

## **California School Finance Authority**

Title 4, Division 15, Article 1.5

### **Finding of Emergency**

Education Code section 47614.5(m) provides, "The California School Finance Authority may adopt regulations to implement this section. Any regulations adopted pursuant to this section may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Title 2 of the Government Code). The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare." The proposed regulations are integral to administration of the Charter School Facility Grant Program (Program) and changes through the regular rulemaking process might not be established in time for the application period of the next funding round for the Program.

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulations to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

### **Authority and Reference**

Authority: Section 47614.5 of the Education Code. Section 47614.5(m) allows the Authority to adopt regulations in order to administer the Program .

Reference: Section 47614.5 of the Education Code, Section 47600, et seq., of the Education Code, Section 47605 of the Education Code, and Section 47612.5 of the Education Code. The regulations include a number of the requirements of the Program contained in Section 47614.5. They also rely on specific provisions within the Charter Schools Act of 1992, commencing with Section 47600 of the Education Code.

### **Informative Digest**

The Authority was created in 1985 to assist school districts and community college districts in financing school construction projects (Education Code section 17170, et seq.). The Authority is authorized to adopt bylaws for the regulation and conduct of its business and is vested with all powers reasonably necessary to carry out its powers and responsibilities (Education Code sections 17179 and 17180).

Pursuant to Education Codesection 47614.5, the State Legislature directed the Authority to commence administration of the Program with the 2013-14 fiscal year and to adopt regulations to implement the Program. Effective July 1, 2013, the Authority initiated its administration of the Program, and pursuant to Section 47614.5(m), a Certificate of Compliance was approved on August 6, 2014 by the Office of Administrative Law (OAL) (OAL Regulatory Action #2014-0625-01C).

On December 20, 2022, the Authority's Board approved the emergency regulations at its board meeting; amendments adopted pursuant to emergency rulemaking are listed below:

#### Section 10170.4. Eligible Applicant

(a)(2) –Add “COVID-19 mitigation improvements or modifications (only incurred during the 2022-2024)” as prescribed by Assembly Bill 178 (2022) providing additional funding for other facility related costs as well as the addition of any improvements or modification to mitigate COVID-19 during the 2022-23 and 2023-24 Program funding rounds.

#### Section 10170.6. Content of Application

(d)(2) – Removal of the subsection due to the removal of the reference to Section 10170.14. Applicants are already required to use certificated appraisers which are subject to their associated bylaws, regulations, and statutes.

Renumber the subsequent sections to ensure proper subsection numbers after the removal.

#### Section 10170.14. Conflicts of Interest

Removal of the entire section to ensure consistency with Government Code (GC) section 1090 and its related sections. As stated in GC section 1097.1, the Fair Political Practices Commission (FPPC) has the “jurisdiction to commence an administrative action, or a civil action” related to GC section 1090 violations or of the related sections.

The original development of Section 10170.14 in 2013 was due to the Authority's attempt to address a perceived deficiency in the law pertaining to the status of charter school officials, including Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of title 1 of the Government Code. Prior to Senate Bill 126 (2019), it was an open question whether statutory conflict of interest laws expressly applied to charter school governing boards. With the passage of SB 126, charter school governing boards are subject to GC section 1090 and therefore, the conflicts of interest prohibitions as described in GC section 1090 fall within the jurisdiction of the FPPC to evaluate and enforce, if necessary. It would be redundant, as best, and potentially inconsistent for the Authority to perform a conflict of interest analysis only for the FPPC to make a final determination.

The Authority will still require applicants to confirm compliance with Program regulations, but applicants are now under a duty as public officials to ensure compliance with GC section 1090, which may include seeking a determination from the FPPC themselves.

As prescribed in Program Regulations section 10170.6(a), applicants must continue to comply with state and federal law, including GC section 1090 as well as any other conflict of interest related laws. This is done through a self-certification compliance form submitted with the Program's application. Program Regulation section 10170.6(g) gives the Authority the ability to recoup funds if an

applicant violates state law, including GC section 1090.

Section 10170.15. Eligible Applicant

Change to Section 10170.14 as the above section is being removed.

**Mandate on Local Agencies or School Districts**

The executive director of the Authority has determined that these amendments to the Program regulations do not impose any additional mandate on local agencies or school districts for a new program or higher level of service of an existing program.

**Evaluation of Inconsistency and Incompatibility**

The Authority performed a search in the California Code of Regulations and the proposed regulations are neither inconsistent nor incompatible with existing regulation.

**Cost Estimate**

The executive director of the Authority has determined that these emergency regulations will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable cost to local agencies or school districts under Section 17561 of the Government Code, and no costs or savings in federal funding to the State.