

## **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**

At its meeting on September 27, 2023, the SAB adopted an emergency regulatory amendment that would extend for two years (until January 1, 2026) the additional grant for general site development. This will prevent a lapse in regulatory authority and would continue to allow School Facility Program (SFP) new construction applications be processed with this additional grant. School districts may be eligible for the additional grant when building new schools and for additions to existing school sites where additional acreage is acquired. With the addition of this supplemental funding, school districts will be assisted in covering the costs for items such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields.

Failure to approve this regulation on an emergency basis will result in funding applications, presented to the SAB for approval after January 1, 2024, not able to request this supplemental grant. This would mean that school districts may not receive additional funding for landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields; thus, potentially providing the inability to complete their projects. Such improvements may therefore be scaled back or omitted from these school sites, which may result in adverse health and safety impacts. School site occupants, especially young children, will have safer ingress and egress and less risk of injury when driveways and walkways are wide, level, and extensive; when finish grading is thorough; when play facilities are of high quality on safe ground cover material; and athletic fields are well-designed with safe playing surfaces, adequate protective fences, and appropriate walkways.

### **Bond Funds Impacted**

The following five State school bonds were authorized by the Legislature and approved by the State's electorate for purposes of school facility construction:

- Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998 (Proposition 1A)
- Kindergarten-University Public Education Facilities Bond Act of 2002 (Proposition 47)
- Kindergarten-University Public Education Facilities Bond Act of 2004 (Proposition 55)
- Kindergarten-University Public Education Facilities Bond Act of 2006 (Proposition 1D)
- Kindergarten through Community College Public Education Facilities Bond Act of 2016 (Proposition 51)

### **General Fund Proceeds**

For the 2023/24 fiscal year, the Governor's budget has appropriated \$1.9 billion for funding eligible new construction and modernization projects under the SFP. The Legislature has declared its intent to appropriate an additional \$875 million from the General Fund in the 2024/25 fiscal year for the same purpose, funding eligible new construction and modernization projects under the SFP.

### Background and Problem Being Resolved

As first implemented, the additional grant for general site development costs was to be suspended “no later than January 1, 2008” unless extended by the SAB. The following is a sequence of events extending the additional grant for general site development:

- First One-Year Extension: The SAB, at its December 12, 2007 meeting, approved emergency regulations extending the suspension date to “no later than January 1, 2009,” which was approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on March 3, 2008.
- Second One-Year Extension: The SAB, at its February 25, 2009 meeting, approved extending the suspension date to “no later than January 1, 2010,” which was approved by the OAL and filed with the Secretary of State on September 18, 2009.
- Third One-Year Extension: The SAB, at its November 4, 2009 meeting, approved extending the suspension date to “no later than January 1, 2011,” which was approved by the OAL and filed with the Secretary of State on April 8, 2010.
- Fourth One-Year Extension: The SAB, at its June 23, 2010 meeting, approved extending the suspension date to “no later than January 1, 2012,” which was approved by the OAL and filed with the Secretary of State on April 27, 2011.
- Fifth Two-Year Extension: The SAB, at its July 12, 2011 meeting, approved extending the suspension date to “no later than January 1, 2014,” which was approved by the OAL and filed with the Secretary of State on December 28, 2011.
- Sixth One-Year Extension: The SAB, at its May 22, 2013 meeting, approved extending the suspension date to “no later than January 1, 2015,” which was approved by the OAL, filed with the Secretary of State on October 30, 2013, and took effect January 1, 2014, due to Senate Bill (SB) 1099, Chapter 295, Statutes of 2012.
- Seventh One-Year Extension: The SAB, at its August 20, 2014 meeting, approved extending the suspension date to “no later than January 1, 2016,” which was approved by the OAL, filed with the Secretary of State on February 9, 2015, and took effect on April 1, 2015, due to SB 1099, Chapter 295, Statutes of 2012.
- Eighth One-Year Extension: The SAB, at its May 27, 2015 meeting, approved extending the suspension date to “no later than January 1, 2017,” which was approved by the OAL and filed with the Secretary of State on December 21, 2015.
- Ninth One-Year Extension: The SAB, at its May 25, 2016 meeting, approved extending the suspension date to “no later than January 1, 2018,” which was approved by the OAL and filed with the Secretary of State on December 12, 2016.
- Tenth One-Year Extension: The SAB, at its June 5, 2017 meeting, approved extending the suspension date to “no later than January 1, 2019,” which was approved by the OAL and filed with the Secretary of State on December 20, 2017.
- Eleventh Five-Year Extension: The SAB, at its June 27, 2018 meeting, approved extending the suspension date to “no later than January 1, 2024,” which was approved by the OAL and filed with the Secretary of State on December 18, 2018.

