

December 18, 2020

TO: ALL SCHOOL DISTRICTS AND OTHER INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO  
AMEND REGULATION SECTION 1580, CALIFORNIA CODE OF  
REGULATIONS, RELATING TO THE EXECUTIVE OFFICER'S EMERGENCY POWERS

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 17070.35 and 17375, Education Code and Section 15503 of the Government Code. The proposal interprets and makes specific reference Sections 17070.35 and 17375 of the Education Code and Section 15503, Government Code.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

On March 4, 2020, the Governor of the State of California issued Executive Order N-25-20, which proclaimed a State of Emergency existed in California as a result of the threat of the Novel Coronavirus 2019 (COVID-19). The threat of COVID-19 has led to many changes in California, including the closure of schools. At its emergency meeting on March 25, 2020, the SAB adopted an emergency regulation that granted the Executive Officer of the SAB and OPSC the ability to extend, for an appropriate period of time to be determined by the Executive Officer, any deadline set forth in regulations adopted by the SAB or in other rules and procedures set by the SAB and/or OPSC. The Office of Administrative Law (OAL) approved the emergency regulation on April 22, 2020. Since that time, the threat of COVID-19 is still present. Counties are opening slowly based on the State's tier system, which allows 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 as it relates to application submittal and other funding requirements of the SAB.

In addition to the above, another statewide threat was introduced; a surge of wildfires abruptly ravaged much of California earlier than the normal wildfire season. This created an additional and ongoing need for the Emergency Powers of the Executive Officer to be expanded beyond the COVID-19 pandemic. These same emergency powers granted for COVID-19 would apply to any State of Emergency declared by the Governor. The Executive Officer would inform the SAB and members of the public of any actions taken. Information regarding any such actions would also be made public through the SAB Agendas as an Information Item, postings on the relevant pages of OPSC's website, along with email blast(s) to stakeholders. The SAB adopted the proposed amendments on an emergency basis on September 30, 2020 and the OAL approved the emergency regulation on November 12, 2020.

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 "Emergency Powers of the Executive Officer," and click on the 45-day Public Notice, Initial Statement of Reasons and 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 the Emergency Powers of the Executive Officer during States of Emergency (Executive Officer of the SAB and OPSC), which is a regulation section under Article 2, Section 1580, of Subgroup 2, of Group 1, of Subchapter 4, of Chapter 3, of Division 2, of Title 2, of the CCR.

#### *Background and Problem Being Resolved*

The SAB administers multiple programs related to school facilities. The two primary programs include the School Facility Program and the Full-Day Kindergarten Facilities Grant Program. Per statute, the SAB sets the rules and processes for its programs through the adoption of regulations. The regulations contain provisions that require school districts to take specified actions by certain deadlines, or funding could be at risk.

The primary stakeholders and participants in programs operated by the SAB are school districts. Some school districts in the State remain closed while other school districts are slowly opening and/or are encouraging online distance-learning. As a result of these situations, school districts throughout the State are quickly working to implement and establish methods to safely provide nutrition services to students while their own staff may or may not continue with the telework arrangements.

The SAB and OPSC are concerned that with so many competing priorities, not all school districts will be able to meet currently established deadlines. The extent to which school districts will be able to continue with school construction funding requirements at the current points in time is unknown. Administrative deadlines set by OPSC can easily be extended. However, without the adoption of the proposed regulatory amendments and maintaining this regulation on a permanent basis means that future declarations of States of Emergency by the Governor shall be subject to regulatory approval each time, thereby taking time to prepare, present to the SAB, and process through the Administrative Procedure Act.

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 ability for the Executive Officer of the SAB and OPSC to extend any deadline set forth in

regulations adopted by the SAB or in other rules and procedures set by the SAB and/or OPSC. 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 ensure transparency of any actions taken by the Executive Officer.

#### *Anticipated Benefits of the Proposed Regulations*

There are non-monetary benefits associated with this proposed regulation. The proposed regulation promotes fairness to school districts participating in the SFP and the FDKFGP. Extension requests can be made in order to prevent school districts from financial harm based on deadlines established by the SAB and/or OPSC in the event school districts cannot comply because of the conditions created as a result of COVID-19 and States of Emergency declared by the Governor. Further, school districts also benefit by not having to focus on construction projects during a time when the education and welfare of students and staff must take priority. The proposed regulation also promotes transparency because the Executive Officer of the SAB and OPSC will inform the SAB and members of the public of any actions taken. Information regarding any such actions would also be made public through the SAB Agendas as an Information Item, postings on the relevant pages of OPSC's website, along with email blast(s) to stakeholders.

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, has determined that there are no other programs or regulations in existence that address the ability for the Executive Officer of the SAB and OPSC to extend any deadline set forth in regulations adopted by the SAB or in other rules and procedures set by the SAB and/or OPSC. 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 ensure transparency of any actions taken by the Executive Officer.

