California Proposed Amendment for Advance Payment
Existing law imposes various limitations on emissions of air contaminants for the control of air pollution from vehicular and non-vehicular sources. Existing law generally designates the State Air Resources Board as the state agency with the primary responsibility for the control of vehicular air pollution, and air pollution control and air quality management affected entities with the primary responsibility for the control of air pollution from all sources other than vehicular sources.

Senate Bill (SB) 854 (2018) authorizes the state board to provide advance payments to grantees of a grant program or project if the state board determines specified conditions are met.

SB 854 requires the state board, in consultation with the Department of Finance, to adopt a regulation implementing that advance payment program.

In accordance with State Air Resources Board’s California Environmental Quality Act report on Advance Pay, there are no significant effects to the economy of the State as this payment process only applies to the timing of disbursements for various projects and on an as needed basis in order for the program to be successful.

In order to meet the mission, California Air Resources Board (CARB) works collaboratively with the Legislature, Air Districts and stakeholders to set guidelines through grant programs which aim to reduce air pollution and greenhouse gasses while providing cleaner air for Californians.
Section 39603.1 is added to the Health and Safety Code, to read:

39603.1.

(a) Notwithstanding any other law, the state board may provide advance payments to grantees of a grant program or project if the state board determines all of the following:

(1) The advance payments are necessary to meet the purposes of the grant program or project.

(2) The use of the advance funds is adequately regulated by grant or budgetary controls.

(3) The request for application or the request for proposals contains the terms and conditions under which an advance payment may be received consistent with this section.

(4) The grantee is either a small affected entity or the grantee meets all of the following criteria:

(A) Has no outstanding financial audit findings related to any of the moneys eligible for advance payment and is in good standing with the Franchise Tax Board and Internal Revenue Service.

(B) Agrees to revert all unused moneys to the state if they are not liquidated within the timeline specified in the grant agreement.

(C) (i) Submits a spending plan to the state board for review prior to receiving the advance payment.

(ii) The spending plan shall include project schedules, timelines, milestones, and the grantee’s fund balance for all state grant programs.

(iii) The state board shall consider the available fund balance when determining the amount of the advance payment.

(D) Reports to the state board any material changes to the spending plan within 30 days.

(E) Agrees to not provide advance payment to any other entity.

(5) In the event of the nonperformance of a grantee, the state board shall require the full recovery of the unspent moneys. A grantee shall provide a money transfer confirmation within 45 days upon the receipt of a notice from the state board.
(b) The state board, in consultation with the Department of Finance, shall adopt a regulation implementing this section to ensure the moneys are used properly.
Subchapter 4.1. Advance Payments

Article 1. General

§ 91040. Purpose.

Purpose. The purpose of this regulation is to ensure that advance payments of grants to programs supported by the California Air Resources Board can be used to support program purposes consistent with appropriate and prudent controls.

NOTE: Authority cited: Sections 39600, 39601, 39603.1 Health and Safety Code.
Reference: Sections 39600, 39601, and 39603.1 Health and Safety Code.

§ 91041 Definitions.

(1) **Advance Payments** means payments to a grantee prior to, and in anticipation of, performance under a grant agreement.

(2) **Audit Findings** means listed items in the report of an independent auditor performing financial or performance audits documenting where improvement is needed.

(3) **Available Fund Balance** means the unobligated and unrestricted cash that a grantee has available for future commitments at the time of requesting the advance payment.

(4) **Budgetary Controls** means the grant recipient has a system of controls in which the grant budgets are compared with actual spending, within the timelines of the grant budget and deliverables to ensure the grant and program objectives are being followed.

(5) **Days** means calendar days.

(6) **District** means a county or regional air pollution control district or a county or regional air quality management district.

(7) **Executive Officer** means the executive officer of the California Air Resources Board or his or her designee.
(8) “**Good Standing**” means:
   a. An entity is in compliance with all applicable requirements of, and is not 
      subject to any form of sanction, penalty, suspension, forfeiture, or 
      disciplinary action by the Internal Revenue Service or Franchise Tax Board.
   b. An entity is in compliance with all reporting requirements of financial 
      information. This includes remittance, audits and reports to the California 
      Franchise Tax Board, and the Internal Revenue Service.

(9) “**Liquidate**” means that all moneys for a specified project have been spent by the 
    grantee for valid and eligible project invoices and administrative costs.

(10) “**Material Changes**” means:
   a. A change in the structure of the entity that is expected to affect the grant. 
      This includes a change in senior principal officers, Board Members, key 
      personnel with the potential to affect the completion of grant objectives , 
      except in regard to air districts.
   b. A change to the spending plan of twenty-five (25) percent or more in any 
      line item.
   c. A change in the financial conditions of the entity that would cause a 
      reasonable person to believe the completion of grant objectives are not 
      achievable.

(11) “**Small District**” means all county or regional air pollution control districts and all 
    county or regional air quality management districts with a population of less than 
    four million (4,000,000) based on data from the California Department of Finance 
    Demographic Research Unit.

