

## INITIAL STATEMENT OF REASONS

### Section 1700. Definitions.

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

To provide the meaning of specific words and terms that are essential to these regulations.

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

Introductory sentence: It was necessary to change “Section” to “Sections” and to add the words “and 17462.3” in order to reference Education Code Section 17462.3, which became effective January 1, 2014, and provides the context for these definitions. In addition, a technical change was made to delete the phrase “subject to the provisions of the Act.” This reference was removed because the term “the Act” is not defined and there is no “Act” to which this regulation refers.

“Apportionment”: It was necessary to define Apportionment because the proposed regulation uses “the date the Board approved an Apportionment” as the start of the ten-year period referred to in Education Code Section 17462.3. This allows school districts, county offices of education, and charter schools to count the ten-year period following an Apportionment during which, under specified circumstances, they may have to return the moneys they received from a state school facilities funding program.

“Board”: It was necessary to define Board as the State Allocation Board (SAB), including its establishment under Government Code Section 15490 because it is authorized to administer the School Facility Program funding, and it is authorized by Education Code Section 17462.3 to establish this program relating to the return of moneys from a state school facilities funding program relating to the sale of real property.

“Charter School”: It was necessary to define Charter School because it is one of the educational entities that may have to return the moneys it received from a state school facilities funding program under specified circumstances. Education Code Sections 47600, et seq., are the basis for the definition because they are “The Charter Schools Act of 1992.” In addition, the School Facility Program Regulations also use these Education Code Sections for the definition of Charter School.

“District Representative”: It was necessary to define district representative in order for this program to operate through forms and documents signed by persons authorized by, and binding upon, their school district, county office of education, and charter school. It benefits the administration of this program to identify a liaison between the SAB and the school district, county office of education, and charter school.

“Form SAB 308”: It was necessary to define Form SAB 308 because school districts, county offices of education, and charter schools must file it under specified circumstances.

“Office of Public School Construction (OPSC)”: It was necessary to define the OPSC because the OPSC is staff to the SAB, and this program will be administered by the OPSC on behalf of the SAB.

“Portable Facility”: It was necessary to define a portable facility for the purpose of excluding its sale from this regulation when the sale does not include the land to which it is affixed. This exclusion reflects that neither AB 308 nor Education Code Section 17462.3 describe sales of portable facilities unless a real estate sale is involved.

## **Section 1701. Ten-Year Time Period.**

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

To set forth criteria for the program.

### **Need for the Regulation**

Introductory sentence: It was necessary to state that criteria (a) through (d) in this Section are for the purpose of implementing Education Code Section 17462.3(a)(3) and (b) because that is the authorizing statute for this program.

Subsection (a): It was necessary to describe the date upon which moneys are received by a school district, county office of education, and/or charter school in order to start the ten-year time period described in Education Code Section 17462.3. Using the date that the SAB approves the Apportionment is understood as an official, well-documented date for all parties.

Subsection (b): It was necessary to describe the date upon which real property is “sold” by a school district, county office of education, and/or charter school in order to know the end of the ten-year time period described in Education Code Section 17462.3. Using the date that the title to the real property is transferred represents a final, official, documented act verifying a sale and, in addition, ensures that real property leases will not be covered by this program since leases do not fall under the provisions contained in AB 308 nor Education Code Section 17462.3.

Subsection (c): It was necessary to clarify that sales of real property shall include real property transferred through condemnation proceedings because condemnation proceedings result in the transfer of title to real property and an adjudged payment amount to a school district, county office of education, and/or charter school. Therefore, if that educational entity had received funding from a state school facility funding program for all or a part of the condemned real property, there is as much reason to apply Education Code Section 17462.3 as in the traditional “sale” between voluntary parties.

Subsection (d): It was necessary to exclude portable facility sales from this regulation when the sale does not include the land to which it is affixed. This exclusion reflects that neither AB 308 nor Education Code Section 17462.3 describe sales of portable facilities unless a real estate sale is involved.

## **Section 1702. Reporting Requirements and Return of Funds.**

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

- To establish the program described in Education Code Section 17462.3, including reporting requirements and return of funds criteria for school districts, county offices of education, and charter schools.

