

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

The Department of Defense (DOD) established the Public Schools on Military Installations (PSMI) program in 2010 to administer an appropriation designated for the construction, renovation, repair, or expansion of elementary and secondary public schools on military installations in order to address capacity needs or facility condition deficiencies. The DOD assessed the condition and capacity of public schools on military installations as part of the PSMI program. It developed a priority list of these schools with the most serious condition and/or capacity deficiencies. The PSMI program provides federal funding of 80 percent of project costs to school districts and the school district provides the local matching share of 20 percent of the project cost.

At its meeting on September 25, 2024, the SAB approved proposed regulatory amendments, on an emergency basis, that would allow the SAB to extend the fund release requirements up to 18 months for projects specifically pertaining to a school facility located on a military installation that is the recipient of a federal grant that requires a local matching share. Under the School Facility Program (SFP), school district projects for new construction and/or modernization have 180 days from apportionment (for non-financial hardship projects) or 365 days from apportionment (for financial hardship projects) to meet fund release requirements as established in SFP Regulation Section 1859.90. For those school districts that have a school facility on a military installation and are a recipient of a federal grant that requires a local matching share, the existing fund release requirements may or may not allow enough time to align SFP deadlines with federal timelines. The proposed regulatory amendments provide the ability for the SAB to provide an extended fund release timeline, not to exceed 18 months, which is already the maximum allowed in statute.

In addition to approving the proposed regulatory amendments, the SAB approved accelerated processing and funding for five school districts representing seven projects that are currently in various stages of proposals, awards, and construction of their school projects on military installations. The SAB's approval of these projects totaled approximately \$24.9 million in state funding that will be used towards the districts' local matching share in obtaining approximately \$336.6 million in federal funding.

The next set of California projects are six school districts representing 11 projects that have been identified on the DOD's priority list. OPSC anticipates presenting two projects for a school district at the December 2024 SAB meeting with several other school district projects being potentially presented for SAB consideration in 2025. Due to unpredictable DOD timelines, it is imperative the regulations are in place as soon as possible to provide flexibility to the SAB. By approving the regulatory amendments on an emergency basis, there will be an immediate ability for the SAB to extend the fund release requirements for the projects. Processing the regulations through the Administrative Procedures Act on a non-emergency basis could take as long as six months and could impact these projects by preventing them from participating in the PSMI program. Therefore, immediate action is needed to approve, on an emergency basis, the proposed regulatory amendments.

Background and Problem Being Resolved

The SAB established the DOD Subcommittee at its April 2012 meeting. The purpose of this Subcommittee was to consider funding options to assist all California school districts with DOD schools in meeting their 20 percent matching share requirement. At the June 2012 DOD Subcommittee meeting OPSC presented an analysis of the potential SFP funding options that school districts could pursue to meet the 20 percent match requirement. The Subcommittee's recommendations were presented to the SAB at the August 2012 SAB meeting. These recommendations included consideration of SFP Regulation changes for DOD projects, such as providing preliminary apportionments and recommending to the Legislature that future bond funds be made available specifically for DOD schools. The SAB chose to recommend that the Legislature provide funding for schools on military installations in California in a future bond proposal to cover the total need for these types of projects.

In 2018, the DOD continued an ongoing assessment of the condition and capacity of schools on military installations. Based on the assessment, the DOD developed an updated priority list. As new federal funds have been appropriated, the Office of Local Defense Community Cooperation (OLDCC) which administers these federal funds, has continued to invite California school districts to participate in the PSMI program.

The problem being resolved is not a problem but a unique opportunity in which school districts are invited to participate in the PSMI program and receive federal funding as long as they submit verification to the OLDCC that local matching funds are available to leverage and receive final approval for federal funding. Funding from the SFP is a significant supporting component in each school district's proposal to access this federal funding opportunity. Since 2012, the SAB and OPSC have provided support to school districts invited to participate in the PSMI program. SAB approvals have provided approximately \$78.9 million in state funding for 19 projects on ten school sites which has leveraged over \$365 million in federal funding for these types of projects across the State of California. Including the September 2024 actions, SAB approvals have provided \$103.8 million in state funding which is expected to leverage more than \$702 million in federal funding.

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 there are no other programs or regulations in existence that allow the SAB to extend the fund release requirements to 18 months for the SFP. 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 provides the ability for a school district that has a school facility on a military installation that has been invited to participate in the PSMI program to meet the SFP fund release requirements while aligning with federal timelines. This ensures equity that public schools on military installations receive new and/or modernized school facilities as well as ensuring 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 October 2024, pursuant to Government Code Section 11346.1(a)(2). The proposed regulatory amendments will be attached 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, and the regulation text.

Authority and Reference Citations

Authority: Section 17070.35 of the Education Code.

Reference: Sections 17072.12, 17072.30, 17074.15, 17076.10, 17077.40, 17077.42 and 17077.45, Education Code.

Information Digest/Policy Overview Statement

At its meeting on September 25, 2024, the SAB approved proposed regulatory amendments, on an emergency basis, that would provide authority for the SAB to extend the fund release requirements, up to 18 months total, for projects specifically pertaining to a school facility located on a military installation that is the recipient of a federal grant that requires a local matching share. Under the SFP, school district projects for new construction and/or modernization have 180 days from apportionment (for non-financial hardship projects) or 365 days from apportionment (for financial hardship projects) to meet fund release requirements as established in SFP Regulation Section 1859.90. For those school districts that have a school facility on a military installation and are a recipient of a federal grant that requires a local matching share, the existing fund release requirements may or may not allow enough time to align with federal timelines. The proposed regulatory amendments provide the SAB the authority to extend the fund release timeline, not to exceed 18 months, which is already allowed in statute.

Summary of the Proposed Regulation

A summary of the proposed regulatory amendments are as follows:

Existing Regulation Section 1859.90 aligns the direct Apportionment process with the timelines of the existing Priority Funding process in order for school districts to submit a valid Form SAB 50-05 and Grant Agreement within 180 days to request the release of funds for non-financial hardship school districts and 365 days for those school districts approved with financial hardship status. The proposed regulatory amendments provide the ability to extend the fund release deadlines, not to exceed 18 months, for a school district that has a school facility located on a military installation that is the recipient of a federal grant that requires a local matching share.

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 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 September 25, 2024, REPORT OF THE EXECUTIVE OFFICER, entitled "Proposed Emergency Regulatory Amendments for the School Facility Program."

Benefits of the Proposed Regulations

There are benefits associated with the proposed regulatory amendments. The SAB will have the flexibility to provide an extended fund release deadline, if necessary, to school districts that have a school facility located on a military installation that is the recipient of a federal grant requiring a local matching share. It can be challenging for school districts to align fund release deadlines under the SFP with the elongated timelines of federal projects on military installations, even with active guidance from OPSC. The extended fund release timeline of 18 months is already allowed in statute. There is a positive impact on the state's economy, as well as the creation of an unknown number of jobs, by facilitating the ability for school districts to succeed with these projects and obtain 80 percent federal funding. 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.