

# State Allocation Board Agenda



Rob Cook, Executive Officer  
Office of Public School Construction  
1130 K Street, Suite 400  
Sacramento, CA 95814

Public Meeting  
Wednesday, January 14, 2009  
State Capitol Building  
Room 112\*  
1:30 p.m.\*

General Information  
(916) 445-3160  
ATSS 485-3160

For further information please contact your Project Manager.

\*Meeting location and time subject to change.

A copy of the 10-Day Notice can be found on our web site at: <http://www.dgs.ca.gov/opsc>

January 14, 2009  
**Agenda**

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NEXT MONTHLY STATE ALLOCATION BOARD MEETING – JANUARY 28, 2009

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.

## 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.

....

"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.

....

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, 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.

THE UNFUNDED APPROVALS AGENDA  
ITEM HAS BEEN WITHDRAWN

SPECIALS

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)

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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..."

AUTHORITY (cont.)

**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.

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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](http://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.

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- 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.

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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

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