- To require the submittal of a completed Form SAB 308 in order to document pertinent data for purposes of administering the program.

### **Need for the Regulation**

Subsection (a): It was necessary to establish that school districts, county offices of education, and charter schools are the subject of the program because it is stated in AB 308 and Education Code Section 17462.3. It was necessary to apply the program to sales of real property that are subject to Education Code Section 17462.3(a) because that is the statutory application permitted by the statute and Education Code Section 17462.3. It was necessary to require the submittal of Form SAB 308 to the OPSC within 90 calendar days of the sale of real property in order to commit to writing certified as true and correct the pertinent circumstances of a covered “sale.” The Form requires the pertinent information regarding a covered real estate sale in order to administer this program. Ninety calendar days affords sufficient time following a sale to complete and submit the Form.

Subsection (b): It was necessary to implement the part of AB 308 and Education Code Section 17462.3 that covers instances where only a portion of the school site is being sold. Therefore, this subsection was necessary to prescribe the calculations of portions of real property in order to determine the proportionate percentage of funding from a state school facility funding program to be returned to the SAB.

Subsection (c): It was necessary to establish that the SAB may make a finding that school districts, county offices of education, and charter schools are the subject to the criteria in Education Code Section 17462.3 that may, under specified conditions, require them to return to the SAB all or a portion of the state school facilities program funding if they sell the real property within the ten-year period following their receipt of that state funding. It was necessary to state that the school district, county office of education, and/or charter school must return the moneys to the SAB because that is specified in AB 308 and Education Code Section 17462.3. Allowing 90 days to return the moneys to the SAB following the SAB’s finding is considered to be sufficient time for this purpose, taking into account that the school district, county office of education, and/or charter school would have ample advance knowledge that their act of selling the subject real property was triggering the requirement for them to return their state school facilities program funding.

### **Return of Real Property Sale Proceeds Notification, Form SAB 308 (New 06/14).**

#### **Specific Purpose of the Form**

- To add General Information and Specific Instructions to assist educational entities in completing the Form.
- To add data fields to identify the submitting educational entity, buyer, seller, sale and property data, state school facilities program funding received, certifications, and signature and date by the district representative.

#### **Need for the Form**

Form Heading: It was necessary to title and date this Form SAB 308 for the consistency of the SAB’s forms and regulations, and so that educational entities can identify the latest version of

the Form to file. The date, "New 06/14," reflects the month and year that the new Form was adopted by the SAB.

Page 1, General Information, first column, first paragraph: It was necessary to advise school districts, county offices of education, and charter schools that they are subject to Education Code Section 17462.3 and required to submit this Form SAB 308 to the OPSC upon the sale of real property meeting the criteria of that Section.

Page 1, General Information, first column, second paragraph: It was necessary to identify documents to be submitted with Form SAB 308 for the accurate administration of this program, and to verify that funding from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

- Bullet 1: A closing escrow document or other legal document is reasonably necessary to confirm the seller(s), purchaser(s), total acres/square footage of real property sold, and final sale price, for the above reasons.
- Bullet 2: A copy of the assessor's parcel map is reasonably necessary to confirm the gross area of the site and the total area of the property sold, for the above reasons.
- Bullet 3: A copy of the current site plan diagram is reasonably necessary to confirm the square footage of all facilities on the site, and indicating which, if any, of the facilities are being sold, for the above reasons.

Page 1, Specific Instructions, second column, Section #1, Date of Sale of Real Property: It was necessary to identify this date because it ends the ten-year period specified in Education Code Section 17462.3 and this regulation.

Page 1, Specific Instructions, second column, Section #2, Real Property Sold: It was necessary to identify the gross area of real property (land and building area), the total area sold, the percentage of area sold, and the applicable Assessor's Parcel Number(s) in order to implement the requirement of Education Code Section 17462.3, that if only a portion of the real property is sold, a proportionate amount of the funds from a state school facilities funding program shall be returned to the SAB.

Page 1, Specific Instructions, second column, Section #3, Purchasing Entity: It was necessary for the efficient submittal of Form SAB 308 to provide boxes to identify the purchaser of the real property.

- Bullet 1: It was necessary to identify the purchaser of the real property in order to know whether it was an educational entity or child care and development service that, by the provisions of Education Code Section 17462.3, would exempt the seller from having to return moneys to the SAB from state school facilities funding programs.
- Bullet 2: It was necessary to require the name of the purchasing entity if it was not one of the educational entities or child care and development service listed in Education Code Section 17462.3, in order to ensure the accurate administration of the program, and to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

Page 1, Specific Instructions, second column, Section #4, Total Funds Received: It was necessary to identify the OPSC application number, SAB apportionment date, the total of all Apportionments provided within the specified ten-year period, and the applicable portion of the apportionment to be returned to the SAB as specified in Education Code Section

17462.3, in order to ensure the accurate administration of the program, and to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

Page 1, Specific Instructions, second column, Section #5, Certification: It was necessary to require the representative of the school district, county office of education, and/or charter school to certify by signing and dating the Form as being: 1) true and accurate information; 2) that they are authorized to act as the representative on the education entity's behalf; and 3) that the language of the Form as adopted by the SAB shall prevail if there is any variance from the Form submitted in order to ensure the accurate administration of the program, and to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

Page 2, Top of page, Introductory sentence: It was necessary to put school districts, county offices of education, and charter schools on notice of the reporting requirement regarding sales of real property and citing the authority as Education Code Section 17462.3 and this regulations.

Page 2, Data Fields, "School District": It was necessary to identify the school district in order to ensure the accurate administration of the program, and to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

Page 2, Data Fields, "County": It was necessary to identify the county in order to ensure the accurate administration of the program, and to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

Page 2, Data Fields, "Site Name": It was necessary to identify the site name in order to ensure the accurate administration of the program, and to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

Page 2, Data Fields, "CDE Site Code": It was necessary to identify the [California Department of Education] CDE site code in order to ensure the accurate administration of the program, and to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

Page 2, Data Fields, "Prior Site Name (If Applicable)": It was necessary to identify the prior site name, if applicable, in order to ensure the accurate administration of the program, and to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

Page 2, Data Fields, "Prior CDE Site Code (If Applicable)": It was necessary to identify the prior CDE site code, if applicable, in order to ensure the accurate administration of the program, and to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

Page 2, Data Fields, "Property Address:" It was necessary to identify the property address in order to ensure the accurate administration of the program, and to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

Page 2, Data Fields, "Assessors Parcel Number (APN)": It was necessary to identify the assessor's parcel number in order to ensure the accurate administration of the program, and to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

Page 2, Data Fields, "District Representative Name (Print Name)": It was necessary to identify the district representative with a discernable printed name in order to ensure the accurate administration of the program, and to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

Page 2, Data Fields, "Telephone Number": It was necessary to identify the district representative's telephone number for any necessary communication in order to ensure the accurate administration of the program, and to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

Page 2, Data Fields, "E-Mail Address": It was necessary to identify the district representative's e-mail address for any necessary communication in order to ensure the accurate administration of the program, and to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

Page 2, Data Fields, Section #1, Date of Title Transfer: It was necessary to identify the date the title was transferred to the pertinent real property because it is the "date sold" for purposes of this regulation. It is the end of the ten-year period specified in Education Code Section 17462.3, and must be known in order to determine if the real property sale is subject to this Section.

Page 2, Data Fields, Section #2, Real Property Sold: It was necessary to provide data fields to identify the gross area of the site, total area sold and associated percentage of total site, gross building area on site, and total building area sold and associated percentage of total site, with associated assessor parcel numbers in order to implement the requirement of Education Code Section 17462.3, that if only a portion of the real property is sold, a proportionate amount of funding from a state school facilities funding program shall be returned to the SAB.

Page 2, Data Fields, Section #3, Purchasing Entity: It was necessary to identify the purchaser of the real property by providing check boxes to determine whether the purchaser was one of the educational entities or child care and development service that, by the provisions of Education Code Section 17462.3, would exempt the seller from having to return moneys to the SAB from state school facilities funding programs, or if not, a check box for "Other" and a line to add the name of the purchaser that is not one of the educational entities or child care and development service listed in Education Code Section 17462.3. Identifying the purchaser is necessary to ensure the accurate administration of the program, and to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

Page 2, Data Fields, Section #4, Total Funds Received for the Site: It was necessary to provide data fields to identify the OPSC Application number, SAB Apportionment date, total State Apportionment, and portion of Apportionment to be returned in order to ensure the accurate administration of the program, and to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

Page 2, Bottom of page, Certifications by District Representative: It was necessary to require the district representative to certify that the information reported on the Form is true and accurate in order to ensure the accurate administration of the program, and to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

This requirement is consistent with the Certifications on other SAB Forms administered by the SAB.

- Bullet 1: It was necessary to require the district representative to certify that he/she is authorized to act on behalf of their governing board in order to ensure that the SAB and OPSC work with the person who is legally empowered to do so, and that the program determinations are binding upon the school district, county office of education, and charter school. This requirement is consistent with the Certifications on other SAB Forms.
- Bullet 2: It was necessary to require the district representative to acknowledge that exact duplicates of Form SAB 308 are to be submitted, and that the language of the Form as adopted by the SAB will prevail regardless of any differences on the submitted Form. This certification ensures the accurate administration of the program, and helps to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3. This acknowledgment is consistent with the Certifications on other SAB Forms administered by the SAB.

Page 2, Data Fields, Signature of District Representative and Date: It was necessary to provide a space for the representative of the school district, county office of education, and/or charter school to certify by signing and dating the Form as being: 1) true and accurate information; 2) that they are authorized to act as the representative; and 3) that the language of the Form as adopted by the SAB shall prevail if there is any variance from the Form submitted in order to ensure the accurate administration of the program, and to verify that funds from a state school facilities funding program are transferred in accordance with Education Code Section 17462.3.

#### **Office of Administrative Law Regulations, Title 1, Section 20(c)(1)**

This State Allocation Board Form is maintained and readily accessible through our Web site. Therefore, it is not necessary to publish this Form in the California Code of Regulations.

#### **Office of Administrative Law Regulations, Title 1, Section 20(c)(2)**

This State Allocation Board Form is made available upon request and through our Web site, and will continue to be made available upon request and through our Web site.

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

The proposed regulation promotes fairness and assists in the State's general welfare through the recovery and reallocation of bond funds in order to ensure the prudent use of taxpayer dollars. Without this proposed regulation, the provisions of the statute would not be in effect as the statute requires the SAB to take an action to create a program. The State would not have a mechanism to recover state funding provided to school districts, county offices of education or charter schools that sell surplus property that was purchased, constructed, or modernized with state bond proceeds. Further, the amount of state funding to be returned would be unclear. This would not be in the best interest of the State.

The proposed regulations are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of this proposed regulation will have a positive impact on the State's general welfare while carrying out the Legislative and voter intent that the bond funds are being used prudently while maintaining the integrity of the SFP.

The proposed regulations will directly impact the State's economy as well as the local economies because school bond apportionments affect local businesses, manufacturing, and construction industries such as architects, engineers, trades and municipalities, along with the potential creation of an unspecified number of jobs. This is in direct alignment with the Governor's directive. Further, the proposed regulations provide a positive impact to the creation of jobs, the creation of new businesses, and the expansion of businesses in California. It is not anticipated that the proposed regulations will result in the elimination of existing businesses or jobs within California.

## **DOCUMENTS RELIED UPON AND STATEMENTS REGARDING THE RULEMAKING**

### **Technical Documents Relied Upon**

The SAB's Action Item, dated June 25, 2014, entitled "Implementation of Assembly Bill 308 Proposed Regulations."

The Economic Impact Assessment prepared pursuant to Government Code Section 11346.3(c).

### **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.

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

The SAB has determined that the proposed regulation does not affect small businesses.

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

The SAB has determined that the adoption of the regulation will not have a direct affect on businesses/small businesses, including the ability of California businesses to compete with businesses in other states because they are not required to comply with or enforce the regulation, nor will they be disadvantaged by the regulation.

### **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, school districts, county offices of education, or charter schools to incur additional costs in order to comply with the proposed regulation.