

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

SCHOOL FACILITY PROGRAM
FINANCIAL CRISIS EMERGENCY REGULATIONS

PURPOSE OF REPORT

To present proposed emergency regulations in response to the State's financial crisis.

DESCRIPTION

On December 17, 2008, the Pooled Money Investment Board took action to temporarily halt disbursing cash from the State's Pooled Money Investment Account for capital projects, including the construction of public schools. This action places school districts that have received an apportionment, under Chapter 12.5 of the Education Code (EC) and approved by the State Allocation Board (SAB), in a difficult position to meet the 18-month time limit to qualify for a fund release as stipulated in EC Section 17076.10 and Regulation Section 1859.90.

AUTHORITY

EC 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."

STAFF COMMENTS

The Office of Public School Construction (OPSC) Staff has 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 fiscal crisis. In order to provide relief to school districts, Staff is proposing the attached emergency regulatory amendments to Regulation Section 1859.90 and adoption of Regulation Section 1859.96 to enable the Board to find that certain apportionments are inactive. This finding of inactivity would provide school districts temporary relief from the 18-month requirement. Once these emergency regulations are in effect, Staff will present an item at the next available SAB meeting to take action on the affected apportionments.

School districts are reminded that these apportionments are full and final as stipulated in EC Section 17070.63.

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RECOMMENDATIONS

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

BOARD ACTION

In considering this item, the State Allocation Board, on January 14, 2009, approved Staff's recommendations, including the amendments to the regulatory text as shown below:

Regulation Section 1859.2. "Inactive Apportionment" means a project, based on a finding by the SAB, that meets the following criteria: . . ." was amended to: "Inactive Apportionment" means **an apportionment made to** a project, based on a finding by the SAB, that meets **all of** the following criteria: . . ."

Regulation Section 1859.90. This clause was added to the end of the first sentence: ". . . subject to the availability of financing provided by the Pooled Money Investment Board for bond-funded projects."

This clause was added to the beginning of the third paragraph: "Subject to the availability of financing provided by the Pooled Money Investment Board for bond-funded projects, . . ."

Regulation Section 1859.96. In the first sentence, "Inactive Apportionment . . ." was amended to: "Inactive Apportionment, **as defined in Regulation Section 1859.2**, . . ."

In the first sentence and in the second sentence, ". . . State bond funds are available . . ." was amended to: ". . . State bond funds are available **for the project** . . ."

The last sentence states: "This regulation section shall become inoperative January 1, 2010." The following words were deleted: ". . . or when the Board finds that bond funds have become available, whichever is first."

The Board also requested that a representative from the State Treasurer's Office address the Board at the January 28, 2009 SAB meeting regarding the State's current financial condition and its ability to access the bond market.

Amend Regulation Section 1859.2

Section 1859.2. Definitions.

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"In Escrow, Non-Governmental Entities" means the deposit of signed instrument(s) and/or funds with instructions with a title company or escrow agent to carry out the provisions of an agreement or contract to acquire a specified school parcel or site for a determinable sum, and for a determinable date of acquisition which may be based on the district's receipt of funding from the State.

"Inactive Apportionment" means an apportionment made to a project, based on a finding by the SAB, that meets all of the following criteria: 1) received a SAB apportionment prior to December 17, 2008; 2) State bond funds have not been released for that apportionment; and, 3) the time limit under Education Code Section 17076.10(d) will expire on or after December 17, 2008.

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Note: Authority cited: Sections 17070.35 and 17078.64, Education Code; Section 15503, Government Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.75, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17073.25, 17074.10, 17074.30, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17078.72(k), 17079, 17079.10, 17280, 56026, and 101012(a)(8), Education Code; Section 53311, Government Code; and Section 1771.5, Labor Code.

Amend Regulation Section 1859.90

Section 1859.90. Fund Release Process.

With the exception of an apportionment made pursuant to Sections 1859.81.1(e) or 1859.81.2, or of an Inactive Apportionment subject to Section 1859.96, the OPSC will release State funds that ~~have been apportioned by the Board~~ has apportioned to the district after submittal, by the district, of the Form SAB 50-05, subject to the availability of financing provided by the Pooled Money Investment Board for bond-funded projects. With the exception of an apportionment made for a Type II Joint-Use Project, not part of a qualifying SFP Modernization project, pursuant to Article 12 of these Regulations, a district must submit the Form SAB 50-05, within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction Adjusted Grant, Modernization Adjusted Grant or Type I or II, part of a qualifying SFP Modernization project, Joint-Use Project apportionment shall be rescinded without further Board action, and the pupils housed in the project, if applicable, will be added back to the district's baseline eligibility. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

If the apportionment was made for a Type II Joint-Use Project, not part of a qualifying SFP Modernization project, pursuant to Article 12 of these Regulations, the district must submit Form SAB 50-05 within 18 months of the date the plans and specifications for the Joint-Use Project that have been approved by the DSA and the CDE are submitted to the OPSC or the apportionment shall be rescinded without further Board action.

Subject to the availability of financing provided by the Pooled Money Investment Board for bond-funded projects, ~~t~~The OPSC will release State funds that have been apportioned by the Board pursuant to Section 1859.81.1(e) to the district within 30 calendar days of the apportionment.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17072.12, 17072.30, 17074.15, 17076.10, 17077.40, 17077.42 and 17077.45, Education Code.

Adopt Regulation Section 1859.96

Section 1859.96. Inactive Apportionments Under a State of California Fiscal Crisis.

In the event of 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, that no longer meets the meaning of Apportionment as defined in Education Code Section 17070.15, and that the 18-month requirement set forth in Education Code Section 17076.10(d) is therefore suspended as of December 17, 2008 and until such time as the Board finds that State bond funds are available for the project when the balance of the 18-month time period which existed on December 17, 2008 shall resume. Once the Board finds that State bond funds are available for the project, the 18-month requirement set forth in Education Code Section 17076.10(d) shall resume but in no case shall that period of time exceed a total of 18 months while the subject project has an Apportionment. Each project will resume where its originating period of time was suspended, as of December 17, 2008. An Apportionment for projects impacted by this Section is full and final, pursuant to Education Code Section 17070.63.

This regulation section shall become inoperative January 1, 2010.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35, 17072.30, 17072.32, 17074.16, and 17076.10, Education Code.