

ATTACHMENT A8

OFFICE OF PUBLIC SCHOOL CONSTRUCTION STAKEHOLDER MEETING February 13, 2025

PROPOSED AMENDMENTS TO THE SCHOOL FACILITY PROGRAM FOR THE CREATION OF A SMALL SIZE SCHOOL DISTRICT PROGRAM

PURPOSE

To discuss and receive stakeholder feedback resulting from Assembly Bill (AB) 247, the Kindergarten through Grade 12 Schools and Local Community College Public Education Facilities Modernization, Repair, and Safety Bond Act of 2024 (Proposition 2), which was approved by a majority of California’s voters on November 5, 2024. This discussion and resulting stakeholder feedback is for the creation of a new Small Size School District Program under Article 11.5 of Chapter 12.5 of the Education Code (EC), which encompasses the School Facility Program (SFP).

AUTHORITY

See Attachment A8a.

BACKGROUND

Article 11.5, comprised of EC Sections 17078.35, 17078.36, 17078.37, and 17078.38, was added to allow the State Allocation Board (Board) to provide a preliminary application process, preliminary apportionment, separate design grants, project assistance grants, and project and construction management grants to small school districts that meet the eligibility requirements and have an enrollment of 2,500 or fewer pupils. The following is a summary of the new statutes.

EC Section 17078.35 defines the following terms for the purposes of Article 11.5:

- *Final Apportionment*
“Final apportionment” has the same meaning as “apportionment” as defined in subdivision (a) of EC Section 17070.15, which is “an allocation of funds for the purpose of eligible new construction, modernization, or hardship approved by the board [State Allocation Board] for an applicant school district.”
- *Preliminary Application*
“Preliminary application” means an application for a preliminary apportionment.
- *Preliminary Apportionment*
“Preliminary apportionment” means a reservation of bond authority for eligible applicants in advance of full compliance with all the application requirements otherwise required for an apportionment under the SFP.

BACKGROUND (cont.)

- *Project and Construction Management Grant*
“Project and construction management grant” means a grant for purposes of obtaining the services from a county office of education, other local educational agency with applicable school facilities construction expertise, applicable state department, or a certified private construction consulting entity from a list established by the California Department of Education (CDE) pursuant to EC Section 17078.47(d)(2), to assist with the planning, site acquisition, preconstruction, construction, and closeout of a project.
- *Small School District*
“Small school district” is a school district, as defined in EC Section 17070.15, with an enrollment of fewer than 2,501 pupils. “Fewer than 2,501 pupils” is equal to “2,500 or fewer pupils,” the phrasing used in this discussion.

The term “school district” is defined in EC Section 17070.15(q) to mean a school district or a county office of education.

EC Section 17078.36 states that all the rules applicable to the SFP apply to the Small School District Program except for those specified in Article 11.5. This section specifies that projects funded under Article 11.5 shall not exceed the amounts made available under Proposition 2. EC Sections 101412(a)(1)(A) and (a)(2)(A) authorize up to ten percent of the amounts allocated in Proposition 2 to New Construction and Modernization to be available to Small School District Program projects. At its January 22, 2025 meeting, the Board set aside the full ten percent of New Construction and Modernization bond authority for the Small School District Program: \$330 million for New Construction projects and \$400 million for Modernization projects.

EC Section 17078.37 states that all small school district projects must submit a preliminary application to the Board and meet all applicable requirements for applications for New Construction (pursuant to Article 3, commencing with EC Section 17071.75) or Modernization (pursuant to Article 6, commencing with EC Section 17073.10). For funding purposes only, the preliminary apportionments will be processed in a manner that is substantially identical to the preliminary apportionment requirements established in EC Section 17078.24 for the Critically Overcrowded Schools Program. This means that the bond authority for the total estimated state costs of a project will be reserved at the time of preliminary apportionment, and then the grants will be amended to reflect the actual scope of work in the approved plan set when the full funding conversion application is processed. If requested and determined to be eligible, the Board will also provide a project and construction management grant that is equal to five percent of the state share of the preliminary apportionment.

