

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

On November 5, 2024, a majority of California's voters approved the Kindergarten through Grade 12 Schools and Local Community College Public Education Facilities Modernization, Repair, and Safety Bond Act of 2024 (Proposition 2). There are many provisions contained in Proposition 2 that require interpretation and inclusion in the existing School Facility Program (SFP) Regulations. It is important to keep in mind that school district applications received by the Office of Public School Construction (OPSC) on or before October 30, 2024 are subject to the statutes and provisions of the SFP as it existed as of January 1, 2024, while school district applications received by OPSC on or after October 31, 2024 are and will be subject to the provisions of Proposition 2.

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. Therefore, it is imperative that these proposed regulations are approved on an emergency basis for the immediate health, safety, and the State's general welfare in order for OPSC to begin implementing the new Proposition 2 program provisions into the SFP. In addition, the new Grant Agreement must be in effect for these health and safety projects as any project receiving an apportionment must have an accompanying Grant Agreement before the funds are released to an applicant.

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 performed a search on whether the proposed regulatory amendments were consistent and compatible with existing State laws and regulations and did not identify any inconsistent or incompatible existing State laws or regulations. The proposed regulatory amendments are consistent with and implement several provisions of statutory changes enacted with the passage of Proposition 2. Proceeding with the implementation of the proposed regulations will provide a positive impact on the state's economy, as well as the creation of an unknown number of jobs in the school construction industry. Once school districts request the release of state funds, manufacturing and construction-related industries such as architecture, engineering, trades and municipalities may expand based on the demand on these industries. School districts will also have the ability to take advantage of the new Proposition 2 provisions. The proposed regulations will maintain equity, consistency, and the integrity of the SFP.

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.

Authority and Reference Citations

Authority: Sections 17070.35, 17075.15, 17078.64, 17078.72 and 175982.73, Education Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17052, 17070.15, 17070.51, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.75, 17071.76, 17072.10, 17072.12, 17072.15, 17072.18, 17072.20, 17072.33, 17073.15, 17073.20, 17073.25, 17074.10, 17074.25, 17074.30, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17078.72, 17078.72(k), 17079, 17079.10, 17079.20, 17079.30, 17280, 42268, 42270, 56026, 100420(c) and 101012(a)(8),

Education Code; Section 53311, Government Code; and Sections 1771.3 in effect on January 1, 2012 through June 19, 2024 and 1771.5, Labor Code.

Information Digest/Policy Overview Statement

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

- 1) the maximum level of total bonding capacity a school district could have to be automatically 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 financial hardship funding has been put in regulation. This mechanism provides school districts the authorization to use temporary funding, ensuring that projects can proceed without delay caused by delays in receiving SFP funding while waiting for a statewide general obligation bond sale or other source available to the program. Although this mechanism is not in Proposition 2, it is an important piece of the financial hardship funding to help school districts progress their projects while waiting for financial hardship funding.
- 2) the timeframe for requiring an update to 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 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.

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.

Mandate on Local Agencies or School Districts

The Executive Officer of the SAB has determined that the proposed regulatory amendments do 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 regulatory amendments.

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 December 3, 2024, REPORT OF THE EXECUTIVE OFFICER, entitled "Proposed Board Policies for Initial Implementation of Proposition 2 for the School Facility Program."
- The SAB's Action Item, dated March 26, 2025, REPORT OF THE EXECUTIVE OFFICER, entitled "Proposed Emergency Regulatory Amendments for the School Facility Program."

Benefits of the Proposed Regulations

There are benefits associated with the proposed regulatory amendments. The SAB has the opportunity to administer the SFP with new Proposition 2 provisions that make program modifications beneficial to school districts, including small school districts and to replenish the SFP with \$8.5 billion in bond authority. The proposed regulations also provide school districts with additional 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. In addition, there is a positive impact on the state's economy, as well as the creation of an unknown number of jobs in the school construction industry. Once school districts request the release of state funds, manufacturing and construction-related industries such as architecture, engineering, trades and municipalities may expand based on the demand on these industries.