)
SAB 01-14-09
Page Three

Division of the State Architect

The regulation impacted is Section 4-330 of Part 1, Title 24.

California Department of Education

The proposed actions of the CDE are taken under existing statutory, regulatory and/or policy authority.

Department of Toxic Substances Control

The proposed actions of the DTSC are taken under existing statutory, regulatory and/or policy authority.

STAFF COMMENTS**Office of Public School Construction**

The proposed administrative policy provides criteria and structure in which FH districts can seek financing for their construction project while there are no State funds available.

Division of the State Architect

The proposed emergency regulation amendments provide school districts an extended period of time to use their approved plans and specifications during this State fiscal crisis.

California Department of Education

The proposed administrative policy amendments will provide flexibility for school districts to secure necessary CDE updates to approvals that may be impacted during this State fiscal crisis.

Department of Toxic Substances Control

The proposed administrative policy amendments provide criteria and structure in which DTSC can hold onto a school district's PEAs and RAW/RAs until site activities begin.

RECOMMENDATION

Accept this report.

BOARD ACTION

In considering this item, the State Allocation Board approved the letter, as Attachment A, including the amendment that the word "apportioning" in the first paragraph be given a definition in a footnote as follows:

"Apportioning" means a reservation of funds for the purpose of eligible School Facility Program projects approved by the board for an applicable school district (Education Code Section 17070.15).

In addition, the Board requested staff to notify all school districts, county offices of education, and post to the OPSC Website.

ATTACHMENT A



State of California • Arnold Schwarzenegger, Governor
State and Consumer Services Agency

DEPARTMENT OF GENERAL SERVICES

Interagency Support Division • Office of Public School Construction

1130 K Street, Suite 400 • Sacramento, CA 95814 • (916) 445-3160 • www.opsc.dgs.ca.gov

Date: January 15, 2009

To: All School Districts and County Superintendents of Schools

From: **Department of General Services**
Office of Public School Construction

Subject: **BRIDGE FINANCING/INTERFUND BORROWING POLICY FOR FINANCIAL
HARDSHIP DISTRICTS – At Your Own Risk**

Per the Budget Letter 08-33 sent by the Department of Finance; which details the action taken by the Pooled Money Investment Board (PMIB) at their December 17, 2008 meeting, the Office of Public School Construction (OPSC) is now restricted from releasing funds for projects that have been approved by the State Allocation Board (SAB) or from apportioning new School Facility Program (SFP) projects until the current budget situation is resolved.

The OPSC offers the following guidelines to districts that are currently or may become Financial Hardship (FH) districts and are considering bridge financing and/or interfund borrowing to proceed with their SFP projects.

Please keep in mind that all financing is done at a district's own risk. There is no guarantee of future State funding. If the bridge financing method meets the following criteria, the OPSC will not consider the proceeds as available for district contribution on their SFP projects:

- Districts must contact the OPSC in writing with their request to seek bridge financing prior to issuing any debt instrument. This request must specifically list the SFP projects (name and SFP number) that will be moved forward with the bridge financing instrument.
- The District's bridge financing instrument must either be a certificate of participation, lease-purchase agreement, or other lease financing arrangement entered into with a party other than the applicant district for the purpose of financing eligible SFP project costs authorized in Education Code.
- Interfund borrowing that conforms to Education Code requirements may also be utilized to allow a district to move forward with their SFP FH project. The district must provide Detail General Ledger (GL) transactions or similar detail report to the OPSC that clearly indicate the following:
 - The transfer out of the fund the district is borrowing from and,
 - The transfer into the fund the monies were deposited in.
 - Both sides of the transaction must be detailed out to the OPSC.

Please Note: There are restrictions against moving State bond funds deposited in Fund 35 (County School Facility Fund). This applies to all districts, Financial Hardship and Non-Financial Hardship. There is, however, flexibility in using other capital facility funds for temporary loans. Please contact your legal counsel for the use of such funds.

- The net bridge financing proceeds shall not exceed the sum of the State's SFP grant and the FH apportionment approval by the SAB. The net financing proceeds shall not exceed the amount of the bridge financing instrument less finance costs of issuance, debt service reserve fund, and capitalized interest costs related to the bridge financing.
- The bridge financing instrument must have been entered into after the district received a financial hardship approval for the phase of the project for which the proceeds are being applied.
- The district must have a school board resolution or board minutes which details the bridge financing instrument or interfund transfer that will be used to move the districts SFP project(s) forward.
- If an escrow account was created for the debt instrument, then a copy needs to be submitted to the OPSC. If no escrow statement is available, the district should identify the following:
 - Details of the debt instrument used,
 - Debt service payment(s) made to date, and
 - Detailed timeline as to when the deposit will be retiring the debt.
- Once State funding is released for the previously apportioned or unfunded SFP projects, the district must utilize the State SFP grant funding to retire the bridge financing debt and/or repay the interfund transfer within **60 calendar days** of receiving the State funding.
- The district must submit documentation showing the debt has been retired. This document would include the following:
 - The Detail General Ledger which documents the transaction; and
 - School Board resolution or School Board minutes authorizing the debt retirement.

Please Note: If satisfactory evidence is not submitted to the OPSC that the district retired its debt or repaid interfund transfers within the 60 calendar day timeframe, the OPSC will consider all proceeds from the bridge financing instrument as available contribution. This will result in the funds being available as contribution to the apportioned or unfunded SFP projects and the financial hardship apportionment would be decreased by the same amount. Additionally, a hold will be placed on any fund releases until evidence the State funding will retire the bridge financing debt is received. The board items for any SFP projects that have not been apportioned will be listing the requirement to retire the debt with the State funding received.

- After State funds are released the State will treat the debt as retired and the bridge financing related debt **will not** be included in the district's indebtedness calculation for purposes of FH qualification.
- Any bridge financing debt not retired after State funding is received will be considered as available contribution during the district's next FH review.

Districts are advised that the costs of issuance, debt service reserve fund, and capitalized interest costs related to the bridge financing are not eligible SFP project costs pursuant to Education Code Section 17074.25 and will not be eligible for reimbursement. However, these expenditures will be considered eligible in a FH review of a district's available funding.

Finally, the OPSC has no way to anticipate when funding would become available again to the school districts. The OPSC will not be able to release funding for the foreseeable future due to the depths of the State's financial crisis. School districts cannot rely on State bond funds to proceed with projects. School districts that enter into any bridge financing debt or interfund borrowing are doing so at their own risk and should carefully consider the current State fiscal situation.

For more information please contact Jason Hernandez at (916) 324-4687 or Steve Inman at (916) 445-3269.

ROB COOK
Executive Officer
Office of Public School Construction
SAB