

**STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE
July 16, 2009**

ACCESSIBILITY AND FIRE CODE REQUIREMENTS ON MODERNIZATION PROJECTS

PURPOSE

To discuss proposed amendments to the School Facility Program (SFP) regulations to replace the three percent option with the 60 percent minimum work necessary option for accessibility and fire code requirements under the Excessive Cost Hardship Grant.

BACKGROUND

Date/Meeting	Overview of Report	Outcome
August 2006 SAB	<ul style="list-style-type: none"> • The Office of Public School Construction (OPSC) staff presented to the State Allocation Board (SAB) amendments to the SFP Section 1859.83(f) to allow school districts the option to choose an allowance based on three percent of the base grant or 60 percent of the minimum work necessary to meet accessibility and fire code requirements. • The report included the methodology and calculations for how the 60 percent option was determined and how the maximum grant cap under the 60 percent option was determined. • The OPSC staff recommended SAB approve the regulation amendments. 	The SAB approved the OPSC staff recommendations to allow school districts the option to choose an allowance based on three percent of the base grant or 60 percent of the minimum work necessary to meet accessibility and fire code requirements on a trial basis for one year with a goal to determine the best way to provide funding for costs of accessibility and fire code requirements compliance.
August 2008 SAB	<ul style="list-style-type: none"> • The OPSC staff reported to the SAB the results of a data analysis based on the amendments to the SFP regulations. • The report included one full year of data from projects that received an allowance for accessibility and fire code requirements from August 2007 to July 2008. • A substantial amount of Districts chose the 60 percent option over the three percent option. Districts that took advantage of the 60 percent option received a significant increase in funding for over the three percent option. 	The SAB accepted the report from OPSC staff and requested staff to draft amended regulations to remove the three percent option for the accessibility and fire code requirements under the Excessive Cost Hardship Grant and keep the 60 percent option.

Date/Meeting	Overview of Report	Outcome
November 2008 IMP	<ul style="list-style-type: none"> • The OPSC staff proposed draft regulations for the accessibility and fire code requirements under the Excessive Cost Hardship Grant to replace the three percent option with the 60 percent option. • The OPSC staff presented to the Implementation (IMP) Committee background information and data on modernization projects that received an allowance for accessibility and fire code requirements from August 2007 to July 2008. 	<ul style="list-style-type: none"> • The IMP Committee requested OPSC staff to gather additional data, and present at the December 2008 IMP meeting. • The IMP requested additional data analysis to look at projects that are replacement of like kind.
December 2008 IMP	No report on this issue was presented.	The IMP Committee Chair announced that the OPSC staff intended to return to the IMP in approximately six months with additional data.

AUTHORITY

SFP Regulation Section 1859.79.2(a) states that Modernization Grant Funds may not be used for new building areas. However, it can be used for replacing building areas of like kind and building areas required by the federal Americans with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

SFP Regulation Section 1859.83(f)(1) currently allows for a Modernization Excessive Cost Hardship Grant for accessibility and fire code requirements. Districts have the option of selecting either three percent of the Modernization Grant or funding based on the verified hard construction costs of the minimum accessibility and fire code work necessary to receive approval from the DSA.

For projects constructed pursuant to SFP Regulation Section 1859.79.2(a) (replacement building area of like kind), SFP Regulation Section 1859.83(f)(2) allows for a Modernization Excessive Cost Hardship grant for accessibility and fire code requirements equal to three percent of the Modernization Grant.

STAFF COMMENTS

At the August 2008 SAB meeting, after reviewing the data presented in the staff report, the SAB requested the OPSC to provide proposed amendments to SFP Regulation 1859.83(f) to discontinue the three percent funding option for the accessibility and fire code grant allowance.

Based on feedback from the November IMP meeting, where stakeholders expressed concern for projects that consist of replacement building area of like kind construction, the OPSC has drafted additional proposed amendments to SFP Regulation Section 1859.83(f). These

amendments would allow districts the opportunity to receive a three percent increase to the base grant if there is replacement building area of like kind in their projects. For projects that include both replacement building area of like kind and other modernization work, districts would be able to choose either the three percent option or the 60 percent option.

