

FINDING OF EMERGENCY

The State Allocation Board (SAB) finds that an emergency exists, and that the proposed regulation is necessary for immediate action to avoid serious harm to the public peace, health, safety, or general welfare, pursuant to Government Code Section 11342.545.

Specific Facts Showing the Need for Immediate Action

On November 5, 2024, a majority of California's voters approved the Kindergarten through Grade 12 Schools and Local Community College Public Education Facilities Modernization, Repair, and Safety Bond Act of 2024 (Proposition 2). In addition to providing \$8.5 billion in bond authority for public Transitional Kindergarten through grade 12 school facilities, there are many provisions contained in Proposition 2 that require interpretation and inclusion in the existing School Facility Program (SFP) Regulations. Voter approval of Proposition 2 made provisions of Assembly Bill (AB) 247 (Muratsuchi, Chapter 81, Statutes of 2024) operative. In part, this bill added Education Code Sections 17077.35 and 17078.74 for the energy efficiency and career technical education supplemental grants, respectively.

Between February and July 2025, the Office of Public School Construction (OPSC) held six stakeholder meetings to inform the development of proposed regulations implementing these two provisions of Proposition 2.

At its meeting on December 3, 2025, the SAB adopted proposed regulatory amendments, on an emergency basis, that implement additional provisions of AB 247 and Proposition 2. These two provisions are supplemental grants for Energy Efficiency and Career Technical Education (CTE).

The Energy Efficiency supplemental grant existed in the SFP in 2002, but the funds allocated for the grant were exhausted years ago. Proposition 2 amended provisions in Education Code Section 17077.35 to provide an increase of up to five percent of the state share, which covers the increased costs associated with including energy efficiency components in SFP New Construction, Modernization, and Charter School Facilities Program (CSFP) New Construction and Rehabilitation projects. There is no longer a set limit on the total amount of funding available for energy efficiency supplemental grants and the grants will be provided for qualifying applications as long as sufficient SFP New Construction or Modernization and CSFP New Construction or Rehabilitation bond authority is available.

The new CTE Supplemental Grant provides up to five percent of the state share of the Modernization base grant for qualifying Modernization projects or up to five percent of the state share of the CSFP Rehabilitation base grant for qualifying CSFP Rehabilitation projects that include CTE components at middle and high schools that meet specific criteria. The CTE supplemental grants are available for eligible Modernization and CSFP Rehabilitation projects and are separate from the Career Technical Education Facilities Program, which is its own program and has its own Proposition 2 funding (\$600 million in bond authority) under the SFP.

It is imperative that the proposed regulations be approved on an emergency basis for the health, safety, and the State's general welfare to ensure that the qualifying CSFP applications are treated fairly by incorporating these supplemental grants into their grant calculations for the preliminary apportionments. Additionally, financial soundness reviews must be conducted and approved by the California School Finance Authority on the total preliminary apportionment amount to ensure each charter school application is in good fiscal health before applications are presented for consideration to the SAB. OPSC will present successful applications to the SAB in

early 2026. Failure to approve these regulations on an emergency basis will delay OPSC in presenting these applications to the SAB in a timely manner, which in turn delays the commencement of construction projects by applicants. Processing the regulations on a non-emergency basis will take approximately four to six months through the Administrative Procedures Act. It does not seem reasonable or logical as the earliest effective date would be July 1, 2026, based on the quarterly approval schedule. Delaying approval of preliminary apportionments until after July 1, 2026 would result in the inability for applicants to request the advance release of funds from a fall statewide general obligation bond sale and delay the receipt of funding until late spring 2027.

Background and Problem Being Resolved

Per program regulations, on July 3, 2025, OPSC opened a new CSFP filing round using the \$600 million authorized by the passage of Proposition 2. The filing round closed on October 30, 2025 in which OPSC received 116 applications from 91 charter schools requesting \$2.78 billion in state funding. This amount is well over the \$600 million authorized in Proposition 2. The applications submitted for the CSFP could be eligible for these two supplemental grants once the grants are approved and in effect.

The problem being resolved is implementing the new statutory authority for the SAB early on so school districts and county offices of education can plan and request the Energy Efficiency and CTE supplemental grants now for their projects. Although charter schools' applications have already been received by OPSC, with an early effective date of the regulations OPSC can include and calculate these two supplemental grants in the preliminary apportionments should the projects qualify for them. This would maintain equity and fairness in the SFP.

OPSC performed a search on whether the proposed regulatory amendments were consistent and compatible with existing State laws and regulations and did not identify any inconsistent or incompatible existing State laws or regulations. The proposed regulatory amendments are consistent with and implement provisions of statutory changes enacted with the passage of Proposition 2. Proceeding with the implementation of the proposed regulations will provide a positive impact on the state's economy, as well as the creation of an unknown number of jobs in the school construction industry. Once school districts request the release of state funds, manufacturing and construction-related industries such as architecture, engineering, trades and municipalities may expand based on the demand on these industries. School districts, county offices of education and applications for charter schools will also have the ability to take advantage of the new Proposition 2 provisions. The proposed regulations will maintain equity, consistency, and the integrity of the SFP.

OPSC, on behalf of the SAB, will notify school districts and other interested parties of its intent to submit the proposed regulatory amendments to the OAL in January, pursuant to Government Code Section 11346.1(a)(2). The proposed regulations will be attached, including two associated forms. The documents may also be viewed on OPSC's website at: [Laws, Regulations for School Construction Projects](#), then scroll down to "SFP," Pending Regulatory Changes under December 3, 2025 Emergency Regulations, and click on the AB 1302 Emergency Notice, Finding of Emergency, the proposed regulation text, and the two associated forms (SAB 50-04 and the SAB 50-09).

Authority and Reference Citations

Authority: Sections 17070.35, 17075.10 in effect as of January 1, 2024, and repealed and added by Assembly Bill 247, Chapter 81, Statutes of 2024, and with the successful passage of

Proposition 2 on November 5, 2024, 17075.11, 17075.20, 17078.64 and 17078.74, Education Code.

Reference: Sections 8974, 17009.5, 17052, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17052, 17070.15, 17070.35, 17070.50, 17070.51, 17070.51(a), 17070.59, 17070.71, 17070.77, 17070.99, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.75, 17071.76, 17072.10, 17072.12, 17072.13, 17072.14, 17072.15, 17072.18, 17072.20, 17072.25, 17072.30, 17072.33, 17072.35, 17073.15, 17073.16, 17073.20, 17073.25, 17074.10, 17074.15, 17074.16, 17074.25, 17074.265, 17074.30, 17074.32, 17075.10 in effect as of January 1, 2024, and repealed and added by Assembly Bill 247, Chapter 81, Statutes of 2024, and with the successful passage of Proposition 2 on November 5, 2024, 17075.11, 17075.15, 17075.20, 17076.10, 17077.10, 17077.30, 17077.35, 17077.40, 17077.42, 17077.45, 17078.52, 17078.53, 17078.54, 17078.56, 17078.58, 17078.72, 17078.72(k), 17078.74, 17079, 17079.10, 17079.20, 17079.30, 17250.30, 17251, 17280, 17375, 42268, 42270, 56026, 100420(c) and 101012(a)(8), Education Code; Section 53311, Government Code; Sections 1771.3 in effect on January 1, 2012 through June 19, 2024 and 1771.5, Labor Code; and Section 2052, Revenue and Taxation Code.

Information Digest/Policy Overview Statement

At its meeting on December 3, 2025, the SAB adopted proposed regulatory amendments, on an emergency basis, that implement additional provisions of AB 247 and Proposition 2. These two provisions are supplemental grants for Energy Efficiency and CTE. Projects received by OPSC on and after October 31, 2024 may qualify for these supplemental grants pursuant to Education Code Sections 17077.35 and 17078.74.

Summary of the Proposed Regulations

A summary of the proposed regulations is as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments revise the Forms SAB 50-04 and SAB 50-09 that align with the Energy Efficiency and CTE supplemental grants in Education Code Section 17077.35 and 17078.74.

Existing Regulation Section 1859.71.3 provides supplemental new construction funding to school districts that include energy efficient components in their SFP new construction projects. The proposed amendments differentiate between approved applications received by OPSC on or before October 30, 2024 and approved applications received by OPSC on or after October 31, 2024. For those approved applications received on or before October 30, 2024, school districts have the option to continue with their approved application already received and accept a full and final apportionment or withdraw its application and resubmit the approved application to be eligible for the new supplemental grant. For those approved applications received on or after October 31, 2024, school districts, county offices of education, and charter schools can apply for the energy efficiency supplemental grant using the new points-based scoring system with new eligibility criteria. The new system determines the percentage of supplemental grant funding allowed based on the Energy Code compliance approach and points achieved using the newly developed scoring system based on California Collaborative for High Performance Schools (CA-CHPS) created by the DSA and CA-CHPS for OPSC. There are two different compliance approaches and the points scoring rubric is separated by the type of compliance method.

Existing Regulation Section 1859.77.1 sets forth a school district's matching share requirement for new construction grants. This section differentiates a school district's matching share requirement based on two dates: applications received before October 31, 2024 and applications received on or after October 31, 2024. Applications received before October 31, 2024 require set matching share contributions for both state and local; applications received after October 31, 2024 will require a matching share contribution based on the methodology and calculation in Regulation Section 1859.70.5 and will be known as the Local Funding Adjustment Grant. The proposed amendments correct the Education Code section for this supplemental grant and an edit that is considered a non-substantive change.

Existing Regulation Section 1859.78.5 provides supplemental modernization funding to school districts that include energy efficient components in their SFP modernization projects. The proposed amendments differentiate between approved applications received by OPSC on or before October 30, 2024 and approved applications received by OPSC on or after October 31, 2024. For those approved applications received on or before October 30, 2024, school districts have the option to continue with the approved application already received and accept a full and final apportionment or withdraw its application and resubmit the approved application to be eligible for the new supplemental grant. For those approved applications received on or after October 31, 2024, school districts, county offices of education, and charter schools can apply for the energy efficiency supplemental grant using the new points-based scoring system with new eligibility criteria. The new system determines the percentage of supplemental grant funding allowed based on the Energy Code compliance approach and points achieved using the newly developed scoring system based on California Collaborative for High Performance Schools (CA-CHPS) created by the DSA and CA-CHPS for OPSC. There are two different compliance approaches and the points scoring rubric is separated by the type of compliance method.

Adoption of Regulation Section 1859.78.10 sets forth qualifying criteria for approved applications received by OPSC on or after October 31, 2024, to request the CTE supplemental grant for the costs associated with enhancements of CTE components in existing middle and high schools. The criteria includes, but is not limited to, 1) at least one CTE component conforms to Education Code Section 17078.74(c); 2) the applicant certifies that CTE costs exceed available modernization funding and are necessary to maintain industry standards; and 3) the applicant is a local educational agency operating a comprehensive high school, has an active career technical advisory committee, and received a minimum plan score of 105 points from the California Department of Education on or after July 3, 2024. In addition, the CTE supplemental grant shall be the lesser of a five percent increase to the Modernization Grant or the costs for the CTE component of the qualifying modernization project. Equipment costs are eligible only if the equipment has an average useful life expectancy of at least 10 years.

Existing Regulation Section 1859.79 sets forth a district's modernization matching share contribution for approved applications received on or before April 29, 2002 (20 percent district share/80 percent state share) and for approved applications received after April 29, 2002 and on or before October 30, 2024 (40 percent district share/60 percent state share). The section also stipulates that for approved applications received on or after October 31, 2024, a district's modernization matching share contribution will be determined based on Education Code Sections 17070.59 and 17074.16 and adjusted for the Local Funding Adjustment Grant using the methodology and calculation in Regulation Section 1859.70.5. The proposed amendments correct the Education Code section for the energy efficiency supplemental grant and there are several minor edits that are considered non-substantive changes.

Existing Regulation Section 1859.83 provides additional school project funding (Excessive Cost Hardship Grants) for which school districts may apply as a result of unusual circumstances that

create excessive project costs. The proposed amendments allow for the inclusion of funding provided by the CTE supplemental grant to be used in the calculations to determine Excessive Cost due to Geographic Location. Funding provided by the energy efficiency supplemental grant is already included in the determination formula. There are other supplemental grants added to this section that include funding, such as the 75 Years or Older Building, Minimum Essential Facilities, and the Transitional Kindergarten supplemental grants. Further, there was a statutory authority lapse for Excessive Cost Hardship grants; however, the authority was restored with the addition of Education Code Section 17075.11, which applies retroactively to applications submitted on or after October 31, 2024. There are minor edits that are considered non-substantive changes.

Existing Regulation Section 1859.163.1 establishes construction cost funding caps for Preliminary Charter School Apportionment determinations, based upon grade level(s) of the project and urban or non-urban location. The apportionment for charter school construction costs shall be the lesser of the funding cap amount or the total of specific cost components related to the size, scope, grade levels and location of the project. The proposed amendments add subsection (8) to allow applicants to reserve funding for the energy efficiency supplemental grant as part of the Preliminary Charter School Apportionment for New Construction. In addition, amendments are made to subsections (a), (a)(9), and (a)(10) to indicate the calculation for determining the Preliminary Charter School Apportionment, the inflator factor, and the matching share through the form of lease payments include the energy efficiency reservation.

Existing Regulation Section 1859.163.5 provides the calculation that determines a Preliminary Charter School Rehabilitation Apportionment based on the eligible square footage included in the project and additional supplemental grants. This section also 1) clarifies the calculation of supplemental grants, and the requirements and calculations for initiating and enforcing a Labor Compliance Program as well as for prevailing wage monitoring and enforcement; and 2) aligns CSFP rehabilitation supplemental grants with Education Code requirements, specifically Section 17078.54(d). The proposed amendments add: 1) subsections (a)(7) and (a)(8) to allow applicants to request and reserve funding for energy efficiency and CTE components as part of a Preliminary Charter School Apportionment for Rehabilitation; and 2) subsection (a)(6) to allow applicants to request and reserve funding for accessibility and fire code requirements as part of a Preliminary Charter School Apportionment for Rehabilitation upon conversion from a Preliminary Charter School Apportionment to a Final Charter School Apportionment. In addition, subsections (a)(9) and (a)(10) are renumbered because of the newly added subsections identified in this section above, and there are a few minor edits that are considered non-substantive in nature.

Existing Regulation Section 1859.164.2 sets forth criteria for the release of funds to charter school entities from preliminary charter school apportionments. "Advance" releases of funds are authorized for specified design costs and site acquisition costs. Qualified charter schools must maintain financial soundness and fund releases must occur within specified time limits. The proposed amendments make minor changes by aligning the renumbering of subsections with those in Regulation Sections 1859.163.1 and 1859.163.5.

Existing Regulation Section 1859.167.1 specifies that the amount of the Final Charter School Apportionment may not be increased for site acquisition costs exceeding those calculated under Section 1859.163.1(b), nor increased for useable acres for the project in excess of the previously approved recommended site size by the California Department of Education. The proposed amendments: 1) allow applicants to request funding for energy efficiency and CTE components for a Final Charter School Apportionment for a CSFP Rehabilitation project; and 2) provide clarification that the CSFP Rehabilitation Grant will be used in place of the

Modernization Grant to calculate the funding provided by Sections 1859.78.5 and 1859.78.10, and that funding provided by Section 1859.78.10(b)(2) will be 50 percent of the OPSC-approved costs for the CTE scope of work, inclusive of equipment, included in an Approved Application for a CSFP Rehabilitation project.

Existing Regulation Section 1859.168 specifies that the Preliminary Charter School Apportionment, once it is converted to a Final Charter School Apportionment, is subject to the district matching share requirement and that the matching share requirement may be met through lease payments. The proposed amendment deletes the words “Section 1859.77.1 and” because the matching share requirement for Preliminary Charter School Apportionments remains a 50 percent local matching share that may be paid through lease payments in lieu of the matching share.

Existing Form SAB 50-04, *Application for Funding*, (Rev. ~~08/25~~ 12/25), (incorporated by reference) is submitted by school districts to apply for State funding for new construction and modernization projects. The proposed amendments incorporate the provisions of Proposition 2 outlined in this Finding of Emergency, such as the supplemental grants for energy efficiency and CTE for new construction and modernization projects.

Existing Form SAB 50-09, *Application for Charter School Preliminary Apportionment*, (Rev. ~~40/44~~ 12/25), (incorporated by reference) is the form for charter school entities to apply for preliminary apportionments for qualifying projects. The proposed amendments incorporate and align with the proposed amendments that are reflected in the regulatory text.

Mandate on Local Agencies or School Districts

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require school districts to incur additional costs to comply with the proposed regulations.

Cost Estimate

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact that might result from the proposed regulatory action, and it has been determined that:

- There will be no costs or savings to the State.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.

Technical Documents Relied Upon

- The SAB’s Action Item, dated December 3, 2025, REPORT OF THE EXECUTIVE OFFICER, entitled “Proposed Emergency Regulatory Amendments for the School Facility Program.”

Benefits of the Proposed Regulations

There are benefits associated with the proposed regulations in that they implement the new statutory authority for the SAB so school districts and county offices of education can plan and

request the Energy Efficiency and CTE supplemental grants now for their projects. Although charter schools' applications have already been received by OPSC, with an early effective date of the regulations OPSC can include and calculate these two supplemental grants in the preliminary apportionments should the projects qualify for them. This would maintain equity and fairness in the SFP.

Additionally, the proposed regulations may have a positive impact on the state's economy, as well as the creation of an unknown number of jobs in the school construction industry, by facilitating funding for school construction. Once school districts request the release of state funds, manufacturing and construction-related industries such as architecture, engineering, trades and municipalities may expand based on the demand on these industries.