REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, December 15, 2010

FISCAL CRISIS REGULATIONS

PURPOSE OF REPORT

To consider emergency amendments to School Facility Program (SFP) regulation sections relating to the State of California's current fiscal crisis as these regulation sections will become inoperative January 1, 2011.

DESCRIPTION

Due to the State's fiscal crisis in early 2009, the State Allocation Board (Board) adopted emergency regulations that would allow the Board to make findings that certain apportionments are "inactive" to relieve school districts from meeting various statutory requirements. The emergency regulations pertained to the New Construction/Modernization Program, the Critically Overcrowded Schools (COS) and Charter School Facilities Programs (CSFP), and the Career Technical Education Facilities and Joint-Use Programs.

At the March 2009 Board meeting, the Board made a finding that a fiscal crisis exists and at the July 2009 Board meeting, the Board declared that 441 projects representing $743.8 million were "Inactive Apportionments" as of December 17, 2008.

At the June 2009 Board meeting, the Board declared that COS projects representing $1.26 billion were "Inactive Preliminary Apportionments" and 41 CSFP projects representing $584.2 million were "Inactive Preliminary Charter School Apportionments" as of December 17, 2008.

At the September 2009 Board meeting, the Board extended the sunset dates of regulation sections pertaining to Inactive Apportionments, Inactive Preliminary Apportionments and Inactive Preliminary Charter School Apportionments. These regulation sections will become inoperative January 1, 2011 and this date applies to the Board's authority to make such findings.

Since the Pooled Money Investment Board freeze, the Board has made unfunded approvals for all new applications being presented. Unfunded approvals do not obligate school districts to meet deadlines that are required when apportionments are made.

At the May 2010 Board meeting, the Board adopted regulations to waive the unfunded financial hardship re-review requirement for projects added to the unfunded list due to the State's inability to provide AB 55 loans. This unfunded list was created in March 2009 and references any projects since added to that list. These regulations will sunset January 1, 2011, at which time, the Board will have the option to declare that the fiscal crisis has ended or extend this and all fiscal crisis SFP regulations for another year.

AUTHORITY

- Education 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 administrative of this chapter. . . .
  - (2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary.

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AUTHORITY (cont.)

- Government Code Section 15503 states "Whenever the board is required to make allocation 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."

- SFP Regulation Section 1859.2 defines an Inactive Apportionment as "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 17075.10(d) will expire on or after December 17, 2008."

- SFP Regulation Section 1859.2 defines an Inactive Preliminary Charter School Apportionment as "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 Section 17078.25(a) or (b) and 17078.52(c)(3) will expire on or after December 17, 2008."

- SFP Regulation Section 1859.96 allows the SAB to make a finding that certain apportionments are "inactive" to relieve school districts from meeting the 18-month time limit for the release of their SAB-approved apportionments as stipulated in Education Code Section 17076.10.

- SFP Regulation Sections 1859.148.2 and 1859.166.2 allow the SAB to make a finding that preliminary apportionments under the COS and the Charter School Facilities Programs are "inactive." This action temporarily suspends the time period for conversion to a Final Apportionment under these two programs. The regular time period is four years from the date of the preliminary apportionment plus an allowable one-year extension upon the Board's approval.

- SFP Regulation Section 1859.81(f) states "If a district has been included on the "Unfunded List (Lack of AB 55 Loans)" for more than 180 calendar days as a result of the State of California's inability to provide interim financing from the Pooled Money Investment Account (AB 55 loans), the Board may suspend the unfunded review requirement as defined in Regulation Section 1859.81(e). Projects added to any other unfunded list shall be subject to the review detailed in Regulation Section 1859.81(e). Regulation Section 1859.81(f) shall become inoperative January 1, 2011, at which time the Board will have the option to extend the SFP emergency regulations (Regulation Sections 1859.96, 1859.148.2, and 1859.166.2) for another year or declare the State's fiscal crisis is over."

STAFF COMMENTS

It is difficult to determine whether the fiscal crisis is indeed over, but the system in which the SFP is operating has certainly changed. While the SFP has received bond funds, and the Board has been able to make apportionments for some projects, there are still a large number of projects on the Unfunded List. There is also a concern that it may not be possible to return to the old method of making apportionments using AB 55 loans to ensure the continuous availability of cash. The Board has discussed and requested that Staff return in the future to discuss a new cash management method that can be used in the future. This new method, along

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STAFF COMMENTS (cont.)

with other actions the Board takes regarding the allocation of cash, may make some of the emergency regulations discussed as a part of this item unnecessary in the future.

There are four regulation sections that are scheduled to sunset on January 1, 2011. Staff has evaluated the need for extending each regulation section and provided below is an analysis of the status of the impacted projects as follows.

1. Status of Inactive Apportionments (SFP Regulation Section 1859.96)

This section was initially put in place to freeze the 18-month time limit on fund release for those projects that received apportionments prior to December 17, 2008. As a result of recent bond sale proceeds, all Inactive Apportionments have been reactivated. As the Board is now only making apportionments when cash is available, SFP Regulation section 1859.96 can be allowed to sunset with no negative effects.

2. Status of COS Inactive Preliminary Apportionments (SFP Regulation Section 1859.148.2)

The COS program allowed for school districts to receive Preliminary Apportionments for projects in advance of meeting requirements for a Final Apportionment. Districts that received Preliminary Apportionments are allowed in statute four years to submit full funding applications with a possible one-year extension.

At the October 2004 meeting, Proposition 55 COS Preliminary Apportionments were made for 496 projects for a total of $1.8 Billion. As a result of the fiscal crisis, the Board took action on 344 projects and declared them Inactive Preliminary Apportionments as of December 17, 2008. The projects were declared inactive to protect the statutory time limits on the preliminary apportionments. Since that time, of the 344 projects declared inactive, 311 have met the requirements to convert to a Final Apportionment and have been placed on the Unfunded List, leaving 33 COS Inactive Preliminary Apportionments. If reactivated, these COS Preliminary Apportionments would have approximately ten months to convert or rescind their reservation of bond authority.

Considerations:

Local Match Expected
It appears that most of the COS Inactive Preliminary Apportionments have been converted to full funding applications without state funds, due to the fact that the participating districts have a local match for the earlier stages of the project. None of the districts representing the 33 remaining Inactive Preliminary Apportionments had financial hardship status for their projects, and therefore are not waiting for State funds to move the project through the design and site acquisition stages of project development. These projects proceed in a similar manner as typical new construction projects. Generally speaking, re-activating these projects does not seem to cause districts any additional harm in regards to the statutory timelines unless they qualify for an Environmental Hardship fund release (discussed below).

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STAFF COMMENTS (cont.)

Environmental Hardship Component
New construction projects can qualify for a Separate Site Apportionment for Environmental Hardship when the best site available requires extensive clean up. The COS projects are provided similar consideration for these purposes with an advance fund release from the Preliminary Apportionment. Not all COS projects require this advance fund release, but of the 33 Inactive Preliminary Apportionments remaining, 11 have requested it and cash has not yet been made available for these purposes. The Board is considering the topic of Environmental Hardship fund releases for COS Preliminary Apportionments as part of this agenda; however, if cash is not made available for these purposes, districts may claim that lack of access to this cash has interfered with their ability to meet the statutory timelines on their Preliminary Apportionments.

3. Status of Inactive Preliminary Charter School Apportionments (SFP Regulation Section 1859.166.2)

The CSFP allowed for charter schools and school districts to receive Preliminary Apportionments for charter school projects in advance of meeting requirements for a Final Apportionment. Applicants that received Preliminary Apportionments are allowed in statute four years to submit full funding applications with a possible one year extension. The CSFP under Propositions 55 and 1D allows for the advance release of funds for design costs and site acquisition, regardless of a charter school or school district's financial hardship status.

At the February 2005 meeting, Proposition 55 Preliminary Charter School Apportionments were made for 28 projects for a total of $276.8 Million. At the May 2008 meeting, Proposition 1D Preliminary Charter School Apportionments were made for 29 projects for a total of $462.6 million. As a result of the fiscal crisis, the Board took action on 41 projects representing $584.2 million that had not yet converted to Final Apportionment status and declared them Inactive Preliminary Charter School Apportionments as of December 17, 2008. Since that point, only four additional projects have met the requirements to convert to a Final Apportionment.

If re-activated, the Proposition 55 Preliminary Charter School Apportionments would have approximately 14 months to convert or rescind their reservation of bond authority and Proposition 1D projects would have approximately three years and five months to convert (with a possible one-year extension) or rescind their reservation of bond authority.

Considerations:

Local Match Typically Not Available
Most of the Preliminary Charter School Apportionments granted also reserved funds for the local match to be paid through the use of a loan from the State. It appears that Charter Schools have been mostly unable to convert Inactive Preliminary Charter School Apportionments to full funding applications without State funds, due to the fact that many participating Charter Schools do not have funds available to start their projects. Very few applications have been able to submit an application for Final Apportionment at this point.

Advance Fund Releases for Design and Site Acquisition Costs
Charter School projects often rely on the early site and design fund release components of the Preliminary Charter School Apportionment in order to start their projects. The Board is considering the topic of advance fund releases for design and site costs for Preliminary Charter School Apportionments as part of this agenda; however, if cash is not made available for these purposes, charter schools and districts may claim that lack of access to this cash has interfered with their ability to meet the statutory timelines on their Preliminary Apportionments.

