

May 6, 2025

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS, 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 emergency regulations adopted by the State Allocation Board (SAB) at its meeting on March 26, 2025. The proposed regulations and the Finding of Emergency are attached to this Notice. These documents can also 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>. Because the Grant Agreement is voluminous, it will be accessible on OPSC's website only and not attached with the proposed regulations.

OPSC has been collaborating with the school district community by holding a series of stakeholder meetings to discuss topics and obtain stakeholder input and feedback to implement the many aspects of Proposition 2. OPSC began stakeholder meetings at the end of January and has continued them almost weekly through April and beyond. There is \$8.5 billion in bond authority, numerous program modifications to be implemented into the SFP, and school districts and stakeholders alike are excited to be a part of it.

At its meeting on March 26, 2025, the SAB adopted proposed regulatory amendments, on an emergency basis, that align and implement provisions of Assembly Bill (AB) 247 (Muratsuchi, Chapter 81, Statutes of 2024) into the SFP regulations and include the following topics:

- 1) the maximum level of total bonding capacity a school district could have and still be eligible for financial hardship assistance increases from \$5 million to \$15 million (Education Code Section 17075.15). In addition to this criterion, the longstanding policy of using bridge financing to allow for interfund borrowing as a tool for school districts to use to continue with their projects while waiting for approval for financial hardship status and project funding has been put in regulation. This mechanism provides school districts the immediate access to temporary funding, ensuring that projects can proceed without delay caused by gaps in receiving SFP funding from infrequent statewide general obligation bond sales. Although this mechanism is not in Proposition 2, it is an important piece of the financial hardship program to help school districts progress their projects while waiting for financial hardship funding.
- 2) the timeframe for requiring revalidation of small school districts' new construction enrollment projections is extended from three years to five years starting from the date the school district's eligibility is approved by the SAB (Education Code Section 17071.75).
- 3) specific assistance to school districts that have a school facility located on a military installation that is a recipient of a federal grant on the site for facilities modernization that requires a local matching share. It is stipulated that for these schools the school districts are eligible for an apportionment for the modernization of a permanent or

portable building that is at only ten years old or is only ten years old after the date of the previous modernization apportionment from state funds under this chapter (Education Code Section 17073.15).

- 4) incorporation by reference of a second *Grant Agreement [Proposition 2]* (New 03/25) used specifically for those applications received by OPSC on or after October 31, 2024 and that have received SFP grant funding. The *Grant Agreement [Proposition 2]* is not in Proposition 2; however, there are new eligible project expenditures in Proposition 2 that have been made part of the Grant Agreement.

Applications filed under the Facility Hardship and Seismic Mitigation Programs are continuously submitted to OPSC for processing based on received date ahead of all other projects.

Background and Problem Being Resolved

At its meeting on December 3, 2024, the SAB adopted recommendations implementing provisions of Proposition 2, which are contained in AB 247. In part, Proposition 2 provides \$8.5 billion in proceeds from the sale of bonds for the construction and modernization of Transitional Kindergarten (TK) through Grade 12 school facilities. Proposition 2 specifies that the \$8.5 billion will be allocated to the SFP as follows:

- New Construction = \$3.3 billion, of which up to ten percent (\$330 million) shall be available to small school districts.
- Modernization = \$4.0 billion, of which up to ten percent (\$400 million) shall be available to small school districts **and** up to \$115 million shall be available to address the remediation of lead in water.
- Charter School Facilities Program = \$600 million, and
- Career Technical Education Facilities Program = \$600 million.

Proposition 2 also makes numerous changes to the SFP as follows:

- Requires the submittal of a five-year school facilities master plan as a condition of participating in the SFP;
- Establishes a points-based methodology for calculating the local contribution a school district is required to make to be eligible to receive state funding;
- Requires school districts participating in the SFP New Construction or Modernization programs after November 5, 2024, to submit an updated report of the school district's existing school building capacity;
- Authorizes additional state funding for the replacement of school buildings that are at least 75 years old;
- Establishes several new supplemental grants (minimum essential facilities, energy efficiency, career technical education, and TK)
- Authorizes the SAB to provide interim housing assistance funding or any other assistance following specified natural disasters;
- Provides specified assistance to school districts with a school facility on a military installation, small school districts, and for the testing and remediation of specified lead levels in water fountains and faucets used for drinking or preparing food on school sites; and
- Increases the maximum level of total bonding capacity allowable for a school district to be automatically eligible for financial hardship assistance.

It was noted at the December 3, 2024 SAB meeting that it would take time for OPSC to process applications received before October 31, 2024, but necessary for OPSC to receive early guidance from the SAB to inform school districts who submitted applications on or after October 31, 2024, or who are currently planning to submit applications for funding. OPSC also determined the need for the SAB to set some program parameters expeditiously so that Facility Hardship Program and Seismic Mitigation Program applications, which address imminent health and safety needs and receive expedited processing and funding under existing SFP regulations, are processed under Proposition 2 quickly and without delay.

The problem being resolved is not a problem but an opportunity to replenish the SFP with \$8.5 billion in bond authority and to implement Proposition 2 provisions in the SFP. As indicated above, the proposed regulations also provide school districts with unique opportunities to qualify for financial hardship at an increased total bonding capacity level; to have new construction eligibility locked in for five years for small school districts; and to allow school districts that have schools located on a military installation that is a recipient of a federal grant that requires a local matching share to receive an apportionment for the modernization of a permanent or portable building that is at least ten years old.

