

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 June 25, 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) establishment of a points-based methodology and sliding scale to calculate the required state and local matching share for all SFP projects, regardless of whether the projects qualify for financial hardship assistance. AB 247 specifies the number of points awarded based on a school district's gross bonding capacity per enrollment; a school district's unduplicated pupil percentage as determined for purposes of the Local Control Funding Formula; whether a school district has an enrollment of 200 pupils or fewer; and whether the project includes the use of a project labor agreement. Based on the total number of points for a project, the required local matching share will be adjusted with no change to the total approved project cost. (Education Code Section 17070.59).
- 2) provides a modernization supplemental grant for projects with a scope of work that includes the demolition and replacement of building(s) at least 75 years of age or older. (Education Code Section 17074.265).
- 3) provides a modernization supplemental grant for projects that expand an existing gymnasium, multipurpose room, library, or school kitchen if the facility is 60 percent or less than the department's recommended size needed to serve the enrollment of the school, or constructing a new gymnasium, multipurpose room, library, or school kitchen if the site is lacking one or more of the specified facilities. (Education Code Section 17073.16).
- 4) provides a modernization supplemental grant for projects that retrofit an existing school facility to adequately house Transitional Kindergarten (TK) pupils or construct new TK classrooms if the site is lacking sufficient school facilities to house TK pupils. (Education Code Section 17073.16).

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. The points-based methodology and sliding scale calculation is a requirement for all projects received on or after October 31, 2024. There have been several health and safety projects presented to and approved by the SAB utilizing the new state/local methodology and calculation for the board items. OPSC has learned that some 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 have been notified by the Department of Defense's Public Schools on Military Installations of their projects coming up on the funding list. These projects receive 80 percent federal PSMI funding and 20 percent SFP funding for their required match for the PSMI program, and may qualify for the supplemental grants outlined on page 1 as topics 2, 3 and 4. 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 for the above-noted program applications.

Although school district projects for the above-noted program applications will continue to be processed for presentation to the SAB, failure to approve these regulations on an emergency basis means that these projects will come before the SAB more than once for approval while the regulations are processed on a non-emergency basis which can take approximately four to six months. By approving the regulations on an emergency basis it will reduce duplicative efforts while increasing efficiency. It also allows school districts to be approved the first time to reserve all available bond authority for the project and subsequently request the cash proceeds from an upcoming statewide general obligation bond sale. It is imperative that school districts have the full commitment of bond authority to their project as soon as possible so that health and safety projects to bid and contract their project quickly. For PSMI funded projects, the commitment of the full complement of bond authority is included in school district's proposals for PSMI funding as a commitment of local match.

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 necessarily 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 set forth the new points-based methodology and sliding scale calculation and also provide school districts with unique funding opportunities to qualify for the 75 year old or older supplemental grant as well as the minimum essential facilities and TK supplemental grants. These additional funding opportunities provide enhancements to existing facilities, as well as the construction of new facilities, thereby increasing the life expectancy of these facilities. The additional funding also covers the expected increased costs of construction for the inclusion of these types of facilities in school districts projects.

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 August 2025, pursuant to Government Code Section 11346.1(a)(2). The proposed regulations will be attached, including the Form 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, the regulation text, and the two forms (SAB 50-04 and the new SAB 57-75).

Authority and Reference Citations

Authority: Sections 17070.35, 17070.59, 17073.16, 17075.15, 17078.64, 17078.72 and 175982.73, Education Code.

Reference: Sections 8974, 17009.5, 17052, 17017.6, 17071.25, 17071.30, 17017.7, 17021, 17047, 17050, 17051, 17052, 17070.15, 17070.51, 17070.51(a), 17070.59, 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, 17072.30, 17072.33, 17073.15, 17073.16, 17073.20, 17073.25, 17074.10, 17074.15, 17074.16, 17074.25, 17074.265, 17074.30, 17074.32, 17075.10, 17075.15, 17077.10, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17078.72, 17078.72(k), 17079, 17079.10, 17079.20, 17079.30, 17280, 17375, 42268, 42270, 56026, 100420(c) and 101012(a)(8), Education Code; Section 53311, Government Code; Sections 1771.3 in effect on January 1, 2012 through June 19, 2024 and 1771.5, Labor Code; and Section 2052, Revenue and Taxation Code.