STAFF ANALYSIS/DISCUSSION

EC Section 17078.38 requires the Board to adopt regulations on the following:

- preliminary application
- preliminary apportionment
- apportionment of design grants, project assistance grants, and project and construction management grants to qualifying financial hardship small school districts, as part of the preliminary apportionment
- substantial progress requirements on apportionments for design and site grants
- requirements for a final apportionment for the project

The Office of Public School Construction (OPSC) recognizes that there are many considerations related to the development of regulations for EC Sections 17078.35, 17078.36, 17078.37, and 17078.38. OPSC has several questions and ideas outlined below to open the conversation and receive stakeholder feedback. OPSC anticipates hosting additional stakeholder meetings to address stakeholder feedback and provide proposed regulations.

1. *What is the purpose of the Small Size School District Program and how will the preliminary apportionments from the program assist small school districts?*

The program will provide preliminary apportionments that reserve bond authority for up to four years, plus the possibility of a single one-year extension subject to Board approval, to a small school district that has a New Construction or Modernization project. A preliminary apportionment mitigates the risk that SFP bond authority will be depleted before a small school district can design the project and obtain the required approvals and documents, such as CDE plan and/or site approval and Division of the State Architect (DSA) plan approval, that are required to receive a final apportionment.

2. *Who is eligible for a preliminary apportionment under the Small Size School District Program?*

Small school districts with an enrollment of 2,500 or fewer pupils can apply for a preliminary apportionment by submitting a preliminary application to OPSC, based on Article 11.5.

3. *What is the proposed overall process for a small school district that seeks a preliminary apportionment?*

- A. A small school district will submit an *Application for Preliminary Apportionment*, along with the necessary eligibility forms for New Construction or Modernization.

STAFF ANALYSIS/DISCUSSION (cont.)

- B. The *Application for Preliminary Apportionment* will be reviewed by OPSC staff and will be sent to the Board for approval.
- C. If approved, the small school district will receive an unfunded approval. A financial hardship small school district may participate in the priority funding process to receive the applicable preliminary apportionment funds for the project.
- D. Concurrently, or subsequent to the preliminary apportionment, the small school district will work on the project's design and obtaining all required approvals and documents for the project's final apportionment.
 - a. Small school districts will need to submit an annual report to OPSC until the preliminary apportionment is converted into a final apportionment. Further details about the submittal of an annual report and the final apportionment requirements can be found below.
- E. Once the project meets all SFP requirements for an adjusted grant, the school district will file an *Application for Funding* (Form SAB 50-04) for a final apportionment.
- F. The Form SAB 50-04 for a final apportionment will be reviewed by OPSC staff and will be sent to the Board for approval.

4. *Which grants will a small school district with a project that qualifies for financial hardship be eligible for in a preliminary apportionment?*

A small school district project that qualifies for financial hardship will be eligible for separate design grants, project assistance grants, and project and construction management grants as part of a preliminary apportionment.

5. *Which grants will a small school district with a project that does not qualify for financial hardship be eligible for in a preliminary apportionment?*

A small school district project that does not qualify for financial hardship will be eligible for project assistance grants and project and construction management grants as part of a preliminary apportionment; however, they will not be apportioned until the final apportionment is approved. This allows the reservation of bond authority for small school district to cover these costs; however, non-financial hardship school district would use their required matching share to cover the cost initially.

STAFF ANALYSIS/DISCUSSION (cont.)

6. *What funding will be released when a successful small school district project with financial hardship is approved for a preliminary apportionment?*

When funding is released for a successful small school district eligible for financial hardship assistance, the funding associated with the separate design grants, project assistance grants, and project and construction management grants will be released to the small school district. Design funding will be released at 40 percent of the total state share for New Construction projects and 25

percent of the total state share for Modernization projects, which is consistent with current SFP Regulations.

7. *What funding will be released when a successful small school district project without financial hardship is approved for a preliminary apportionment?*

No advance funding is released for non-financial hardship school districts. School districts would use the required local match for the initial costs of the project. Because the school district received a preliminary apportionment, they can proceed knowing that bond authority for the state share has been reserved for the specific project, provided the school district submits an Approved Application by the deadline.

8. *What form document(s) will a small school district need to submit for the preliminary application process?*

Small school districts would submit an *Application for Preliminary Apportionment* based on OPSC's interpretation of EC Section 17078.37. OPSC proposes to create a new form similar to the *Application for Preliminary Apportionment* (Form SAB 50-08) that was used under the Critically Overcrowded Schools Program. OPSC will bring a sample *Application for Preliminary Apportionment* form to the next OPSC Stakeholder Meeting on this topic.