Staff is presenting proposed amendments to SFP Regulation Section 1859.83(f) as shown in Attachment A and to Form SAB 50-04 shown in Attachment B to add the option for projects that contain replacement building area of like kind construction. Additionally, staff is presenting proposed amendments to SFP Regulation Section 1859.83(f) as shown in Attachment C and to Form SAB 50-04 shown in Attachment D to discontinue the three percent option entirely.

OPTION 1:

Amend the regulations as outlined in Attachment A and B to discontinue the three percent option for projects without replacement building area of like kind construction.

Allow projects with replacement building area of like kind construction the opportunity to select the three percent increase to the base grant or the 60 percent option if the project contains both replacement building area of like kind construction and other modernization work.

PROS:

- Districts with replacement building area of like kind projects would be eligible for a three percent increase vs. receiving no funding at all.
- Districts with replacement building area of like kind projects have the ability to select either the 60 percent option or the three percent option, but not both. The option selected by the district would depend on the amount of accessibility and fire code requirement upgrades being done to facilities that are not replacement building area of like kind construction.

CON:

Additional funds will be provided under the three percent option without verification of actual construction costs.

OPTION 2:

Amend the regulations as outlined in Attachment C and D to discontinue the three percent option entirely.

PROS:

- This option is consistent with the Board's direction.
- This option would allow for ease of administration.

CONS:

- Districts with replacement building area of like kind projects would not be eligible for a three percent increase or the 60 percent option.
- Districts with replacement building area of like kind projects would only be eligible for the 60 percent option if they have Accessibility and Fire Code Requirement upgrades being done to facilities that are not replacement building area of like kind.

ATTACHMENT A

Section 1859.83. Excessive Cost Hardship Grant.

In addition to any other funding authorized by these Regulations, a district is eligible for funding as a result of unusual circumstances that created excessive project costs beyond the control of the district. The Excessive Cost Hardship Grant shall be based on any of the following:

- (f) Excessive cost due to accessibility and fire code requirements:
- (1) The district is eligible for a Modernization Excessive Cost Hardship Grant equal to ~~three percent of the Modernization Grant for accessibility and fire code requirements. In lieu of three percent, the district has the option of requesting~~ 60 percent of the amount determined in (A), not to exceed 60 percent of the amount determined in (B):
 - (A) Determine the difference of the verified hard construction costs of the minimum accessibility and fire code work necessary to receive approval from the DSA minus seven percent of the sum of the Modernization Grant and the district matching share of the Modernization Grant pursuant to Section 1859.79.
 - (B) Determine the difference of 1. minus 2.:
 1. Multiply the pupils requested in the application by the New Construction Grant.
 2. The sum of the State and district share of the pupils requested on the Form SAB 50-04 multiplied by the grant determined pursuant to Section 1859.78 and 1859.78.3.
- (2) In lieu of funding provided in (1), projects that contain replacement building area of like kind constructed pursuant to Section 1859.79.2(a)(1) in addition to other modernization work may request be provided a Modernization Excessive Cost Hardship Grant equal to either three percent of the Modernization Grant or 60 percent of the amount determined in (A), not to exceed 60 percent of the amount determined in (B).
- (3) In lieu of funding provided in (1), projects that consist exclusively of replacement building area of like kind pursuant to Section 1859.79.2(a)(1) are eligible for a Modernization Excessive Cost Hardship Grant equal to three percent of the Modernization Grant.
- ~~(3)~~ (4) The district is eligible for a Modernization Excessive Cost Hardship Grant of:
 - (A) \$80,000 for each new two-stop elevator required to be included in the project by the DSA if the Approved Application was received on or before April 29, 2002.
 - (B) \$60,000 for each new two-stop elevator required to be included in the project by the DSA if the Approved Application is received after April 29, 2002.The amounts shown in (A) and (B) above shall be adjusted annually in the manner prescribed in Section 1859.78.
- (4) (5) The district is eligible for a Modernization Excessive Cost Hardship Grant of:
 - (A) \$14,400 for each additional stop of the new elevator required in (3) above if the Approved Application was received on or before April 29, 2002.
 - (B) \$10,800 for each additional stop of the new elevator required in (3) above if the Approved Application was received after April 29, 2002.