The Office of Public School Construction (OPSC) has been involved in an on-going analysis of the SFP new construction base grants for purposes of determining whether the general site development allowance was included in the base grant amounts. The preliminary analysis resulted in discrepancies between the previous funding program, the State School Building Lease-Purchase Program (LPP) and the SFP. It is reasonable to conclude that when the LPP converted to the SFP, general site development was not considered in the base grants.

The proposed regulatory amendment continues to be extended until a complete analysis of the new construction base grant can be completed. The analysis must determine whether the extra costs associated with the additional grant for general site development, (such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities and permanent playground equipment, and athletic fields), are included in the SFP per-pupil base grant. There has not been conclusive evidence to show that this additional grant is not needed to complete the projects.

### Financial Impact

For the 2024 calendar year, OPSC anticipates nine new construction projects will request approximately \$10.0 million for the general site development grant and for the 2025 calendar year, nine new construction projects will request approximately \$12.1 million. These dollar amounts are based on new construction funding applications currently sitting on OPSC's Workload List and Applications Received Beyond Bond Authority List and are projected to be presented for SAB approval in calendar years 2024 and 2025. In addition, these applications have not yet been processed and, therefore, the project counts and requesting funding amounts may change.

As stated above, school districts may be eligible for the additional grant when building new schools and for additions to existing school sites where additional acreage is acquired. In addition to eligible new construction projects, Charter School Facilities Program and Facility Hardship/Seismic Mitigation Program (SMP) projects could be eligible for the general site development grant. Facility Hardship/Rehabilitation and SMP projects are health and safety projects and are presented to the SAB on an on-going basis.

OPSC performed a search on whether the proposed regulation was consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that there are no other programs or regulations in existence that allow school districts to request the additional general site development grant for new construction school facility projects. Therefore, the proposed regulations are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulation assists school districts in covering the costs for items such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields in order to complete their projects.

OPSC, on behalf of the SAB, will notify school districts and other interested parties of its intent to submit the proposed regulation to the OAL in November 2023, pursuant to Government Code Section 11346.1(a)(2). The proposed regulation amends the SFP Regulations under the CCR, Title 2, Chapter 3, Subchapter 4, Group 1, State Allocation Board, Subgroup 5.5, Regulations relating to the Leroy F. Greene School Facilities Act of 1998. The proposed regulation will be attached and may also be viewed 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>, scroll down to "SFP," Pending Regulatory Changes and click on the AB 1302 Emergency Notice, Finding of Emergency and the regulation text.

### Authority and Reference Citations

Authority: Section 17070.35 of the Education Code.

Reference: Sections 17070.35, 17072.12, and 17072.35 of the Education Code.

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

At its meeting on September 27, 2023, the SAB adopted an emergency regulatory amendment that would extend for two years (until January 1, 2026) the additional grant for general site development. This would prevent a lapse in regulatory authority and would continue to allow School Facility Program (SFP) new construction applications be processed with this additional grant. The Governor's budget has appropriated \$1.9 billion for funding eligible new construction and modernization projects under the SFP for the 2023/24 fiscal year. The Legislature has declared its intent to appropriate an additional \$875 million from the General Fund in the 2024/25 fiscal year for the same purpose, funding eligible new construction and modernization projects under the SFP.

### **Summary of the Proposed Regulation**

The proposed emergency regulation change was adopted by the SAB at its September 27, 2023 meeting to extend the additional grant for general site development for two years (until January 1, 2026). The proposed additional grant for general site development costs utilizes the continuing availability of new construction funding through the Bond Funds and the General Fund Proceeds both identified on page 1.

A summary of the proposed regulation is as follows:

Existing Regulation Section 1859.76 provides new construction additional grants for specific types and amounts of site development costs. The proposed amendment provides that the general site development shall be suspended no later than January 1, 2026 unless otherwise extended 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 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 Documents Relied Upon**

- The SAB's Action Item, dated September 27, 2023, REPORT OF THE EXECUTIVE OFFICER, entitled "Additional Grant for General Site Development."

## **Benefits of the Proposed Regulations**

Extending the SFP general site development grant for two years will have a positive impact on California businesses providing landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields, including the companies which supply the materials for these improvements. Failure to implement this regulation may require reducing the scope of work for some school projects.

The State of California benefits from this regulation as it assists in increasing the State's infrastructure investment resulting in a positive impact to the State's economy as well as help to support job creation. This regulation will have a positive impact to various business, manufacturing, and construction-related industries such as architecture, engineering, trades and municipalities, along with the creation of an unknown amount of [temporary] jobs.

There is a public health and safety impact assigned to the regulation. School site occupants, especially young children, will have less risk of injury and safer ingress and egress when driveways and walkways are wide, level, and extensive; when finish grading is thorough; when play facilities are of high quality on safe ground cover material; and athletic fields are well-designed with safe playing surfaces, adequate protective fences, and appropriate walkways.