

REPORT OF THE EXECUTIVE OFFICER  
State Allocation Board Meeting, February 25, 2009

CAREER TECHNICAL EDUCATIONAL FACILITIES AND  
JOINT-USE SCHOOL FACILITY PROGRAM FINANCIAL  
CRISIS EMERGENCY REGULATIONS

PURPOSE OF REPORT

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

DESCRIPTION

The current financial crisis has impacted some school districts' ability to proceed with their current school facility related projects. Consequently, some districts will be unable to submit approved construction plans for their School Facility Program (SFP) Joint-Use and Career Technical Education Facilities Program (CTEFP) projects to the Office of Public School Construction (OPSC) within the required deadlines. Absent approval of these proposed emergency regulations, the districts' failure to meet these submittal timelines would result in the rescission of the districts' SFP Joint-Use and CTEFP apportionments without further Board action.

AUTHORITY

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."

STAFF COMMENTS

The 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 1859.129 – SFP Joint-Use

Current regulations state that Type II Joint-Use projects that are not part of a qualifying SFP Modernization project must submit the Division of the State Architect (DSA) and California Department of Education (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 12-month requirement to submit the DSA and CDE's approved plans and specifications for a period not to exceed 12 months.

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STAFF COMMENTS (cont.)

Amend Regulation Section 1859.197 - CTEFP

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.

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.

ATTACHMENT A  
PROPOSED AMENDMENTS TO THE  
SCHOOL FACILITY PROGRAM REGULATIONS  
State Allocation Board Meeting, February 25, 2009

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 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 only if the district has *not* submitted all required plans and specifications to the DSA 30 days prior to the conclusion of 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.
- (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.

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 period prescribed in (b)(1) and (c)(2) above and Section 1859.193(d) only if the district has *not* submitted all required plans and specifications to the DSA 30 days prior to the conclusion of these time periods. 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.

*Note: The proposed amendments above in Section 1859.197(c)(1) were adopted by the State Allocation Board at its January 28, 2009 meeting.*