The amounts shown in (A) and (B) above shall be adjusted annually in the manner prescribed in Section 1859.78.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17072.32, 17074.15, 17074.16, 17075.10, 17075.15, 17077.40, 17077.42 and 17077.45, Education Code.

Attachment B
50-04 Instructions

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Section 6

Modernization Adjusted Grant pursuant to Section 1859.70. For purposes of this apportionment, the following documents must be submitted with this form (as appropriate):

If the request includes funding for accessibility and fire code requirement pursuant to Section 1859.83(f), the DSA approved list of the minimum accessibility work required and a detailed cost estimate for the work in the plans, [unless the project includes replacement building area of like kind and the district has selected the three percent option according to Regulation Section 1859.83\(f\)\(2\) or 1859.83\(f\)\(3\).](#)

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7. Excessive Cost Hardship Request

Check the appropriate box to request an augmentation to the New Construction, Modernization or Charter School Facility Program Rehabilitation Grants for an excessive cost hardship for the items listed. Refer to Section 1859.83 for eligibility criteria. Requests for excessive cost grants for accessibility requirements are allowed only if required by the Division of the State Architect (DSA). ~~At the district's option, t~~The district may request ~~three percent of the modernization base grant or enter~~ [60 percent of the amount calculated pursuant to Regulation Section 1859.83\(f\)\(1\), or when both replacement building area of like kind and other modernization exist, the district may request either three percent of the modernization base grant or 60 percent of the amount calculated pursuant to Regulation Section 1859.83\(f\)\(1\).](#) Projects that consist exclusively of replacement building area of like kind may request three percent of the Modernization Grant. Attach a copy of the DSA approved list that shows the minimum work necessary for accessibility requirements.

50-04 Form

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Section 6

Modernization or Charter School Facility Program Rehabilitation Only

- Rehabilitation/Mitigation [Section 1859.83(e)]: \$ _____
- Geographic Percent Factor: _____ %
- Accessibility/Fire Code
 - 3 percent of base grant; ~~or,~~
 - 60 percent of minimum work \$ _____
- Number of 2-Stop Elevators: _____
- Number of Additional Stops: _____
- Small Size Project
- Urban/Security/Impacted site

ATTACHMENT C

Section 1859.83. Excessive Cost Hardship Grant.

In addition to any other funding authorized by these Regulations, a district is eligible for funding as a result of unusual circumstances that created excessive project costs beyond the control of the district. The Excessive Cost Hardship Grant shall be based on any of the following:

- ...
- (f) Excessive cost due to accessibility and fire code requirements:
 - (1) ~~The district is eligible for a Modernization Excessive Cost Hardship Grant equal to three percent of the Modernization Grant for accessibility and fire code requirements. In lieu of three percent, The district has the option of may requesting 60 percent of the amount determined in (A), not to exceed 60 percent of the amount determined in (B):~~
 - (A) Determine the difference of the verified hard construction costs of the minimum accessibility and fire code work necessary to receive approval from the DSA minus seven percent of the sum of the Modernization Grant and the district matching share of the Modernization Grant pursuant to Section 1859.79.
 - (B) Determine the difference of 1. minus 2.:
 1. Multiply the pupils requested in the application by the New Construction Grant.
 2. The sum of the State and district share of the pupils requested on the Form SAB 50-04 multiplied by the grant determined pursuant to Section 1859.78 and 1859.78.3.
 - ~~(2) Projects constructed pursuant to Section 1859.79.2(a)(1) may be provided a Modernization Excessive Cost Hardship Grant equal to three percent of the Modernization Grant.~~
 - ~~(3)~~ (2) The district is eligible for a Modernization Excessive Cost Hardship Grant of:
 - (A) \$80,000 for each new two-stop elevator required to be included in the project by the DSA if the Approved Application was received on or before April 29, 2002.
 - (B) \$60,000 for each new two-stop elevator required to be included in the project by the DSA if the Approved Application is received after April 29, 2002.The amounts shown in (A) and (B) above shall be adjusted annually in the manner prescribed in Section 1859.78.
 - ~~(4)~~ (3) The district is eligible for a Modernization Excessive Cost Hardship Grant of:
 - (A) \$14,400 for each additional stop of the new elevator required in ~~(3)~~ (2) above if the Approved Application was received on or before April 29, 2002.
 - (B) \$10,800 for each additional stop of the new elevator required in ~~(3)~~ (2) above if the Approved Application was received after April 29, 2002.