OPSC is proposing that districts submit a project narrative to assist in calculating the preliminary apportionment. A project narrative is required for Charter School Facilities Program (CSFP) preliminary apportionment applications. For the CSFP, the narrative must include a description of the proposed project including, but not limited to, number of classrooms, grade level of the pupils to be served, intended opening date of the project, the Charter School General Location, and whether the project will be permanent or portable construction.

STAFF ANALYSIS/DISCUSSION (cont.)

9. *What eligibility requirements will a small school district need to meet to be eligible to apply for a preliminary apportionment?*

A small school district will need to have qualifying eligibility under the respective New Construction or Modernization program to apply for a preliminary apportionment. A small school district will need to use either an *Enrollment Certification/Projection* (Form SAB 50-01) to update their New Construction eligibility, or an *Eligibility Determination* (Form SAB 50-03) for a Modernization application to update their site-specific eligibility, if necessary.

As part of a small school district's New Construction eligibility update, a district could also lock in their enrollment for a period of five years due to the Proposition 2 amendments to EC Section 17071.75(g).

10. *How can a small school district receive design grants as part of their preliminary apportionment?*

Design grants would only be available to small school districts that qualify for financial hardship assistance by meeting the requirements in EC Section 17075.15, based on EC Section 17078.38(b).

OPSC proposes that small school districts should be able to make a request for design grants on the preliminary application so that these design grants can be included as part of the preliminary apportionment. This would be similar to how financial hardship school districts currently request an advance design apportionment according to SFP Regulation Section 1859.81.

11. *How can a small school district receive project assistance grants as part of their preliminary apportionment?*

Project assistance grants would be available as a supplemental grant at the preliminary apportionment stage for all small school districts with an enrollment of 2,500 pupils or fewer for the prior fiscal year, based on EC Sections 17072.10(e) and 17074.10(e). The amount of the supplemental grant is adjusted annually by an amount commensurate with the percentage adjustment for the Class B Construction Cost Index (CCI) as approved by the Board each January pursuant to EC Section 17070.35.

12. *How can a small school district receive a project and construction management grant as part of their preliminary apportionment?*

The project and construction management grant is a separate supplemental apportionment for small school districts pursuant to EC Section 17078.38(b)(2). The project and construction management grant should be included as part of the preliminary application and the preliminary apportionment. The preliminary

STAFF ANALYSIS/DISCUSSION (cont.)

apportionment of a project and construction management grant is equal to five percent of the state share of the preliminary apportionment.

OPSC proposes that small school districts should be able to make a request for the project and construction management grant on the preliminary application so that the project and construction management grant can be included as part of the preliminary apportionment.

The project and construction management grant will be recalculated at the time of conversion for full funding.

13. *How will construction cost changes be accounted for at the preliminary apportionment stage?*

OPSC proposes that the preliminary apportionment mirror the CSFP and provide an inflator factor on top of the current base and supplemental grants to account for potential future changes in the CCI. At the time of conversion, the adjusted grant would be based on that year's CCI, and the project would be capped at the original preliminary apportionment (plus the inflator).

At preliminary apportionment, a project's total cost will be calculated using the *Application for Preliminary Apportionment* form, a narrative describing what the small school district plans to do in the project, and the inflator factor. At the time of conversion, the total project cost will be recalculated based on the DSA-approved plan sets, a Form SAB 50-04, and the current year's grant amounts.

If the conversion application's total project cost is higher than the preliminary apportionment, and bond authority is available, the conversion application can receive an apportionment for the full adjusted amount. If no bond authority is available, the conversion application will need to be reduced to the amount reserved for the preliminary apportionment. If the conversion total project cost is less than the preliminary apportionment, the excess authority will be returned.

14. *How will the priority funding process work for apportionments provided under the Small Size School District Program?*

All apportionments provided under the Small Size School District Program will be subject to the priority funding process. All apportionments will initially receive an unfunded approval and will need to participate in a priority funding filing round for bond sales to take place to fund the apportionment.

STAFF ANALYSIS/DISCUSSION (cont.)

15. *How will the substantial progress requirements on preliminary apportionments work?*

A Small Size School District Program project that qualifies for financial hardship assistance and receives design grants as part of their preliminary apportionment will be subject to the substantial progress requirements, similar to those that are currently in place for approved New Construction or Modernization grant applications, based on EC 17078.38(c).

A Small Size School District Program project that does not receive a design fund release following their preliminary apportionment will not be subject to the submittal of substantial progress reports for the timeframe of up to five years after the preliminary apportionment received an approval.