This proposed regulation does not impact California businesses and does not impact the creation of jobs. This proposed regulation protects school districts from unintended financial consequences if funding for school projects is jeopardized by failure to comply with deadlines during this unprecedented time of extreme crises. 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 1580 grants the Executive Officer of the SAB and OPSC the ability to extend, for an appropriate period of time to be determined by the Executive Officer, any deadline set forth in regulations adopted by the SAB or in other rules and procedures set by the SAB and/or OPSC. The Executive Officer shall notify the SAB upon exercising the powers authorized by the regulation. The regulation further specifies that a deadline extension shall not alter approved project funding amounts, and the regulation shall not use the regulation solely to alter prospective grant amounts. The proposed regulatory amendments remove the sunset language and maintains the regulation on a permanent basis to allow for future declarations of States of Emergency by the Governor to be included.

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 SFP and FDKFGP under Education Code Sections 17070.35 and 17375(g), as well as Government Code Section 15503.

#### 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 17375(g). The State Allocation Board may adopt regulations to implement this section. Any regulations adopted pursuant to this section may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Title 2 of the Government Code). The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Government Code Section 15503. Whenever the board is required to make allocations or apportionments under this part, it shall prescribe rules and regulations for the administration of, and not inconsistent with, the act making the appropriation of funds to be allocated or apportioned. The board shall require the procedure, forms, and the submission of any information it may deem necessary or appropriate. Unless otherwise provided in the appropriation act, the board may require that applications for allocations or apportionments be submitted to it for approval.

#### Determination of Inconsistency or Incompatibility with Existing State Regulations

On March 4, 2020, the Governor of the State of California issued Executive Order N-25-20, which proclaimed a State of Emergency existed in California as a result of the threat of the COVID-19. The threat of COVID-19 has led to many changes in California, including the closure of schools. At its emergency meeting on March 25, 2020, the SAB adopted an emergency regulation that granted the Executive Officer of the SAB and OPSC the ability to extend, for an appropriate period of time to be determined by the Executive Officer, any deadline set forth in regulations adopted by the SAB or in other rules and procedures set by the SAB and/or OPSC. The OAL approved the emergency regulation on April 22, 2020. Since that time, the threat of COVID-19 is still present. Counties are opening slowly based on the State's tier system, which allows 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 as it relates to application submittal and other funding requirements of the SAB.

In addition to the above, another statewide threat was introduced; a surge of wildfires abruptly ravaged much of California earlier than the normal wildfire season. This created an additional and ongoing need for the Emergency Powers of the Executive Officer to be expanded beyond the COVID-19 pandemic. These same emergency powers granted for COVID-19 would apply to any State of Emergency declared by the Governor. The Executive Officer would inform the SAB and members of the public of any actions taken. Information regarding any such actions would

also be made public through the SAB Agendas as an Information Item, postings on the relevant pages of OPSC's website, along with email blast(s) to stakeholders. The SAB adopted the proposed amendments on an emergency basis on September 30, 2020 and the OAL approved the emergency regulation on November 12, 2020.

The SAB and OPSC are concerned that with so many competing priorities, not all school districts will be able to meet currently established deadlines. The extent to which school districts will be able to continue with school construction funding requirements at the current points in time is unknown. Administrative deadlines set by OPSC can easily be extended. However, without the adoption of the proposed regulatory amendments and maintaining this regulation on a permanent basis means that future declarations of States of Emergency by the Governor shall be subject to regulatory approval each time, thereby taking time to prepare, present to the SAB, and process through the Administrative Procedure Act.

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 ability for the Executive Officer of the SAB and OPSC to extend any deadline set forth in regulations adopted by the SAB or in other rules and procedures set by the SAB and/or OPSC. 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 ensure transparency of any actions taken by the Executive Officer.

#### IMPACT 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 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. This proposed regulation protects school districts from unintended financial consequences if funding for school projects is jeopardized by failure to comply with deadlines during this unprecedented time of extreme crises. 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*

- The proposed regulation promotes fairness to school districts participating in the SFP and the FDKFGP. Extension requests can be made in order to prevent school districts from financial harm based on deadlines established by the SAB and/or OPSC in the event school districts cannot comply because of the conditions created as a result of COVID-19 and States of Emergency declared by the Governor. Further, school districts also benefit by not having to focus on construction projects during a time when the education and welfare of students and staff must take priority.
- The proposed regulation also promotes transparency because the Executive Officer of the SAB and OPSC will inform the SAB and members of the public of any actions taken. Information regarding any such actions would also be made public through the SAB Agendas as an Information Item, postings on the relevant pages of OPSC's website, along with email blast(s) to stakeholders.
- 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 protects school districts from unintended financial consequences if funding for school projects is jeopardized by failure to comply with deadlines during this unprecedented time of extreme crises. 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 February 1, 2021. 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, 6<sup>th</sup> Floor  
West Sacramento, CA 95605

E-mail Address: [Lisa.Jones@dgs.ca.gov](mailto: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 "Emergency Powers of the Executive Officer" and click on one of the linked documents, such as the 45-day Public Notice, the Initial Statement of Reasons and 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. The proposed regulation protects school districts from unintended financial consequences if funding for school projects is jeopardized by failure to comply with deadlines during this unprecedented time of extreme crises.

### 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.