The amounts shown in (A) and (B) above shall be adjusted annually in the manner prescribed in Section 1859.78.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17072.32, 17074.15, 17074.16, 17075.10, 17075.15, 17077.40, 17077.42 and 17077.45, Education Code.

Attachment D
50-04 Instructions

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Section 6

Modernization Adjusted Grant pursuant to Section 1859.70. For purposes of this apportionment, the following documents must be submitted with this form (as appropriate):

If the request includes funding for accessibility and fire code requirement pursuant to Section 1859.83(f), the DSA approved list of the minimum accessibility work required and a detailed cost estimate for the work in the plans, [unless the project is a replacement building area of like kind.](#)

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7. Excessive Cost Hardship Request

Check the appropriate box to request an augmentation to the New Construction, Modernization or Charter School Facility Program Rehabilitation Grants for an excessive cost hardship for the items listed. Refer to Section 1859.83 for eligibility criteria. Requests for excessive cost grants for accessibility requirements are allowed only if required by the Division of the State Architect (DSA). ~~At the district's option, t~~The district may request ~~three percent of the modernization base grant or enter~~ 60 percent of the amount calculated pursuant to Regulation Section 1859.83(f). Attach a copy of the DSA approved list that shows the minimum work necessary for accessibility requirements.

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7. Excessive Cost Hardship Request

Modernization or Charter School Facility Program Rehabilitation Only

- Rehabilitation/Mitigation [Section 1859.83(e)]: \$ _____
- Geographic Percent Factor: _____ %
- Accessibility/Fire Code
 - ~~3 percent of base grant; or,~~
 - (60 percent of minimum work) \$ _____
- Number of 2-Stop Elevators: _____
- Number of Additional Stops: _____
- Small Size Project
- Urban/Security/Impacted site

ATTACHMENT E

BACKGROUND AND DATA ANALYSIS RESULTS

The Modernization Accessibility and Fire Code Requirements Grant:

The steps in applying for an accessibility and fire code requirements grant allowance, when submitting a complete modernization funding application are as follows:

- A district submits a completed access compliance and/or fire life safety checklist to the DSA for approval.
- The DSA approved checklist(s) is then submitted by the district along with a complete modernization funding application to the OPSC.
- The SAB approves the application and provides an unfunded approval or an apportionment.

Accessibility and Fire Code Compliance:

The Modernization Excessive Cost Hardship Grant for accessibility and fire code compliance is based on estimated construction costs as reported by the district on the access compliance and/or fire life safety checklist. These costs must represent the minimum work necessary to receive approval from the Access Compliance Unit of the DSA. The grant is calculated by taking the accessibility and fire code requirements compliance costs and subtracting seven percent of the sum of the State and district share of the project's modernization base grant.

