

## **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 a proposed regulatory amendment to allow 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.

On March 4, 2020, the Governor of the State of California issued Executive Order N-25-20, which proclaims a State of Emergency exists in California as a result of the threat of the Novel Coronavirus 2019 (COVID-19). The threat of COVID-19 has led to many changes in California, including the closure of all schools, and a statewide shelter-in-place order. This has impacted the ability of school districts to maintain normal operations as it relates to application submittal and other requirements of the SAB. Without immediate regulatory action, school districts may be harmed 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 proclaims a State of Emergency exists in California as a result of the threat of the Novel Coronavirus 2019 (COVID-19). The threat of COVID-19 has led to many changes in California, including the closure of all schools, and a statewide shelter-in-place order.

The primary stakeholders and participants in programs operated by the SAB are school districts. All schools in the state are currently closed, and it is expected that this may last several more months, until the end of the current school year. As a result of this unprecedented situation, school districts throughout the state are quickly working to implement online learning programs for students, establish methods to safely provide nutrition services to students, and transition their own staff to 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 in a position to meet currently established deadlines. 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. Administrative deadlines set by OPSC can easily be extended. However, without the adoption of this proposed emergency regulation, school districts may be financially harmed by deadlines previously adopted in regulation by the SAB. Further, the harm will be disproportionate, as not all school districts have the same ability to address the demands of responding to the changes required due to the threat of COVID-19 as well as to any SAB deadlines. This regulation will allow the Executive Officer to temporarily extend, for an appropriate period of time as determined by the Executive Officer, any deadline set forth by the SAB or OPSC. Upon exercising this authority, to maintain transparency, the Executive Officer will notify the SAB of actions taken. OPSC will also post the actions to the relevant section of the OPSC website.

OPSC performed a search on whether the proposed regulatory amendment was 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, support the creation of this emergency 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 amendment 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. The regulation automatically is repealed 180 days after the effective date, and the authority granted to the Executive Officer is only valid during the time period of the State 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 early April 2020, pursuant to Government Code Section 11346.1(a)(2). The proposed regulatory amendment will be attached.

## **Authority and Reference Citations**

Authority: Section 15503 of the Government Code.

Reference: Proclamation of State of Emergency, Mar. 4, 2020; Executive Order N-25-20.

## **Information Digest/Policy Overview Statement**

At its emergency meeting on March 25, 2020, the SAB adopted the proposed regulatory amendment on an emergency basis to prevent school districts from financial harm from deadlines established by the SAB or OPSC in the event that school districts cannot comply because of the conditions created as a result of the State of Emergency due to the threat of COVID-19.

## **Summary of the Proposed Regulation**

A summary of the proposed regulation is as follows:

Proposed adoption of 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 regulation is valid only during the time period of the State of Emergency, and is automatically repealed 180 days from its adoption, subject to subsequent action by the SAB.

## **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 Emergency Item, dated March 25, 2020, entitled "Emergency Powers of the Executive Officer During the COVID-19 State 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 this unprecedented time of extreme crisis. 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.