

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, January 28, 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 public schools construction. This action places school districts that have received a preliminary 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 required four year time limit for a preliminary apportionment to convert to a final apportionment. In addition, other time limits associated with the submittal of Division of the State Architect (DSA) and the California Department of Education (CDE) approved plans are impacted by the State's financial crisis.

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 and new sections for adoption (See Attachment A).

Amend Regulation Section 1859.2

Definitions have been added for "Inactive Preliminary Apportionment" and "Inactive Preliminary Charter School Apportionment" to allow for districts who are participating in the Critically Overcrowded Schools (COS) and Charter School Facilities programs to maintain their current project timeline status. Without these regulations, districts may not be able to meet the statutory timelines required for conversion to a Final Apportionment or Final Charter School Apportionment.

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STAFF COMMENTS (cont.)

Amend Regulation Section 1859.121

Current regulations state that Joint-Use projects must be approved at the July session of each year. The proposed addition would provide that the Board would still be presented, but would only approve the Joint-Use applications should the authority to apportion funds exist at that time.

Amend Regulation Section 1859.129

Current regulations state that Type II Joint-Use projects that are not part of a qualifying SFP Modernization project must submit the DSA and CDE approved plans and specifications to the OPSC within one year of the apportionment. Proposed regulations would allow the Board, once a determination that the project qualifies as an Inactive Apportionment has been made, to suspend the twelve month requirement to submit the DSA and CDE's approved plans and specifications for a period not to exceed 12 months.

Adopt Regulation Section 1859.148.2

This section creates the method in which a district's COS project timeline would be extended in response to this fiscal crisis. Districts would be able to continue their projects once the crisis has passed with all the remaining time they had on December 17, 2008 when the crisis began. For example, districts would not be required to proceed with their projects during a time when the Board could not provide the earlier stages of funding, such as a separate site apportionment for environmental hardship.

Amend Regulation Section 1859.164.2

Current regulations provide that once a district submits the *Fund Release Authorization* (Form SAB 50-05), the OPSC will release the funds. The proposed revised regulations would provide a clause defining this release as subject to availability of those funds.

Adopt Regulation Section 1859.166.2

This section creates the method in which a district's charter school project timeline would be extended in response to this fiscal crisis. Districts would be able to continue their projects once the crisis has passed with all the remaining time they had on December 17, 2008 when the crisis began. For instance, districts would not be forced to proceed with their projects during a time when the Board could not provide the earlier stages of funding, such as separate advance release of funds for design or site acquisition.

Amend Regulation Section 1859.197

Current regulations provide that the OPSC will release funds for approved Career Technical Educational Facilities projects that include loans for the district's matching share within 30 days of the apportionment. The proposed revised regulations provide a clause defining this release as subject to availability of those funds. In addition, current regulations provide a 12-month period to applicants to submit the necessary approvals from the CDE and DSA for projects apportioned as a reservation of funds. The proposed regulations provide for an extension not to exceed 12 months to this time limit.

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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 approved the staff's recommendations. In addition, the proposed language relating to the SFP Joint-Use Program [Regulation Section 1859.129(b)(1)(A)] and relating to the Career Technical Education Facilities Program [Regulation Section 1859.197(e)] was deferred until the February 2009 SAB meeting.

ATTACHMENT A
PROPOSED AMENDMENTS TO THE
SCHOOL FACILITY PROGRAM REGULATIONS
State Allocation Board Meeting, January 28, 2009

Amend Regulation Section 1859.2. as follows:

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 Preliminary Apportionment" means an apportionment for a project, based on a finding by the SAB, that meets all of the following criteria: 1) received a Preliminary Apportionment prior to December 17, 2008; 2) A complete request to convert a Preliminary Apportionment to a Final Apportionment has not been made; 3) the time limit under Education Code Section 17078.25(a) or (b) will expire on or after December 17, 2008.

"Inactive Preliminary Charter School Apportionment" means an apportionment for a project, based on a finding by the SAB, that meets all of the following criteria: 1) received a Preliminary Charter School Apportionment prior to December 17, 2008; 2) A complete request to convert a Preliminary Charter School Apportionment to a Final Charter School Apportionment has not been made; 3) the time limit under Education Code Sections 17078.25(a) or (b) and 17078.52(c)(3) 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 1859.121. as follows:

Section 1859.121. Joint-Use Project Application Submittals and Apportionments.