If the construction costs of a modernization project exceed 50 percent of the building replacement cost, the building must be brought into compliance with the current building code as part of the Title 24 requirements. Therefore, the maximum a district can receive for access compliance is the difference between the new construction base grant (which represents approximately 50 percent of the replacement cost) and the sum of the State and district share of the modernization project's base grant. The chart below illustrates how the Excessive Cost Hardship Grant cap is calculated based on one pupil grant, how the seven percent is applied, and how the three percent option is determined:

1) Calculation of Maximum Grant (Cap)—Based on One Elementary Pupil

State and District Share of New Construction Base Grant at 50%		State and District Share of 100% Modernization Base Grant		Maximum Grant Allowable for Accessibility and Fire Code Requirements
\$9,369	-	\$5,947	=	\$3,422

2) Examples of 60 Percent Calculation of the Excessive Cost Hardship Grant

If the Minimum Accessibility and Fire Code Work Verified by DSA is:		7% of State and District Share of Modernization Base Grant		Difference		Excessive Cost Hardship Grant at 100%
\$2,000	-	\$416	=	\$1,584		\$1,584
\$5,000	-	\$416	=	\$4,584		\$3,422 (cap)
\$350	-	\$416	=	- \$66		\$0

3) Example of 3 Percent Calculation

State and District Share of 100% Modernization Base Grant		3% increase of the State and District Share of Modernization Base Grant		Excessive Cost Hardship Grant at 100%
\$5,947	x	3%	=	\$178

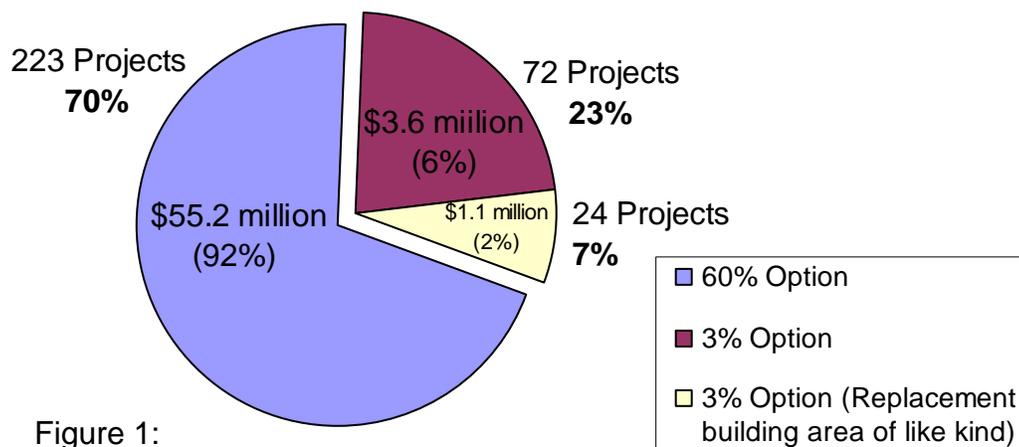
Modernization projects that consist of replacement of buildings with like-kind facilities instead of modernizing them are eligible for an Excessive Cost Hardship Grant equal to three percent of the modernization base grant. Replacement building area of like kind means facilities are demolished and replaced with new facilities of the same square footage. It is not possible to itemize compliance costs in replacement projects because the items are already embedded in the overall building design.

From August 2007 to December 2008 (16 months), a total of 319 modernization applications received a grant apportionment that included an Excessive Cost Hardship Grant for accessibility and fire code requirements. Using this data, OPSC staff conducted an analysis and identified the following findings:

1. Data Analysis: Modernization Projects with an Accessibility and Fire Code Grant Allowance

Over the past 16 months, 223 out of 319 modernization projects (70 percent) received the Excessive Cost Hardship Grant allowance for accessibility and fire code requirements under the 60 percent option versus the three percent option. The SAB apportioned a total of \$59.9 million for accessibility and fire code requirements under the Excessive Cost Hardship Grant. Of this amount, \$55.2 million (92 percent) was allotted to projects that chose the 60 percent option, \$3.6 million (six percent) was allotted to projects that selected the three percent option and did not contain replacement building area of like kind, and \$1.1 million (two percent) was allotted to projects that selected the three percent option and contained replacement building area of like kind. Figure 1 illustrates the type of option selected by districts and the amount of apportionments provided.