To support successful project conversion applications, OPSC proposes that small school districts submit an annual report to our office until the preliminary apportionment is converted into a final apportionment as detailed below. This annual report will be a narrative that will detail the progress that is being made towards designing the project and obtaining the required approvals and documents for the project's final apportionment.

Once the project's conversion application has been submitted, reviewed, approved, and has received a final apportionment, the final apportionment will need to meet the substantial progress requirements that are currently in place for approved New Construction or Modernization grant applications, based on EC 17078.38(c).

16. *How will the final apportionment requirements work?*

Pursuant to EC Section 17078.38(d), the final apportionment requirements for a project funded under the new Small Size School District Program will be substantially similar to the Critically Overcrowded Schools Program. Districts will have up to four years to obtain the required DSA and CDE approvals and submit an Approved Application, i.e. a complete Form SAB 50-04 to apply for a final apportionment. Small school districts may request a single one-year extension from the Board.

17. *How soon can a small school district apply for a preliminary apportionment under the Small Size School District Program?*

A small school district can apply for a preliminary apportionment under the Small Size School District Program as soon as OPSC develops the *Application for Preliminary Apportionment* form and regulations, and the form and regulations have been approved by the Board and the Office of Administrative

STAFF ANALYSIS/DISCUSSION (cont.)

Law. The new forms and regulations will become effective as of the effective date that is determined by the Office of Administrative Law.

AUTHORITY**Education Code (EC) 17070.35 – General Provisions**

(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. However, the board shall have no authority to set the level of the fees of any architect, structural engineer, or other design professional on any project. The initial regulations adopted pursuant to this chapter shall be adopted as emergency regulations, and the circumstances related to the initial adoption are hereby deemed to constitute an emergency for this purpose. The initial regulations adopted pursuant to this chapter shall be adopted by November 4, 1998. If the initial regulations are not adopted by that date, the board shall report to the Legislature by that date, explaining the reasons for the delay.

(2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary.

(3) Determine the eligibility of school districts to receive apportionments under this chapter.

(4) Apportion funds to eligible school districts under this chapter.

(b) The board shall review and amend its regulations as necessary to adjust its administration of this chapter to conform with the act that amended this section to add this subdivision. Regulations adopted pursuant to this subdivision shall be adopted by November 5, 2002, and shall be adopted as emergency regulations in accordance with 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). The adoption of any emergency regulation pursuant to this subdivision filed with the Office of Administrative Law shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any emergency regulation adopted pursuant to this section shall remain in effect for no more than 365 days unless the board has complied with Sections 11346.2 to 11348, inclusive, of the Government Code.

EC Section 17078.35 – Assistance to Small School Districts

For purposes of this article, the following definitions apply:

(a) “Final apportionment” has the same meaning as “apportionment” as defined in subdivision (a) of Section 17070.15.

AUTHORITY (cont.)

(b) "Preliminary application" means an application for a preliminary apportionment pursuant to this article.

(c) "Preliminary apportionment" means a reservation of bond authority for eligible applicants under this article in advance of full compliance with all of the application requirements otherwise required for an apportionment pursuant to this chapter.

(d) "Project and construction management grant" means a grant for purposes of obtaining the services from a county office of education, other local educational agency with applicable school facilities construction expertise, applicable state department, or a certified private construction consulting entity from the list maintained pursuant to paragraph (2) of subdivision (d) of Section 17078.47, to assist with the planning, site acquisition, preconstruction, construction, and closeout of a project.

(e) "Small school district" is a school district, as defined in Section 17070.15, with an enrollment of fewer than 2,501 pupils.

(Added by Stats. 2024, Ch. 81, Sec. 23. (AB 247) Effective July 3, 2024. Operative November 6, 2024, pursuant to Sec. 30 of Ch. 81.)

EC Section 17078.36 – Assistance to Small School Districts

(a) Unless this article expressly provides otherwise, the provisions contained in the other articles of this chapter shall apply with equal force to a project funded under this article. This article shall control over the provisions of this chapter contained in other articles only to the extent that this article expressly conflicts with those provisions.

(b) This article shall apply only to a small school district that is otherwise eligible under this chapter for a project that meets both of the following:

(1) The project meets the criteria set forth in subdivision (a) of Section 17078.37.

(2) The project is to be funded from proceeds of state bonds approved by the voters at the November 5, 2024, statewide general election that shall not exceed the amounts made available pursuant to paragraphs (1) and (2) of subdivision (a) of Section 101412.

