

## MEMORANDUM

**Date:** March 14, 2018

**To:** Members of the California School Finance Authority

**From:** Katrina M. Johantgen, Executive Director

**Re:** Resolution 18-03 – Approving Readoption of the Emergency Rulemaking Process

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Emergency Regulations (ER) under the Charter School Facility Grant Program (SB740 or Program) were approved at the October 11, 2017 California School Finance Authority (CSFA) Board Meeting, and approved by the Office of Administrative Law (OAL) on November 2, 2017. The ER contained the pro-rata methodology necessary to administer the Program due to oversubscription. On December 12, 2017, the proposed permanent regulations (PPR) were approved by the Board and submitted to OAL as the beginning of the Regular Rulemaking process. A Notice of Proposed Rulemaking opened the 45-day Public Comment period which closed on February 20, 2018. The Authority received several public comments on the PPR concerning Section 10170.4 (a)(1). During the same time frame, the Department of Finance (DOF) introduced Trailer Bill Language (TBL), which does not agree with PPR Section 10170.4 (a)(1). CSFA is proposing to readopt the approved ER, with the addition of the language from the PPR (minus Section 10170.4 (a)(1)). This merge will update the regulations regarding the online application process for the Program and remove obsolete language. Additionally, it will also allow CSFA more time to respond to public comments and work with DOF on the TBL before finalizing the PPR.

Public comments to the PPR were submitted by attorneys, charter schools, charter management organizations and stakeholders regarding the proposed amendments made to the Section as follows:

### **Section 10170.4. Eligible Costs.**

- (a) *Grant funds may be applied toward a Charter School's facilities costs for all of the following:*
  - (1) *Costs associated with facility rents or leases as evidenced by an executed rental or lease agreement and beginning with the 2018-19 funding round, shall be subject to one of the following conditions:;*
    - (A) *Reimbursable facility rent or lease costs may not exceed prior year's costs on file with the Authority, adjusted to be consistent with the current year COLA Index; or*
    - (B) *The rent or lease costs of new facility agreements are at or below market rate based on an independent appraisal paid for by the Applicant.*

The public comments both opposed and supported the proposed amendments to the aforementioned section. Regarding section (A), concerns were submitted about how the baseline lease amount would be determined, and how the application of the COLA index to their submitted lease costs could affect the school's overall eligibility. Regarding section

(B), stakeholders expressed concern about the new requirement of an independent appraisal to validate increases in rent or lease costs that exceeded the COLA, as the cost of the appraisal would create a financial burden on schools. Letters of support for the Section were submitted by the California Teachers Association and In the Public Trust (an advocacy group).

In addition to public comment on the proposed regulations, stakeholders also expressed concern about the TBL that was submitted by the Department of Finance during the same time period. The TBL mirrors most of CSFA's proposed regulations but will be "beginning with the 2016-17 funding round". The 2016-17 start in the TBL was inconsistent with the 2018-19 start in CSFA's PPR. Additional time is needed for CSFA to work with stakeholders and DOF to resolve any inconsistencies between the TBL and Program regulations before the PPR can be completed and filed with OAL.

The current ER will expire on May 2, 2018. To create the additional time needed to finalize the PPR, CSFA can withdraw Section 10170.4 (a)(1) from the ER and readopt with the addition of only the uncontested PPR language regarding the online application process. CSFA staff will file a Notice of Publication as required under the Emergency Readopt Rulemaking Action to extend the emergency regulations for 90 days. The proposed readopt ER is attached and contains blue strikeouts and underlines to denote language previously approved by OAL and the board.

CSFA intends to proceed with the Regular Rulemaking Action and Certificate of Compliance upon resolution of the issues brought up during the public comment period, after the TBL is finalized, and when the CSFA Board approves the proposed amended permanent regulations. CSFA has one year to complete the proposed Permanent rulemaking process.

**Recommendation:** Staff recommends readopting the approved Emergency regulations, with the addition of the uncontested PPR language, and postponing completion of the proposed Permanent Regulations process.