

October 21, 2020

TO: ALL SCHOOL DISTRICTS AND OTHER INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED EMERGENCY REGULATORY ACTION

In accordance with Assembly Bill 1302, Chapter 713, Statutes of 2006, enclosed are proposed regulatory amendments adopted by the State Allocation Board (SAB) on an emergency basis at its meeting on September 30, 2020. The proposed regulatory amendments and Finding of Emergency are attached to this Notice and can be accessed on the Office of Public School Construction's (OPSC) website at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations#@ViewBag.JumpTo>.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

On March 4, 2020, the Governor of the State of California issued Executive Order N-25-20, which proclaimed a State of Emergency existed in California as a result of the threat of the Novel Coronavirus 2019 (COVID-19). Since March 4, 2020, the threat of COVID-19 is still present. Counties are opening slowly based on the State's tier system, which allows school districts in those counties to open slowly and/or continue with online distance-learning. However, there continues to be an impact on the public school system to maintain normal operations as it relates to application submittal and other funding requirements of the SAB.

Another statewide threat has been introduced; a surge in wildfires throughout the state has introduced an earlier than normal wildfire season. This has created an additional and ongoing need for the Emergency Powers of the Executive Officer to be expanded beyond the COVID-19 pandemic. These same emergency powers granted for COVID-19 would apply to any State of Emergency declared by the Governor. The Executive Officer would inform the SAB and members of the public of any actions taken. Information regarding any such actions would also be made public through the SAB Agendas as an Information Item, postings on the relevant pages of OPSC's website, along with email blast(s) to stakeholders.

The primary stakeholders and participants in programs operated by the SAB are school districts. Some school districts in the state remain closed while other school districts are slowly opening and/or are encouraging online distance-learning. As a result of these situations, school districts throughout the state are quickly working to implement and establish methods to safely provide nutrition services to students while their own staff may or may not continue with the telework arrangements.

The SAB administers multiple programs related to school facilities. The two primary programs include the School Facility Program and the Full-Day Kindergarten Facilities Grant Program. Per statute, the SAB sets the rules and processes for its programs through the adoption of regulations. The regulations contain provisions that require school districts to take specified actions by certain deadlines, or funding could be at risk.

The SAB and OPSC are concerned that with so many competing priorities, not all school districts will be able to meet currently established deadlines. The extent to which school districts will be able to continue with school construction funding requirements at the current points in time is unknown. Administrative deadlines set by OPSC can easily be extended. However, without the adoption of the proposed regulatory amendments and maintaining this regulation on a permanent basis means that future declarations of States of Emergency by the Governor shall be subject to regulatory approval each time, thereby taking time to prepare, present to the SAB, and process through the Administrative Procedure Act.

As noted in the introductory paragraph above, the Finding of Emergency and the proposed regulation are attached to this Notice. You may review the documents on OPSC's website at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations#@ViewBag.JumpTo>. Copies of the proposed regulation and Finding of Emergency will be mailed to any person requesting this information by using the OPSC contact information set forth below. The proposed regulation implements the Emergency Powers of the Executive Officer during States of Emergency (Executive Officer of the SAB and OPSC), which is a regulation section under 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.

OPSC, on behalf of the SAB, intends to submit the proposed regulation to the Office of Administrative Law (OAL) in early November 2020. The following is an overview of the proposed regulation.

Summary of the Proposed Regulation

A summary of the proposed regulation is as follows:

Existing Regulation Section 1580 grants the Executive Officer of the SAB and OPSC the ability to extend, for an appropriate period of time to be determined by the Executive Officer, any deadline set forth in regulations adopted by the SAB or in other rules and procedures set by the SAB and/or OPSC. The Executive Officer shall notify the SAB upon exercising the powers authorized by the regulation. The proposed regulation further specifies that a deadline extension shall not alter approved project funding amounts, and the regulation shall not use the regulation solely to alter prospective grant amounts. The proposed regulatory amendments remove the sunset date language and maintains the regulation on a permanent basis to allow for future declarations of States of Emergency by the Governor to be included.

SUBMISSION OF COMMENTS

Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the OAL, the adopting agency provide a Notice of the Proposed Emergency Action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed regulations to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed regulation as set forth in Government Code Section 11349.6.

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OAL within five days after the SAB submits the regulations to the OAL for review.

Please reference submitted comments as regarding "Emergency Powers of the Executive Officer During States of Emergency," addressed to:

Reference Attorney

Mailing Address: Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

E-mail Address: staff@oal.ca.gov

Fax No.: (916) 323-6826

For the status of the SAB submittal to the OAL for review, and the end of the five-day written submittal period, please consult the website of 1) the OAL at www.oal.ca.gov under the heading "Emergency Regulations," and 2) OPSC at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations#@ViewBag.JumpTo>, then click on the following documents under the heading entitled "Executive Officer's Emergency Powers:"

- AB 1302 Five-Day Notice
- Finding of Emergency
- Proposed Regulation Text

Pursuant to Title I, Section 55, please send a copy of written comments regarding the proposed regulatory action, as well as requests for a copy of the proposed regulatory action, and questions concerning the substance of the proposed regulatory action, addressed to:

Lisa Jones, Regulations Coordinator

Mailing Address: Office of Public School Construction
707 3rd Street, 6th Floor
West Sacramento, CA 95605

E-mail Address: lisa.jones@dgs.ca.gov

Fax No.: (916) 375-6721

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Emergency Regulatory Action may be directed to Ms. Lisa Jones at (916) 376-1753. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Michael Watanabe, Chief of Administrative Services, at (916) 376-1646.