

April 30, 2021

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS OF SCHOOLS AND OTHER INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO
AMEND REGULATION SECTION 1700, CALIFORNIA CODE OF
REGULATIONS, RELATING TO SURPLUS SCHOOL PROPERTY; USE OF
PROCEEDS; RETURN OF MONEYS FROM A STATE SCHOOL FACILITIES FUND
PROGRAM

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-referenced regulation section contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend the above-referenced regulation section under the authority provided by Sections 17462, 17462.3 and 17463.7, Education Code and Section 15490 of the Government Code. The proposal interprets and makes specific reference Sections 17462, 17462.3, 17463.7 and 17463.8 of the Education Code.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The SAB, at its meeting on September 30, 2020, adopted proposed regulatory amendments on an emergency basis relating to the use of site sale property proceeds. Senate Bill (SB) 98, Chapter 24, Statutes of 2020 [Education finance: omnibus budget trailer bill] was chaptered June 29, 2020 and provided school districts with the resources and flexibilities necessary to provide quality education during the COVID-19 pandemic. SB 820, Chapter 110, Statutes of 2020, [Education Finance: Education Omnibus Budget Trailer Bill] was chaptered September 18, 2020 and amended SB 98 by adding clarifying changes and flexibility to the School Facility Program (SFP).

Attached to this Notice is the specific regulatory language of the proposed regulation. The proposed regulation is accessible and can be reviewed 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 the heading entitled "Use of School Property Proceeds," and click on the 45-day Public Notice, Initial Statement of Reasons and the regulation text. Copies of the proposed regulation will be mailed to any person requesting this information by using OPSC's contact information set forth below in this Notice.

The proposed regulation implements Education Code Section 17463.7 provisions into the existing Use of Surplus School Property Site Sale Proceeds regulations.

Background and Problem Being Resolved

In March 2020, Governor Newsom issued Executive Order N-25-20, which proclaimed a State of Emergency existed in California as a result of the threat of COVID-19. Since March, the threat of COVID-19 is still present. Counties are opening slowly based on the State's tier system, which allows those school districts in those counties to open slowly and/or continue with online distance-learning. However, there continues to be an impact on the public school system to maintain normal operations. School districts are running into issues, such as not having enough computer equipment to furnish students who are needing to attend school through online distance-learning. School districts are in need of additional financial resources in order to meet the needs to ensure a quality education for their students.

OPSC, on behalf of the SAB, administers the Unused Site Program. As required by law, all school districts are required to report any unused school sites to the SAB annually. The school districts self-certify requests for waivers and reduction of fees based on certain criteria outlined in Education Code Section 17219. In addition, school districts are required to report any newly acquired, recently sold, or closed school sites.

School districts' governing boards that want to sell, or lease, for a term not exceeding 99 years, any real property belonging to the district can under existing law. Additionally, existing law specifies the conduct of these sales and leases, and the purposes for which funds derived from these transactions may be used. SB 98, Chapter 24, Statutes of 2020, as amended by SB 820, Chapter 110, Statutes of 2020, added Education Code Section 17463.7 (until July 1, 2024) to expand the purposes for which funds from those transactions may be used by authorizing a school district to deposit the proceeds from the sale or lease of surplus real property, together with any personal property located on the property, purchased with nonstate funds, into the general fund of the school district and to use those proceeds for any one-time general fund purpose. Education Code Section 17463.7 also requires a school district to take certain actions. Prior to transferring the proceeds into a school district's general fund account, school districts must submit specific documents to the SAB for approval.

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, determined that both statutes (SB 98, Chapter 24 and SB 820, Chapter 110, Statutes of 2020) were created to add Education Code Section 17463.7 and to clarify provisions in order to provide additional flexibilities to school districts under the SFP. There are no other programs or regulations in existence that address the circumstances. 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 regulation will expand flexibilities for school districts when determining the use of site sale proceeds for any one-time general fund purpose.

Anticipated Benefits of the Proposed Regulations

The proposed regulation adds Education Code Section 17463.7 to the existing regulations for this Program for purposes of providing clarifying definitions of "one-time expenditures" and "on-going expenditures." This is an added benefit to school districts by allowing them to expand the purposes for which funds from the sale or lease of any real property belonging to the school

district and the conduct of these sales and leases for which the funds derived from these transactions can be used. School districts are authorized to deposit the proceeds from the sale or lease of surplus real property, together with any personal property located on the property and purchased with nonstate funds, into the general fund of the school district and to use the proceeds for any one-time general fund purpose.

