

## EMERGENCY POWERS OF THE EXECUTIVE OFFICER DURING STATES OF EMERGENCY

### PURPOSE

To present the State Allocation Board (Board) with recommendations to extend and approve an amendment to previously approved emergency regulations 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, 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 OPSC for all programs administered by the Board.

### DESCRIPTION

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

At the Board's March 25, 2020 Emergency Meeting, the Board adopted emergency regulations that allowed the Executive Officer Emergency Powers to temporarily extend any deadline set by the Board and/or OPSC to School Districts.

When the Executive Officer acted to do so, the Board and stakeholders were provided with notification. The regulation is only valid during the time frame of the emergency declared by the Governor on March 4, 2020 and was scheduled to be repealed after 180 days, unless subsequently acted upon by the Board.

This item seeks Board approval to broaden the Executive Officer Emergency Powers to all declared States of Emergency and removes the sunset date for the regulations.

### AUTHORITY

See Attachment A.

### STAFF ANALYSIS/STATEMENTS

Since the enactment of the Emergency Powers Regulations, staff have extended key filing deadlines and granted a number of extensions due to the state of emergency from the threat of COVID-19 and the continued impacts to school districts throughout the state.

STAFF ANALYSIS/STATEMENTS (cont.)

To date, Staff has taken the following actions:

- The deadline for Career Technical Education Facilities Program application submittals that was scheduled for April 6, 2020 was extended to June 30, 2020.
- The deadline to submit Priority Funding Participation Requests was extended from June 11, 2020 to August 28, 2020.
- Additionally, as of September 20, 2020, Staff has received 305 extension requests from school districts. The following is a summary of the of the requests received and their current status.
  - 150 large school districts
  - 87 medium school districts
  - 65 small school districts
- Request Status
  - Approved – 291
  - Pending – 10
  - Denied – 4

Now, the recent wildfires have demonstrated an additional and ongoing need for the Emergency Powers of the Executive Officer to be expanded beyond the COVID-19 pandemic. Staff is presenting the attached regulatory amendments to provide the Executive Officer the same emergency powers granted for COVID-19 for any State of Emergency declared by the Governor.

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 or any other State of Emergency, 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 emergency areas that may need to take priority at this time.

RECOMMENDATIONS

1. Adopt the proposed Regulation as shown on Attachment B.
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.

The State Allocation Board approved this Item on September 30, 2020.

## ATTACHMENT A

### AUTHORITY

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....

EC 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 that, “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.”

## ATTACHMENT B

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 periods 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: Sections 17070.35 and 17375, Education Code; Government Code Section 15503.

Reference: ~~Proclamation of State of Emergency, Mar. 4, 2020; Executive Order N-25-20.~~ Sections 17070.35 and 17375, Education Code; Government Code Section 15503.