Modernization Projects/Apportionment for the Accessibility and Fire Code Grant Allowance



2. Data Analysis: No 60 Percent Option

The apportionment for 223 projects that selected the 60 percent option totaled \$55.2 million. If only the three percent option had been available during this period, the districts would have received only \$9.4 million versus \$55.2 million for the minimum work necessary for accessibility and fire code requirements. Figure 2 shows how districts benefit from the 60 percent option for accessibility and fire code requirements.

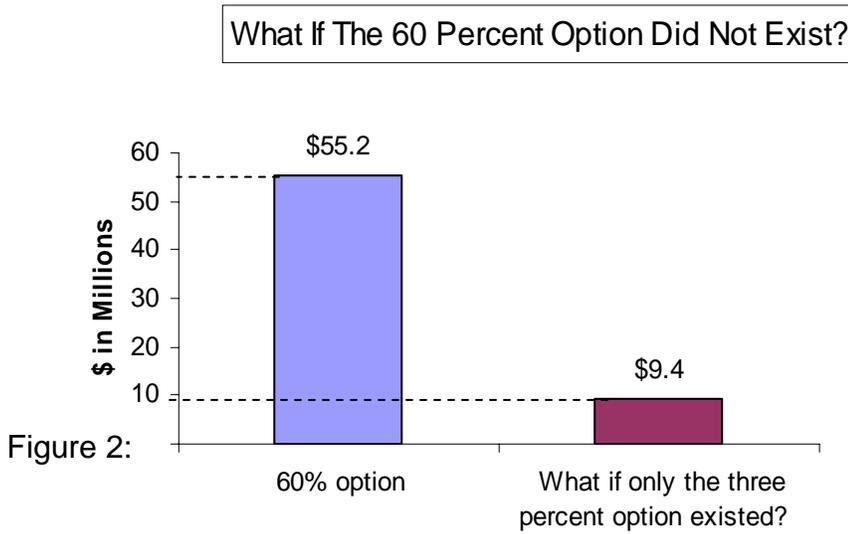


Figure 2:

3. Data Analysis: Top 10 Percent of Modernization Projects

Of the 319 modernization projects apportioned from August 2007 to December 2008 with an accessibility and fire code requirements grant allowance, the top 10 percent, or 32 projects, was reviewed to determine whether there was a trend for projects with a higher base grant to select one option over another. Figure 3 shows that large projects (based on the amount of base grant received) tend to select the 60 percent option rather than the three percent option.

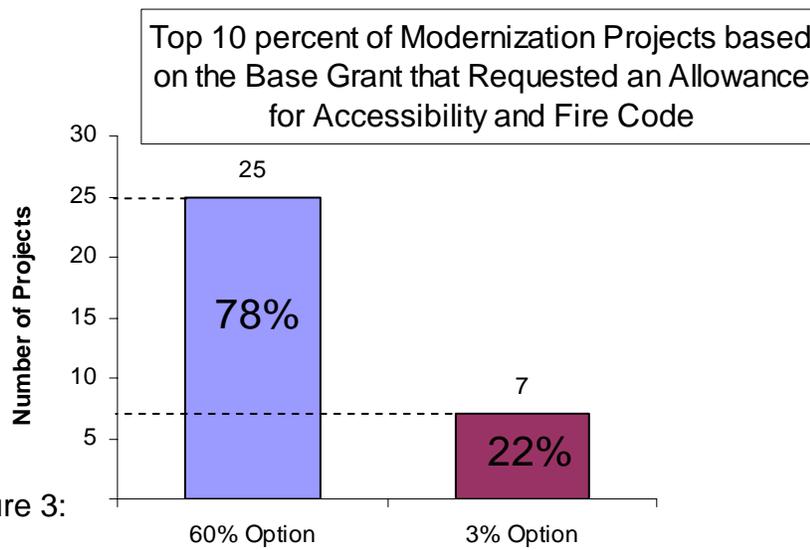


Figure 3: