

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Emergency Meeting
March 25, 2020

**EMERGENCY POWERS OF THE EXECUTIVE OFFICER DURING THE
COVID-19 STATE OF EMERGENCY**

PURPOSE

To present the State Allocation Board (Board) with recommendations to approve an emergency regulation to allow the Executive Officer of the State Allocation Board and the Office of Public School Construction (OPSC), with notification to the Board and only during the time period of the emergency proclaimed by the Governor of the State of California on March 4, 2020, to temporarily extend any deadline set forth in regulations adopted by the Board or in other rules and procedures set by the Board and/or the OPSC for all programs administered by the Board, for a period not to exceed 180 days, in response to the Novel Coronavirus 2019 (COVID-19) impact on school districts.

DESCRIPTION

The recent crisis of COVID-19 adds challenges for school districts that desire to submit program funding applications and meet funding requirements associated with approaching deadlines for school construction projects funded by the Board.

In many other aspects, in keeping with the emergency proclamation and subsequent Executive Orders, the State of California is extending deadlines and taking actions to provide relief for California residents for a period of at least 90 days. School districts in the State have been shut down, residents have been directed to stay home as much as possible, and this may continue for the remainder of the school year.

In order to provide immediate relief to school districts and allow district staff to focus on other pressing needs such as implementing distance learning and adjusting to their own employees that may now be working off site, Staff is presenting the Board with a regulation that will allow the Executive Officer of the Board and OPSC to temporarily extend any deadline set by the Board and/or OPSC. In the event that the Executive Officer acts to do so, the Board and stakeholders will be provided with notification. This regulation shall only be valid during the time frame of the emergency declared by the Governor on March 4, 2020 and is repealed after 180 days, unless subsequently acted upon by the Board.

AUTHORITY

Executive Order N-25-20, issued on March 4, 2020, proclaims a State of Emergency exists in California as a result of the threat of COVID-19.

Education Code (EC) Section 17070.35 states in part:

(a) 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....

Education Code Section 17375(g) states that “The State Allocation Board may adopt regulations to implement this section. Any regulations adopted pursuant to this section may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Title 2 of the Government Code). The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

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 ANALYSIS/STATEMENTS

Actions necessary to respond to the threat of COVID-19 have had, and will continue to have a major impact on the daily operations of all people in California. One such impact is the closure of all school districts throughout the state. Not only do these closures impact the students and teachers as they prepare to transition to online learning, but it impacts all levels of the school district as district staff also work to fulfill the other duties deemed essential, such as food service and childcare.

OPSC is concerned that with so many competing priorities, not all school districts will be in a position to respond to deadlines and requirements of the School Facility Program, the Full-Day Kindergarten Facilities Grant Program, or any other program under the authority of the Board.

STAFF ANALYSIS/STATEMENTS (cont.)

The extent to which school districts will be able to continue with school construction funding requirements at the current point in time is currently unknown. For any internal response deadlines to OPSC requests for information and documentation, OPSC has already notified school districts that extensions will be granted. However, not all timelines can be extended by OPSC absent a regulation change approved by the Board.

Given the unprecedented circumstances, Staff believes it is reasonable to provide relief through the temporary extension of deadlines associated with regulations and other processes that may be difficult for school districts to comply with at this time. For example, OPSC has identified the following areas that need immediate attention (this list is not intended to be exhaustive):

- The opening of the next Full-Day Kindergarten Facilities Grant Program filing round, currently scheduled for April 1, 2020.
- The deadline for Career Technical Education Facilities Program application submittals currently scheduled for April 6, 2020.
- The timelines associated with the Full-Day Kindergarten Facilities Grant Program Apportionments previously awarded, including the deadline to submit project approvals by April 23, 2020 for those projects awarded at the October 23, 2019 meeting that did not receive an advance release of funds, and the deadline to submit project approvals by May 22, 2020 for those projects that received an advance release of funds on May 22, 2019.
- Deadlines to demonstrate compliance with substantial progress of construction projects
- In progress and Final Expenditure Reporting deadlines
- Certain accounts receivable deadlines
- Priority Funding Certification and Fund Release deadlines

Depending on the length of the State of Emergency, it may be necessary to extend deadlines for other requirements as well.

As the needs are identified, the Executive Officer will exercise the powers granted pursuant to the Regulation. The Executive Officer shall inform the Board and members of the public of actions taken. Information regarding any such changes will also be posted on the relevant section of OPSC's website.

CONCLUSION

Staff is presenting a Regulation to allow the Executive Officer of the Board and OPSC to provide relief to school districts by temporarily extending deadlines to certain program requirements and regulations. Adoption of the Regulation will allow the Board and OPSC to relieve some of the strain school districts are encountering as a result of COVID-19, and will prevent any unintended consequences of school construction funding being at risk solely as a result of school districts needing to focus their efforts in other areas that may need to take priority at this time.

RECOMMENDATIONS

1. Adopt the proposed Regulation as shown on the Attachment.
2. Authorize the Executive Officer to file the proposed Regulation with the Office of Administrative Law on an emergency basis and make the Regulation permanent.

ATTACHMENT

Article 2, Section 1580, of Subgroup 2, of Group 1, of Subchapter 4, of Chapter 3, of Division 2, of Title 2 of the California Code of Regulations is added to read:

§ 1580. Executive Officer's Emergency Powers.

The Executive Officer of the State Allocation Board and the Office of Public School Construction is directed to take all appropriate actions to provide relief to school districts and maintain equitable participation in the programs administered by the Board during the period of emergency proclaimed by the Governor of the State of California on March 4, 2020. Such actions may include the extension, for an appropriate period of time to be determined by the Executive Officer, of any deadline set forth in regulations adopted by the Board or in other rules and procedures set by the Board and/or the Office of Public School Construction. Upon exercising the powers granted pursuant to this section, the Executive Officer shall inform the Board and members of the action taken. In no case shall a deadline extension alter approved project funding amounts or shall the Executive Officer of the State Allocation Board and the Office of Public School Construction use the authority granted by this section solely to alter prospective grant amounts.

This regulation is repealed effective 180 days from its adoption, subject to subsequent action by the Board.

Note: Authority cited: Government Code Section 15503. Reference: Proclamation of State of Emergency, Mar. 4, 2020; Executive Order N-25-20.