Information Digest/Policy Overview Statement

At its meeting on June 25, 2025, the SAB adopted proposed regulatory amendments, on an emergency basis, that align with provisions of AB 247 (Muratsuchi, Chapter 81, Statutes of 2024) and include the following topics:

- 1) establishment of a points-based methodology and sliding scale to calculate the required state and local matching share for all SFP projects, regardless of whether the projects qualify for financial hardship assistance. AB 247 specifies the number of points awarded based on a school district’s gross bonding capacity per enrollment; a school district’s unduplicated pupil percentage as determined for purposes of the Local Control Funding Formula; whether a school district has an enrollment of 200 pupils or fewer; and whether the project includes the use of a project labor agreement. Based on the total number of points for a project, the required local matching share will be adjusted with no change to the total approved project cost. (Education Code Section 17070.59).
- 2) provides a modernization supplemental grant for projects with a scope of work that includes the demolition and replacement of building(s) at least 75 years of age or older. (Education Code Section 17074.265).
- 3) provides a modernization supplemental grant for projects that expand an existing gymnasium, multipurpose room, library, or school kitchen if the facility is 60 percent or less than the department’s recommended size needed to serve the enrollment of the school, or constructing a new gymnasium, multipurpose room, library, or school kitchen if the site is lacking one or more of the specified facilities. (Education Code Section 17073.16).
- 4) provides a modernization supplemental grant for projects that retrofit an existing school facility to adequately house TK pupils or construct new TK classrooms if the site is lacking sufficient school facilities to house TK pupils. (Education Code Section 17073.16).

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 additional specific words, terms, and forms, as well as further define existing words and terms essential to these regulations for purposes of implementing Proposition 2 provisions in the SFP Regulations.

Existing Regulation Section 1859.32 sets forth the definitive criteria and guidelines for excluding specific permanent and portable classrooms from the district's gross classroom inventory. The proposed amendment provides an additional criterion that excludes the counting of classrooms funded through the California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program from the district's gross classroom inventory.

Existing Regulation 1859.51 outlines the criteria for adjusting a district's new construction baseline eligibility. The proposed amendment adds an additional adjustment to reduce the new construction baseline by the number of pupils housed in TK classrooms constructed from funding provided under the SFP modernization program.

Proposed adoption of Regulation Section 1859.70.5 establishes a points-based determination and sliding scale for the required state and local contributions for SFP projects. This will be known as the Local Funding Adjustment Grant. There are four criteria for determining the number of points awarded for a project: 1) a school district's gross bonding capacity per enrollment; 2) a school district's unduplicated pupil percentage as determined for purposes of the Local Control Funding Formula; 3) a school district that has an enrollment of 200 pupils or fewer; and 4) whether the project includes the use of project labor agreement. This is in alignment with Education Code Section 17070.59. This section establishes the submittal timing and deadlines for providing the information necessary to make the funding adjustment.

Existing Regulation Section 1859.77.1 sets forth a school district's matching share requirement for new construction grants. The proposed amendments differentiate a school district's matching share requirement based on two dates: applications received before October 31, 2024 and applications received on or after October 31, 2024. Applications received before October 31, 2024 require set matching share contributions for both state and local; applications received after October 31, 2024 will require a matching share contribution based on the methodology and calculation of the new regulation section above (Regulation Section 1859.70.5) and will be known as the Local Funding Adjustment Grant. This is in alignment with Education Code Section 17070.59. Additionally, there are several minor edits that are considered non-substantive changes.

Proposed adoption of Regulation Section 1859.78.7.1 provides a modernization supplemental grant for projects with a scope of work that includes the demolition and replacement of buildings at least 75 years of age or older. This section sets forth the eligibility criteria and grant calculations for this supplemental grant. The grant amount is aligned with the new construction per pupil grant amount and will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the SAB each January. Recipients of this grant will receive an alternate per-pupil grant amount than provided under the current modernization program and must replace the building that generated the eligibility for this grant. The regulation also requires the replacement of portable buildings with permanent buildings. This is in alignment with Education Code Sections 17074.25 and 17074.265.

Proposed adoption of Regulation Section 1859.78.9.1 provides a modernization supplemental grant for projects that either expand an existing gymnasium, multipurpose room, library, or school kitchen if the facility is 60 percent or less than the department's recommended size needed to serve the enrollment of the school, or construct a new gymnasium, multipurpose room, library, or school kitchen if the site is lacking one or more of the specified facilities. This section sets forth the minimum essential facilities eligibility criteria and grant calculation. The grant will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the SAB each January. This is in alignment with Education Code Sections 17073.16 and 17074.25.