(Added by Stats. 2024, Ch. 81, Sec. 23. (AB 247) Effective July 3, 2024. Operative November 6, 2024, pursuant to Sec. 30 of Ch. 81.)

EC Section 17078.37 – Assistance to Small School Districts

Notwithstanding subdivision (a) of Section 17072.30 and subdivision (a) of Section 17074.16, as applicable:

AUTHORITY (cont.)

(a) Applicants for funding pursuant to this article shall do both of the following:

(1) Submit preliminary applications to the board.

(2) Meet the eligibility requirements described in Article 3 (commencing with Section 17071.75) and Article 6 (commencing with Section 17073.10), as applicable.

(b) The board shall do both of the following:

(1) Accept a preliminary application from, and make a preliminary apportionment to, a small school district for new construction grants pursuant to Article 4 (commencing with Section 17072.10) or modernization grants pursuant to Article 7 (commencing with Section 17074.10) in a manner substantially identical to the preliminary apportionment requirements established in Section 17078.24, except that the eligibility of the applicant shall be based on the criteria established in paragraph (2) of subdivision (a).

(2) If requested, provide a preliminary apportionment of a project and construction management grant equal to 5 percent of the state share of the preliminary apportionment.

(Added by Stats. 2024, Ch. 81, Sec. 23. (AB 247) Effective July 3, 2024. Operative November 6, 2024, pursuant to Sec. 30 of Ch. 81.)

EC Section 17078.38 – Assistance to Small School Districts

The board shall adopt regulations setting forth all of the following:

(a) The preliminary application and preliminary apportionment.

(b) The apportionment of design grants, project assistance grants pursuant to subdivision (e) of Section 17072.10 and subdivision (e) of Section 17074.10, as applicable, and project and construction management grants to applicants that qualify for financial hardship assistance pursuant to Section 17075.15, as part of the preliminary apportionment.

(c) The existence of substantial progress requirements on apportionments for design and site grants identical to the requirements set forth in Section 1859.105 of Title 2 of the California Code of Regulations.

(d) The requirements for a final apportionment for the project in a manner substantially identical to the requirements of subdivisions (a) and (b) of Section 17078.25.

(Added by Stats. 2024, Ch. 81, Sec. 23. (AB 247) Effective July 3, 2024. Operative November 6, 2024, pursuant to Sec. 30 of Ch. 81.)

Links to Referenced Authority Sections**EC Section 17070.15 – General Provisions**Link: [EC Section 17070.15.](#)**EC Section 17070.35 – General Provisions**Link: [EC Section 17070.35.](#)**EC Section 17071.75 – New Construction Eligibility Determination**Link : [EC Section 17071.75.](#)**EC Section 17072.10 – New Construction Grant Eligibility Determination**Link : [EC Section 17072.10.](#)**EC Section 17072.30 – New Construction Funding Process**Link: [EC Section 17072.30.](#)**EC Section 17073.10 – Modernization Eligibility Determination**Link: [EC Section 17073.10.](#)**EC Section 17074.10 – Modernization Apportionment**Link: [EC Section 17074.10.](#)**EC Section 17074.16 – Modernization Apportionment**Link: [EC Section 17074.16.](#)**EC Section 17075.15 – Hardship Application**Link: [EC Section 17075.15.](#)**EC Section 17078.10 – Critically Overcrowded School Facilities**Link: [EC Section 17078.10.](#)**EC Section 17078.22 – Critically Overcrowded School Facilities**Link: [EC Section 17078.22.](#)**EC Section 17078.24 – Critically Overcrowded School Facilities**Link: [EC Section 17078.24.](#)**EC Section 17078.25 – Critically Overcrowded School Facilities**Link: [EC Section 17078.25.](#)

Links to Referenced Authority Sections (cont.)

EC Section 17078.47 – State Augmentation of Federal Supporting America’s School Infrastructure Grant Program for Priority School Districts

Link: [EC Section 17078.47.](#)

EC Section 101412 – Kindergarten Through Grade 12 School Facilities Program Provisions

Link: [EC Section 101412.](#)

Section 1859.105 of Title 2 of the California Code of Regulations

Link: [Section 1859.105 of Title 2 of the California Code of Regulations](#)

Section 1859.140 of Title 2 of the California Code of Regulations

Link [Section 1859.140 of Title 2 of the California Code of Regulations](#)