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STAFF COMMENTS (cont.)

4. Financial Hardship Re-Reviews [SFP Regulation Section 1859.81(f)]

At the May 2010 meeting, the Board adopted Regulations to waive the unfunded financial hardship re-review requirement for projects added to the unfunded list due to the State's inability to provide AB 55 loans. The regulation becomes inoperative on January 1, 2011 at which point the Board has the option to either declare the fiscal crisis over or extend the regulation for another year.

Although several unfunded approvals have been converted to apportionments with the funds made available through the first priorities in funding round, after the November 2010 meeting, there are 128 projects with financial hardship status remaining on the unfunded list.

Considerations:

Circumstances Have Not Changed But is the State Still in a Fiscal Crisis?
Until the Board adopts a different cash management system, projects with financial hardship status will still remain on the Unfunded List until bond sale proceeds become available, which may trigger a re-review if this regulation is allowed to sunset. Allowing this to occur may not be in keeping with the Board's original intent in approving this regulation change and may cause school districts to have to go through additional reviews before accessing an apportionment. However, if the Board adopts the position that the fiscal "crisis" is in fact over and that methods of making apportionments have now changed, it may be appropriate to allow this regulation to sunset and address this issue as part of the creation of a new cash management system.

OPTIONS

Option 1(A): Extend, for one year, the Inactive Preliminary Charter School Apportionment, the Inactive Preliminary Apportionments Regulations, and the Financial Hardship Re-Review Regulations until a future discussion on a cash management system takes place. Allow the Inactive Apportionments Regulations to Sunset.

Amend SFP Regulation Sections 1859.148.2, 1859.166.2 and 1859.81(f) by extending the date one year from January 1, 2011 to January 1, 2012 and authorize the Executive Officer to file the regulations on an emergency basis with the Office of Administrative Law.

Option 1(B): Extend, for six months, the Inactive Preliminary Charter School Apportionment, the Inactive Preliminary Apportionments Regulations, and the Financial Hardship Re-Review Regulations until a future discussion on a cash management system takes place. Allow the Inactive Apportionments Regulations to Sunset.

Amend SFP Regulation Sections 1859.148.2, 1859.166.2 and 1859.81(f) by extending the date six months from January 1, 2011 to July 1, 2011 and authorize the Executive Officer to file the regulations on an emergency basis with the Office of Administrative Law.

Pros:

- Allows districts and charter schools additional time to plan for any changes resulting from a new cash management system.
- Minimizes impact to districts and charter schools if cash is not made available for advance fund releases for design and site related needs and statutory timelines are not met (no risk of rescission).

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OPTIONS (cont.)

- Allows the Board additional time to find a more permanent solution to these situations as part of the larger cash management system discussion.

Cons:

- Extending the COS Inactive Preliminary Apportionment Regulations may not be necessary and delays the closeout of the program and the potential return of bond authority.
- Extending the Preliminary Charter School Apportionment Regulations also delays progress in the program.
- Extending the Financial Hardship Re-Review regulations may allow districts whose six month time period has expired and have additional contribution to their projects to receive financial hardship assistance that was not necessary for the project.

Option 2: Allow the Inactive Apportionment regulations to sunset and extend some, but not all of the remaining three regulation sections for one year. Authorize the Executive Officer to file the regulations on an emergency basis with the Office of Administrative Law for those regulation sections to be extended.

Listed below are specific pros and cons for extending or allowing a sunset on the Inactive Preliminary Charter School Apportionment regulations, the Inactive Preliminary Apportionments regulations (COS), and the Financial Hardship Re-Review regulations. For ease of making a motion, the Board may choose to adopt Option 2 and specify which of the remaining three regulation sections it would like to extend.

Inactive Preliminary Apportionments (COS) – SFP Regulation Section 1859.148.2

Pros of Extending:

- Allows COS projects more time to wait for funding to move their projects to a Final Apportionment application submittal with no rescission penalty until the projects are re-activated and the timeline expires.
- Still enables the Board to restart the statutory time clock requirement once State bond funds become available for either Environmental Hardship requests or to cover the full amount of the preliminary apportionment.
- Keeps with the Board's original desire to hold districts harmless for the State's fiscal crisis.
- Limits potential liability for re-activating projects when environmental hardship fund release cash is not available.
- Allows the Board more time to make cash available for environmental hardship fund releases and then re-activate the projects.

Cons of Extending:

- It does not appear that COS projects are experiencing delays in converting to a Final Apportionment application solely due to the State's fiscal crisis.
- Keeps bond authority for these projects reserved for additional time.
- Does not provide motivation to move projects forward

*Note – If these regulations are not extended, the Board must declare a date upon which these projects are considered re-activated (Staff suggests a date of either December 15, 2010 or December 31, 2010).