The proposed regulation is therefore determined to be consistent and compatible with existing State laws and regulations. As stated above, 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, determined that there are no other programs or regulations in existence that address the circumstances. Therefore, the proposed regulation is determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulation expands flexibilities for school districts when determining the use of site sale proceeds for any one-time general fund purpose.

The proposed regulation does not impact California businesses and does not impact the creation of jobs. The proposed regulation affords school districts expanded resources and flexibilities under the SFP in order to help them make financially-sound decisions regarding one-time general fund purposes. It is not anticipated that the proposed regulation will result in the elimination of existing businesses or jobs within California.

Summary of the Proposed Regulation

A summary of the proposed regulation is as follows:

Existing Regulation Section 1700 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments add Education Code Section 17463.7 to the introduction of the definitions section because these definitions also apply to Section 17463.7. In addition, this same section has been added to the authority and reference citations.

There were no changes to existing Regulation Sections 1701 and 1702.

After conducting a review, the SAB has concluded that these are the only regulations on this subject area and, therefore, the proposed regulation is neither inconsistent nor incompatible with existing State laws and regulations. The proposed regulation is within the SAB's authority to enact regulations for the existing Use of Surplus School Property Site Sale Proceeds regulations.

Statutory Authority and Implementation

Education Code 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 17463.7 states in part: (a) Notwithstanding any other law, a school district may deposit the proceeds from the sale or lease of surplus real property, together with any personal property located on the property, purchased with nonstate funds, into the general fund of the school district and may use the proceeds for any one-time general fund purpose. . .

...

(c) Before a school district exercises the authority granted pursuant to this section, the governing board of the school district shall first submit to the State Allocation Board documents certifying both of the following:

(1) the sale of real property pursuant to this section does not violate the provisions of a local bond act.

(2) the real property is not suitable to meet projected school construction needs for the next 10 years.

...

Determination of Inconsistency or Incompatibility with Existing State Regulations

Previously, Education Code Section 17463.7 existed in law from July 28, 2009 until January 1, 2016 when it was repealed. The law authorized the use of surplus real estate sale proceeds for one-time general fund purposes as long as the costs were not related to a school district's ongoing operations. School districts were required to present a plan to its local governing board regarding the use of one-time expenditures and explain why these expenditures would not result in ongoing fiscal obligations for the school district. School districts were ineligible for hardship funding under the State School Deferred Maintenance Program for a period of five years after the proceeds were deposited into the general fund. In addition, a school district's SFP facility and financial hardship assistance was reduced by an amount equal to that of the school district's one-time expenditure(s). School districts were required to certify the following:

- That it had no major deferred maintenance needs;
- That the site sale did not violate local bond restrictions; and
- That the real property was not suitable to meet projected school construction needs for the next ten years.

Education Code Section 17462 currently authorizes school districts to deposit the proceeds from the sale or lease of surplus real property, together with any personal property located on the property, into the general fund of the school district and to use the proceeds for any one-time general fund purpose. The regulations for this Program already exist. The information below provides a comparison governing the use of surplus site sale proceeds deposited into a school district's governing fund based on the two Education Code Sections; 17462 and 17463.7:

- Under Education Code Section 17462
 - Source of Site Funding: Site can be purchased with state and/or local funds.
 - School Facility Program Funding:
 1. Prohibited from participating in the SFP for five years.
 2. Unable to apply for Facility Hardship and Financial Hardship funding.
 - Use of Funding: One-time Expenditures.
 - School Board Resolution Requirements:
 1. No anticipated need for additional sites or construction for 10 years.
 2. No major deferred maintenance requirements.
 3. The sale does not violate local bond act provisions.
- Under Education Code Section 17463.7

- Source of Site Funding: Site must have been purchased with nonstate funds.
- School Facility Program Funding:
 1. Not prohibited from participating in the SFP.
 2. Unable to apply for Financial Hardship grant funding.
- Use of Funding: One-time Expenditures.
- School Board Resolution Requirements:
 1. The site is not suitable to meet projected school construction needs for 10 years.
 2. The sale does not violate local bond act provisions.

School districts must take specific actions if they want to make use of Education Code Section 17463.7 provisions such as the submission of the following:

- A letter to the Executive Officer of the SAB and the OPSC requesting authorization from the SAB to transfer site sale proceeds into the school district's general fund account for a one-time general fund purpose;
- A school board resolution that includes specific criteria;
- A copy of the original site purchase agreement that details the original purchase price, the number of acres on the site, and the sources of funds used to purchase the site;
- Documentation of the number of acres being sold from the site.

The school district's request must be presented to the SAB for approval prior to the funds being transferred by the school district. Education Code Section 17463.7(g) provides that the proceeds from the sale or lease of surplus property that were initiated before June 30, 2024 may also be deposited in accordance with statute.

