

FINDING OF EMERGENCY

The State Allocation Board (SAB) finds that an emergency exists, and that the proposed regulations are 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

Immediate action is needed to approve proposed regulatory amendments on an emergency basis. 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).

Existing law authorizes school district governing boards to sell, or lease for a term not exceeding 99 years, any real property belonging to the school district. Existing law also specifies the conduct of these sales and leases and the purposes for which the funds derived from these transactions can be used.

SB 98, as amended by SB 820, adds Education Code Section 17463.7 until July 1, 2024 to expand the purposes for which funds from these 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 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. In addition, a school district's SFP financial hardship funding assistance will be reduced by an amount equal to that of the school district's one-time expenditure(s). School districts are required to certify to the following:

- That the site sale does not violate local bond restrictions; and
- That the real property is not suitable to meet projected school construction needs for the next ten years.

Failure to approve these regulatory amendments on an emergency basis will prohibit school districts from using all the resources available to them in order to help them make financially-sound decisions regarding one-time general fund purposes. Further, failure to approve these regulatory amendments will also result in the lack of clarity in the definition of a "one-time" expenditure.

Background and Problem Being Resolved

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 table below is a side-by-side comparison governing the use of surplus site sale proceeds deposited into a school district's governing fund based on the two Education Code sections:

	EC Section 17462	EC Section 17463.7
Source of Site Funding	Site can be purchased with state and/or local funds.	Site must have been purchased with nonstate funds.
School Facility Program Funding	• Prohibited from participating in the SFP for five years. • Unable to apply for Facility Hardship and Financial Hardship funding.	• Not prohibited from participating in the SFP. • Unable to apply for Financial Hardship grant funding.
Use of Funding	One-time Expenditures	One-time Expenditures
School Board Resolution Requirements	• No anticipated need for additional sites or construction for 10 years. • No major deferred maintenance requirements. • The sale does not violate local bond act provisions.	• The site is not suitable to meet projected school construction needs for 10 years. • 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 Office of Public School Construction (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.

The statute also requires the 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 have exercised the authority granted by this section, 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.

OPSC performed a search on whether the proposed regulatory amendments were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that SB 820, Chapter 110, Section 8, Statutes of 2020, the Education Finance: Education Omnibus Trailer Bill, was created to clarify and add Education Code Section 17463.7 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 regulatory amendments will expand flexibilities for school districts when determining the use of site sale proceeds for any one-time general fund purpose.

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 November 2020, pursuant to Government Code Section 11346.1(a)(2). The proposed regulatory amendments will be attached and may be viewed on OPSC's website at: <https://www.dgs.ca.gov/OPSC/Resources/Laws-and-Regulations>.

Authority and Reference Citations

Authority: Sections 17462, 17462.3 and 17463.7 of the Education Code; Section 15490 of the Government Code.

Reference: Sections 17462, 17462.3, 17463.7 and 17463.8 of the Education Code.

Information Digest/Policy Overview Statement

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Summary of the Proposed Regulations

A summary of the proposed regulatory amendments 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.

Mandate on Local Agencies or School Districts

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require school districts to incur additional costs in order to comply with the proposed regulations.

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 September 30, 2020, entitled "Use of Surplus School Property Proceeds."

Benefits of the Proposed Regulations

The proposed regulatory amendments add 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.