OPSC, on behalf of the SAB, will notify school districts and other interested parties of its intent to submit the proposed regulatory amendments to the Office of Administrative Law (OAL) in May 2025, pursuant to Government Code Section 11346.1(a)(2). The proposed regulations 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>, then scroll down to "SFP," Pending Regulatory Changes and click on the AB 1302 Emergency Notice, Finding of Emergency, and the regulation text. Because the Grant Agreement is voluminous, it will be accessible on OPSC's website only and not attached with the proposed regulations.

Summary of the Proposed Regulations

A summary of the proposed regulations are as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments define an additional specific term essential to these regulations and stipulates the applicable dates when a certain Grant Agreement will be used for projects.

Existing Regulation 1859.51 outlines the criteria for adjusting a district's new construction baseline eligibility. In subsection (j), small school districts (schools with an enrollment of 2,500 students or fewer) new construction baselines will not be adjusted until three years after the district's eligibility was approved by the SAB. The proposed amendment locks in their baseline eligibility from three years to five years. This is in alignment with Education Code Section 17071.75.

Existing Regulation Section 1859.60 sets forth the criteria for a school district to calculate its modernization baseline eligibility for each school site. The proposed amendments provide specified assistance to school districts that have a school facility located on a military installation that is the recipient of a federal grant that requires a local matching share. Further, these school districts are eligible for a modernization apportionment of a permanent or portable building that

is at least ten years old or is at least ten years old after the date of the previous modernization apportionment. This is in alignment with Education Code Section 17073.15.

Existing Regulation Section 1859.61 sets forth specific factors which impact a district's capacity to house pupils and therefore require adjustments to the modernization baseline eligibility. The proposed amendments add a new subsection that pertains to the modernization baseline eligibility for additional facilities located on a military installation. This is in alignment with Education Code Section 17073.15(b). With the addition of the new subsection, there is renumbering of the subsections which is considered a non-substantive change.

Existing Regulation Section 1859.78.8 specifies that an additional apportionment will be provided by Education Code Section 17074.10(a) for facilities previously modernized with State funds. The proposed amendments add two new subsections that specify new eligibility criteria for permanent and portable school facilities that are located on a military installation. This is in alignment with Education Code Section 17073.15.

Existing Regulation Section 1859.79.2 sets forth guidelines for eligible and ineligible expenditures related to the use of modernization grant funds. The proposed amendments clarify that portable classroom facilities funded under Education Code Section 17073.15(b) are also included in the exception of portable classroom facilities eligible for an additional apportionment.

Existing Regulation Section 1859.81 sets forth specific criteria for school districts and county offices of education to qualify for financial hardship status. The proposed amendments increase the maximum level of total bonding capacity that a school district can have and still be automatically eligible for financial hardship assistance from \$5 million to \$15 million. This is in alignment with Education Code Section 17075.15. In addition to this proposed amendment, new subsection (i) is being added to formalize the longstanding policy/practice of allowing school districts to utilize bridge financing. This policy has been used as a tool for interfund borrowing for school districts to continue with their projects while waiting for the receipt of financial hardship project funding. Lastly, there are non-substantive changes throughout this Section that capitalizes Financial Hardship as it is a defined term.

Existing Form SAB 50-03, *Eligibility Determination*, (Rev. ~~42/40~~ 03/25), is used by school districts to calculate their eligibility for new construction and modernization funding under the SFP. The proposed amendments incorporate provisions of Proposition 2 related to eligibility determination for school facilities located on military installations that are a recipient of a federal grant for facilities modernization that requires a local matching share. This is in alignment with the proposed amendments to the regulation sections noted on the previous page. There are two proposed amendments not related to Proposition 2 and that is the data and year on pages 2 and 3 of the form. The enrollment year information will help streamline the verification process and allow for clearer verification of CBEDS enrollment being utilized on each Form SAB 50-03 as it's processed by OPSC.

As discussed earlier, the proposed *Grant Agreement [Proposition 2]* (New 03/25) templates are used for projects submitted to OPSC on or after October 31, 2024 and incorporate the new provisions of Proposition 2. They are entered into for every future funding application that is processed; therefore, each Grant Agreement will contain the relevant program's sections. The Grant Agreements were developed to address the Office of Statewide Audits and Evaluation's audit findings by improving program oversight and expenditure accountability. The Grant Agreements serve as binding documents and key resources that define the responsibilities of the state and school districts from the determination of the amount of eligible state funding to

the reporting of all project funds, including any savings achieved. This ensures transparency and accountability for the program grants being awarded under the SFP.

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 regulation 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, email or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, email or fax must be received at the OAL within five days after the SAB submits the regulation to the OAL for review.

Please reference submitted comments as regarding “Proposed Emergency Regulatory Amendments for the School Facility Program,” 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>, then scroll down to School Facility Program “Pending Regulatory Changes.”

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, 4th Floor
West Sacramento, CA 95605

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

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Emergency Regulatory Action may be directed to Ms. Lisa Jones at (279) 946-8459. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Michael Watanabe, Deputy Executive Officer, at (279) 946-8463.