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 both statutes (SB 98, Chapter 24 and SB 820, Chapter 110, Statutes of 2020) were created to add Education Code Section 17463.7 and to clarify provisions in order to provide additional flexibilities to school districts under the SFP. There are no other programs or regulations in existence that address the circumstances. Therefore, the proposed regulation is determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulation will expand flexibilities for school districts when determining the use of site sale proceeds for any one-time general fund purpose.

IMPACT 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 local agencies or school districts to incur additional costs in order to comply with the proposed regulation.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Executive Officer of the SAB has made the following initial determinations relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- The proposed regulation creates no costs to any local agency or school district requiring reimbursement pursuant to Section 17500 et seq., or beyond those required by law, 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.
- The proposed regulation creates no costs or savings to any State agency beyond those required by law.
- The SAB has made an initial determination that there will be no impact on housing costs.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact to Businesses and Jobs in California

The proposed regulation does not impact California businesses and does not impact the creation of jobs. The proposed regulation adds Education Code Section 17463.7 into the existing Use of Surplus School Property Site Sale Proceeds regulations, specifically the introduction of the definitions section because these definitions also apply to Section 17463.7. In addition, this same section has been added to the authority and reference citations.

It is not anticipated that the proposed regulation will result in the elimination of existing businesses or jobs within California.

Benefits to Public Health and Welfare, Worker's Safety, and the State's Environment

- Executive Order N-25-20, issued by Governor Newsom in March 2020, proclaimed a State of Emergency existed in California as a result of the threat of COVID-19. Since that time, the threat of COVID-19 is still present. Counties are opening slowly based on the State's tier system, which allows those school districts in those counties to open slowly and/or continue with online distance-learning. However, there continues to be an impact on the public school system to maintain normal operations. School districts are running into issues, such as not having enough computer equipment to furnish students who are needing to attend school through online distance-learning. The proposed regulation promotes fairness and social equity to school districts by providing clarification to the definitions of "one-time expenditures" and "on-going expenditures" so that school districts have additional financial resources in order to ensure a quality education for their students. It also affords school districts expanded resources and flexibilities under the SFP in order to help them make financially-sound decisions regarding one-time general fund purposes.
- The proposed regulation also promotes transparency because statute requires OPSC to submit an interim and a final report to the SAB, and the budget, education policy, and fiscal committees of the Legislature that identifies the school districts that exercised the authority granted by Education Code Section 17463.7, the amount of proceeds involved, and the purposes for which those proceeds were used. The reports are due June 1, 2022 and January 1, 2026, respectively.
- There is no impact to the State's environment from the proposed regulation.

The SAB finds the proposed regulation fully consistent with the stated purposes and benefits.

EFFECT ON SMALL BUSINESSES

It has been determined that the proposed regulation will not have an impact on small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. The proposed regulation adds Education Code Section 17463.7 into the existing Use of Surplus School Property Site Sale Proceeds regulations, specifically the introduction of the definitions section because these definitions also apply to Section 17463.7. It is not anticipated that the proposed regulation will result in the elimination of existing businesses or jobs within California.

SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

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 OPSC no later than June 14, 2021, end of day. The express terms of the proposed regulation as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, email or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Lisa Jones, Regulations Coordinator

Mailing Address: Office of Public School Construction
707 Third Street, 6th Floor
West Sacramento, CA 95605

E-mail Address: Lisa.Jones@dgs.ca.gov

Fax No.: (916) 375-6721

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Lisa Jones at (916) 376-1753. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Michael Watanabe, Chief of Administrative Services, at (916) 376-1646.

ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulations substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulation.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulation should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulation during the 15-day period.

SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulation with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulation for which the adoption is proposed in strikeout/underline.
2. A copy of this Notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received they will be added to the rulemaking file. The file is available for public inspection at OPSC during normal working hours. Items 1 through 3 are also available on OPSC's Internet 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 the heading entitled "Use of School Property Proceeds," and click on one of the linked documents, such as the 45-day Public Notice, the Initial Statement of Reasons and/or the proposed regulatory text.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Both statutes (SB 98, Chapter 24 and SB 820, Chapter 110, Statutes of 2020) were created to add Education Code Section 17463.7 and to clarify provisions in order to provide additional flexibilities to school districts under the SFP. There are no other programs or regulations in existence that address the circumstances. Proceeding with the implementation of the proposed regulation will expand flexibilities for school districts when determining the use of site sale proceeds for any one-time general fund purpose.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the website listed above.