

## **INITIAL STATEMENT OF REASONS**

### **Section 1580. Purpose.**

#### **Specific Purpose of the Regulation**

To modify the regulation in order to make the regulation permanent.

#### **Need for the Regulation**

It was necessary to grant 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. In addition, it was necessary to remove the sunset language and maintain the regulation on a permanent basis to allow for future declarations of States of Emergency by the Governor to be included. 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

#### **Anticipated Benefits and Economic Impact of the Proposed Regulation**

There are non-monetary benefits associated with the 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.

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.

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.

## **Technical Documents Relied Upon**

The State Allocation Board's Action items, dated March 25, 2020 (emergency meeting) and September 30, 2020, entitled "Emergency Powers of the Executive Officer During the COVID-19 State of Emergency" and "Emergency Powers of the Executive Officer During States of Emergency," respectively.

## **Alternatives to the Proposed Regulatory Action that would be as Effective and Less Burdensome to Private Persons**

The SAB finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation 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. 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.

## **Alternatives to the Proposed Regulatory Action that would Lessen any Adverse Economic Impact on Small Business**

The SAB has determined that the proposed regulation will not impact small businesses.

## **Finding of Significant Adverse Economic Impact on Businesses**

The SAB has determined that the adoption of the proposed regulation will not have an economic impact on businesses/small businesses because they are not required to directly comply with or enforce the regulation, nor will they be disadvantaged by the regulation. In fact, 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.

## **Impact on Local Agencies or School Districts**

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.

## **ECONOMIC IMPACT ASSESSMENT OF REGULATIONS**

*“Emergency Powers Emergency Powers of the Executive Officer During the COVID-19 State of Emergency” and “Emergency Powers of the Executive Officer During States of Emergency”*

### **Proposed State Allocation Board 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 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.

### **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.

### **Description of Regulations to Implement Law**

The proposed regulation is summarized 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 AB 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.

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

There are non-monetary benefits associated with this proposed regulatory action. 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.

#### Statutory Authority and Implementation

Education Code (EC) 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.

#### **Impact to California Businesses and Jobs**

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.