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OPTIONS (cont.)

Inactive Preliminary Charter School Apportionments – SFP Regulation Section 1859.166.2

Pros of Extending

- Allows Charter School projects more time to wait for funding to start their projects with no rescission penalty until the projects are re-activated and the timeline expires.
- Still enables the Board to restart the statutory time clock requirement once State bond funds become available for advance fund release requests or for the entire preliminary apportionment amount.
- Keeps with the Board's original desire to hold districts and charter schools harmless for the State's fiscal crisis.
- Limits potential liability for re-activating projects when advance fund release cash is not available.
- Allows the Board more time to make cash available for advance fund releases and then re-activate the projects.

Cons of Extending

- Keeps bond authority for these projects reserved for additional time.
- Does not provide motivation to move projects forward.

*Note – If these regulations are not extended, the Board must declare a date upon which these projects are considered re-activated (Staff suggests a date of either December 15, 2010 or December 31, 2010).

Financial Hardship Re-Reviews – SFP Regulation Section 1859.81(f)

Pros of Extending

- Keeps with the Board's original desire to hold districts harmless for the State's fiscal crisis.

Cons of Extending

- State bond funds may be provided for financial hardship assistance when a re-review would have revealed that a district had other funds available to contribute to the project.

Option 3: Re-activate all preliminary apportionments and then allow all regulation sections related to the fiscal crisis to sunset.

If the Board takes no action, SFP Regulation Sections 1859.81(f), 1859.96, 1859.148.2, and 1859.166.2 become inoperative January 1, 2011. For pros and cons please reference the individual regulation sections above.

RECOMMENDATION

Seek Board direction.

BOARD ACTION

In considering this Item, the Board approved Option #1B extending the date for six months from January 1, 2011 until July 1, 2011 for Regulation Sections 1859.81(f), 1859.148.2, and 1859.166.2. In addition, the Board authorized the Executive Officer to file the regulations on an emergency basis with the Office of Administrative Law.

Attachment A

(Extend the Inactive Preliminary Charter School Apportionment, the Inactive Preliminary Apportionments Regulations, and the Financial Hardship Re-Review Regulations for one year)

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, 20~~11~~12.

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

Reference: Section 17078.25, Education Code.

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, 20~~11~~12.

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

Reference: Sections 17078.52 and 17078.53, Education Code.

Section 1859.81. Financial Hardship.

(f) If the district submits Form SAB 50-04 within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on the "Unfunded List (Lack of AB 55 Loans)" for more than 180 calendar days as a result of the State of California's inability to provide interim financing from the Pooled Money Investment Account (AB 55 loans), the Board may suspend the unfunded review requirement as defined in Regulation Section 1859.81(e). Projects added to any other unfunded list shall be subject to the review detailed in Regulation Section 1859.81(e). Regulation Section 1859.81(f) shall become inoperative January 1, 20~~11~~12, at which time the Board will have the option to extend the SFP emergency regulations (Regulation Sections 1859.96, 1859.148.2, and 1859.166.2) for another year or declare the State's fiscal crisis is over.

Note: Authority cited: Sections 17070.35, 17075.15, 17078.72 and 17592.73, Education Code.

Reference: Sections 17071.75, 17075.10, 17075.15, and 17079.20, Education Code.

Attachment B

(Extend the Inactive Preliminary Charter School Apportionment, the Inactive Preliminary Apportionments Regulations, and the Financial Hardship Re-Review Regulations for six months)

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~~ July 1, 2011.

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

Reference: Section 17078.25, Education Code.

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~~ July 1, 2011.

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

Reference: Sections 17078.52 and 17078.53, Education Code.

Section 1859.81. Financial Hardship.

(f) If the district submits Form SAB 50-04 within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on the "Unfunded List (Lack of AB 55 Loans)" for more than 180 calendar days as a result of the State of California's inability to provide interim financing from the Pooled Money Investment Account (AB 55 loans), the Board may suspend the unfunded review requirement as defined in Regulation Section 1859.81(e). Projects added to any other unfunded list shall be subject to the review detailed in Regulation Section 1859.81(e). Regulation Section 1859.81(f) shall become inoperative ~~January~~ July 1, 2011, at which time the Board will have the option to extend the SFP emergency regulations (Regulation Sections 1859.96, 1859.148.2, and 1859.166.2) for another year or declare the State's fiscal crisis is over.

Note: Authority cited: Sections 17070.35, 17075.15, 17078.72 and 17592.73, Education Code.

Reference: Sections 17071.75, 17075.10, 17075.15, and 17079.20, Education Code.