Proposed adoption of Regulation Section 1859.78.9.2 provides a modernization supplemental grant for projects that either retrofit an existing school facility to adequately house TK pupils or construct new TK classrooms if the site is lacking sufficient school facilities to house TK pupils. This section sets forth the eligibility criteria and calculation for this supplemental grant to construct new or retrofit existing space into TK classrooms. The grant will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the SAB each January. This is in alignment with Education Code Sections 17073.16 and 17074.16.

Existing Regulation Section 1859.79 sets forth a district's modernization matching share contribution for approved applications received on or before April 29, 2002 (20 percent district share/80 percent state share) and for approved applications received after April 29, 2002 and on or before October 30, 2024 (40 percent district share/60 percent state share). The proposed amendments stipulate that for approved applications received on or after October 31, 2024, a district's modernization matching share contribution will be determined based on Education Code Sections 17070.59 and 17074.16 and adjusted for the Local Funding Adjustment Grant using the methodology and calculation in Regulation Section 1859.70.5. Additionally, there are several minor edits that are considered non-substantive changes.

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 provide that modernization grant funds may now be used on additional square footage constructed with funding for 75 year old or older buildings, minimum essential facilities (gymnasium, multipurpose room, library, or school kitchen), and the retrofit of existing school facilities or the construction of new TK classrooms to house TK pupils, as well as any additional square footage constructed to meet the minimum requirements of Title 5, California Code of Regulations. Prior to AB 247 and Proposition 2, the construction of new building area was not typically allowable. Additionally, there are several minor edits that are considered non-substantive changes.

Existing Regulation Section 1859.82.1 sets forth the criteria as to general factors generating facility hardship program eligibility as well as placing limits on program eligibility including, but not limited to performance of routine maintenance or repair, issues resulting from the deferment of routine maintenance or repair, lack of current code compliance, or the addition of components that were not previously existing, and the required information that must be contained in the industry specialist's report/findings. The proposed amendments add the square footage per pupil as well as the minimum/maximum square footage for multipurpose room (excluding food service) and for school kitchen for elementary school pupils, middle school pupils and high school pupils. The addition of these facilities was also necessary for purposes of determining the funding formula for providing the supplemental grants in Regulation Section 1859.78.9.1.

Existing Form SAB 50-04, *Application for Funding*, (Rev. ~~05/20~~ 08/25), (incorporated by reference) is submitted by school districts to apply for State funding for new construction and

modernization projects. The proposed amendments incorporate the provisions of Proposition 2 outlined in this Finding of Emergency, such as the new matching share requirements for new construction and modernization projects, including the Local Funding Adjustment Grant, and the modernization supplemental grants for 75 year old or older buildings, minimum essential facilities (gymnasium, multipurpose room, library, and school kitchen), and the TK supplemental grant to retrofit existing school facilities or construct new TK classrooms to house TK pupils. These amendments are necessary to collect the information needed to calculate the Local Funding Adjustment Grant.

Proposed adoption of the Form SAB 57-75, *75 Years or Older Building Cost Estimate and Cost/Benefit Analysis (CBA)*, (New 06/25), and its instructions, (incorporated by reference) is submitted by school districts and sets forth the specificity of how to utilize the form for submittal. This form will serve as the cost estimate for preparing the cost-benefit analysis required in the statute.

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 or charter schools 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 June 25, 2025, REPORT OF THE EXECUTIVE OFFICER, entitled "Proposed Emergency Regulatory Amendments for the School Facility Program."
- The SAB's Action Item, dated August 19, 2025, REPORT OF THE EXECUTIVE OFFICER, entitled "Corrections to 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 and to replenish the SFP with \$8.5 billion in bond authority. The proposed regulations provide school districts with a points-based methodology and sliding scale to calculate the required state and local matching share contribution for all SFP projects, and there are additional modernization supplemental funding opportunities for

projects such as the demolition and replacement of buildings at least 75 years of age or older; for projects that expand an existing gymnasium, multipurpose room, library, or school kitchen; and for projects that retrofit an existing school facility to house TK pupils or construct new TK classrooms if the site is lacking sufficient school facilities to house TK pupils. 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.