

FINDING OF EMERGENCY

The State Allocation Board (SAB) finds that an emergency exists, and that the proposed regulations are 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

Immediate action is needed to approve proposed regulatory amendments to an existing regulation section to remove the sunset date language in the regulation section and maintain the regulation on a permanent basis to allow for future declarations of States of Emergency declared by the Governor. Currently, the regulation allows the Executive Officer of the SAB and the Office of Public School Construction (OPSC) to temporarily extend any deadline set by the SAB or OPSC for any program under the authority of the SAB due to the threat of the Novel Coronavirus (COVID-19) pandemic. This regulation is automatically repealed 180 days from its adoption, subject to subsequent action by the SAB.

On March 4, 2020, the Governor of the State of California issued Executive Order N-25-20, which proclaimed a State of Emergency exists in California as a result of the threat of 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 those 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 postings on the relevant pages of OPSC's website, along with email blast(s) to stakeholders.

Without immediate regulatory action, school districts may be negatively impacted financially for failure to meet specified deadlines.

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:

"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.”

Background and Problem Being Resolved

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 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.

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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 during 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 of October 9, 2020, OPSC has received 323 requests for extensions to SAB and OPSC deadlines. Of those requests, 309 have been approved, only nine were denied and five are pending further review. Of those denied, further research determined that the need for extensions were not the result of COVID-19 or other State of Emergencies.

OPSC performed a search on whether the proposed regulatory amendments were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that the SAB's broad authority to establish regulations in the authority sections mentioned above, as well as Executive Order N-25-20, along with future declarations of States of Emergency by the Governor, support the ongoing need for this regulation. There is no other way to ensure that school districts can maintain compliance with program requirements, therefore, the proposed regulatory amendments are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory amendments will provide relief to school districts and prevent them from financial harm as a result of lack of compliance with deadlines during the time of this State of Emergency, as well as future declarations of States of Emergency.

OPSC, on behalf of the SAB, will notify school districts and other interested parties of its intent to submit the proposed regulatory amendment to the Office of Administrative Law (OAL) in late October or early November 2020, pursuant to Government Code Section 11346.1(a)(2). The proposed regulation will be attached.

Authority and Reference Citations

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

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Information Digest/Policy Overview Statement

At its meeting on September 30, 2020, the SAB adopted proposed regulatory amendments on an emergency basis to existing Regulation Section 1580. The proposed regulatory amendments remove the sunset date language for this regulation section and maintains the regulation on a permanent basis to allow for future declarations of States of Emergency by the Governor to be included. This will prevent any unintended consequences of school construction funding being at risk when school districts need to focus their attention and efforts in other emergency areas that may take priority at the time.

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.

Mandate on Local Agencies or School Districts

The Executive Officer of the SAB has determined that the proposed regulation does 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 in order to comply with the proposed regulation.

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 Document Relied Upon

The SAB's Action Item, dated September 30, 2020, entitled "Emergency Powers of the Executive Officer During States of Emergency."

Benefits of the Proposed Regulation

Benefits of the proposed regulation include protecting school districts from unintended financial consequences if school funding projects are jeopardized by failure to comply with deadlines during times of extreme crisis and declarations of States of Emergency. Further, school districts also benefit by not having to focus on construction projects during a time when the education and welfare of students and staff must take priority.