The Board shall accept Approved Applications for Joint-Use Funding on a yearly basis as follows:

- (a) For any funding made available for this purpose by May 31, 2003, applications will be accepted from November 5, 2002 through May 31, 2003. The Board will apportion the funding made available by May 31, 2003 at the July 2003 Board meeting.
- (b) For any additional funding that is made available for this purpose from June 1, 2003 through May 31, 2008, the Board will accept applications from June 1 of the prior calendar year through May 31 of the current calendar year for any funding made available for this purpose by May 31 of each year. The Board will apportion the funding made available by May 31 of each year at the following July Board meeting based on the SFP regulations in effect at that time.
- (c) For any funding that is made available for this purpose the Board will accept applications for the 2008/2009 funding cycle from June 1, 2008 through March 1, 2009. For the 2009/2010 funding cycle and for all future funding cycles, the Board will accept applications from March 2 of the prior calendar year through March 1 of the current calendar year. Subject to the availability of financing provided by the Pooled Money Investment Board for bond-funded projects, The Board will apportion the funding made available based on the SFP regulations in effect at that time.

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

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

Amend Regulation Section 1859.129. as follows:

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:
 - (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 District's ability to receive plans and specifications approval from the DSA and/or CDE (plans only) has been impacted, and therefore is no longer 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 twelve month period as of December 17, 2008 for a period not to exceed 12 months. Once the suspension period has concluded, each project will resume where its originating period of time was suspended, as of December 17, 2008. 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.
 - (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.

Adopt Regulation Section 1859.148.2. as follows:

Section 1859.148.2. Inactive Preliminary Apportionments Under a State of California Fiscal Crisis

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 Preliminary Apportionment, as defined in Regulation Section 1859.2, that no longer meets the meaning of Preliminary Apportionment as defined in Education Code Section 17078.10(c), and that the four-year period with a possible one time one-year extension requirement set forth in Education Code Section 17078.25(a) and (b) 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, the balance of four-year period with a possible one time one-year extension period which existed on December 17, 2008 shall resume. Once the Board finds that State bond funds are available for the project, the four-year period with a possible one time one-year extension requirement set forth in Education Code Section 17078.25(a) and (b) shall resume but in no case shall that period of time exceed a total of four-year period with a possible one time one-year extension while the subject project has a Preliminary Apportionment. Each project will resume where its originating period of time was suspended, as of December 17, 2008.

This regulation section shall become inoperative January 1, 2010.

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

Reference: Section 17078.25, Education Code.

Amend Regulation Section 1859.164.2. as follows:

Section 1859.164.2. Preliminary Charter School Apportionment Fund Release.

A Charter School receiving a Preliminary Charter School Apportionment from the Board after July 2, 2003 may request an advance release of funds for either of the following:

- (a) A separate advance release of funds for design equal to 20 percent of the amount determined in Section 1859.163.1(a)(1) through (9) or Section 1859.163.5(a) through (g).
- (b) A separate advance release of funds for site acquisition once the requirements in Section 1859.81.1(a)(2) and (3) are met for an amount not to exceed the Preliminary Charter School Apportionment for site acquisition. The Board shall release to the Charter School an amount up to the Preliminary Charter School Apportionment determined in Section 1859.163.1(b).

Qualified Charter Schools may request a separate advance release of funds for the design and for the site acquisition for the same project. A Charter School seeking an advance release of funds pursuant to (a) and/or (b) must have been deemed and maintained financial soundness status from the Authority. Subject to the availability of financing provided by the Pooled Money Investment Board for bond-funded projects, the OPSC will release State funds included in a Preliminary Charter School Apportionment pursuant to (a) or (b) to the Charter School after submittal of the Form SAB 50-05. The OPSC shall not release funds in excess of the Preliminary Charter School Apportionment. State funds released from a Preliminary Charter School Apportionment pursuant to this Section shall be subject to the provisions in Section 1859.166. Once the Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment pursuant to Section 1859.167, the Charter School may request a release of the remaining funds as prescribed in Section 1859.90. Prior to the release of any funds, the Charter School Agreements must be executed.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.53 and 17078.58, Education Code.

Adopt Regulation Section 1859.166.2. as follows:

Section 1859.166.2. Inactive Preliminary Charter School Apportionments Under a State of California Fiscal Crisis

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 Preliminary Charter School Apportionment, as defined in Regulation Section 1859.2, that no longer meets the meaning of Preliminary Charter School Apportionment as defined in Education Code Section 17078.52(c)(3), and that the four-year period with a possible one time one-year extension requirement set forth in Education Code Section 17078.25(a) and (b) 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, the balance of four-year period with a possible one time one-year extension period which existed on December 17, 2008 shall resume. Once the Board finds that State bond funds are available for the project, the four-year period with a possible one time one-year extension requirement set forth in Education Code Section 17078.25(a) and (b) shall resume but in no case shall that period of time exceed a total of four-year period with a possible one time one-year extension while the subject project has a Preliminary Charter School Apportionment. Each project will resume where its originating period of time was suspended, as of December 17, 2008.

This regulation section shall become inoperative January 1, 2010.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.52 and 17078.53, Education Code.

Amend Regulation Section 1859.197. as follows:

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.
- (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.