(12) “**Spending Plan**” means an outline of how the advanced funds will be expended 
    within the term of the grant agreement.

(13) “**State Board**” means the California Air Resources Board or ‘CARB”.

(14) “**Entity**” means any grant recipient other than a district as defined in this 
    Subsection.

NOTE: Authority cited: Sections 39600, 39601, 39603.1 Health and Safety Code. 
Reference: Sections 39600, 39601, and 39603.1 Health and Safety Code.


(a) All requests for advance payments must contain the information required by law, 
    including in this Subchapter.
(b) The Executive Officer or his or her designee will make the final determination to accept, modify, or deny an advance payment.


§ 91043. Advance Payment Criteria.

(a) Requirements for small districts. To be approved for an advance payment, small districts must provide documentation to the Executive Officer demonstrating all of the following:

(1) The advance payments, in the amount required, are necessary to meet the purposes of the grant program or project;
   a) The advance payment is intended to alleviate a practical business or economic situation that would inhibit the program or project.
(2) The use of the advance payments is adequately regulated by grant or budgetary controls, including that any financial audit findings that, in the view of the Executive Officer or designee, relate to any moneys eligible for advance payment, have been addressed;
(3) The use of the advance payment is limited to the specified activities approved for the grant.
(4) Agrees to return all unused moneys to the state if they are not liquidated within the timeline specified in the grant agreement.

(b) Requirements for other districts (districts that are not small) and other entities. To be approved for an advance payment, any other entity that is not a small district must provide documentation to the Executive Officer demonstrating that it meets all the requirements of paragraph (a) and meet all of the following requirements:

(1) The entity has no outstanding uncorrected material misstatement in financial audits and audit findings are being corrected, in the view of the Executive Officer or designee, relate to any moneys eligible for advance payment;
(2) Is in good standing with the Franchise Tax Board (FTB) and Internal Revenue Service (IRS). The entity must be in good standing with FTB and IRS at the time the advance payment request is made. If the entity falls out of good standing with FTB or IRS after an advance payment is made, but before the grant is completed, the Executive Officer or his or her designee may require the return of any unspent monies in accordance with Section 91045.
(3) Agrees to return all unused moneys to the state if they are not liquidated within the timeline specified in the grant agreement.
(4) Has an appropriate spending plan.
(5) For advance payments larger than One-hundred Thousand Dollars ($100,000.00) or twenty-five (25) percent of the operating budget, the Executive Officer may require additional guarantees (e.g., bond, pledge of collateral), except in regard to air districts.
(c) Spending Plan contents. A spending plan, if required, must provide sufficient information for the Executive Officer or designee reasonably to conclude that the advance payment request is necessary to meet the purposes of the grant program or project and is adequately regulated by grant or budgetary controls, including but not limited to:

(1) A discussion of project schedules, timelines, milestones, and the grantee’s fund balance for all state grant programs;
(2) An explanation of how the matters discussed in accordance with paragraph (c)(1) demonstrate compliance with this subchapter’s requirements.
(3) A commitment to report any material changes to the spending plan within 30 days.
(4) A commitment not to use the advance payments received to provide payments in advance to grantees, except to another air district.

(d) Additional requirements. The Executive Officer or designee may request additional information from applicants if it is needed to ascertain whether an advance payment is appropriate under this subchapter or other governing law. This process may include audits as needed.

NOTE: Authority cited: Sections 39600, 39601, 39603.1 Health and Safety Code.
Reference: Sections 39600, 39601, and 39603.1 Health and Safety Code.

§ 91044. Severability

Each part of this subchapter is deemed severable, and in the event that any part of this subchapter is held to be invalid, the remainder of this subchapter shall continue in full force and effect.

NOTE: Authority cited: Sections 39600, 39601, 39603.1 Health and Safety Code.
Reference: Sections 39600, 39601, and 39603.1 Health and Safety Code.
To ensure that all stakeholders and affected entities voices are heard and that all viable options for actions are considered, CARB will hold a pre-board workshop in March 2019, followed by a Board Hearing in June 2019. Please visit our website at www.arb.ca.gov for updates.
Links to current program guidelines that may be amended to include information for advance payment requirements.

- Funding Agricultural Replacement Measures for Emission Reductions Program
  https://arb.ca.gov/ag/agincentives/agincentives.htm

- Lower-Emission School Bus Program
  https://www.arb.ca.gov/msprog/schoolbus/schoolbus.htm

- Woodsmoke Reduction Program
  https://www.arb.ca.gov/planning/sip/woodsmoke/reduction_program.htm

- Low Carbon Transportation Investments and Air Quality Improvement Program
  https://www.arb.ca.gov/msprog/aqip/aqip.htm

- Enhanced Fleet Modernization Program
  https://www.arb.ca.gov/msprog/aqip/efmp/efmp.htm