

FINAL STATEMENT OF REASONS

Title 2. Administration
Division 2. Financial Operations
Chapter 3. Department of General Services
Subchapter 4. Office of Public School Construction
Group 1. State Allocation Board
Subgroup 5.7. School Facilities Needs Assessment and Emergency Repair Program

Section 1859.302. Definitions.

Specific Purpose of the Regulation

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

Need for the Regulation

It was necessary to provide definitions for specific words and terms that are used extensively in these regulations as it eliminates the need for restating definitions at every instance of use, and to make minor non-substantive changes.

Section 1859.318. Supplement, Not Supplant, Needs Assessment Grant Funds.

Specific Purpose of the Regulation

To amend the regulation.

Need for the Regulation

It was necessary to delete "reimbursement" and substitute "funding" because the Emergency Repair Program (ERP) has been modified to provide grant funding for eligible ERP projects, pursuant to Assembly Bill (AB) 607, Chapter 704, Statutes of 2006 (Goldberg), in addition to the existing method of reimbursing costs already expended. The word "funding" can apply to either method of ERP apportionments.

It was necessary to make the non-substantive change of adding Education Code Section 17592.72 as a reference section, because it was amended by AB 607.

Section 1859.320. General.

Specific Purpose of the Regulation

To amend the regulation.

Need for the Regulation

Line 1: It was necessary to amend this regulation to accommodate grant funding for ERP projects as required by AB 607, and to make two non-substantive changes.

Lines 2 through 4: To make minor non-substantive changes.

Lines 4 and 5: It was necessary to delete this sentence to conform to the newly-revised Form SAB 61-03, which streamlines the application process by allowing more than one building component or system per Grant Request.

Section 1859.321. Eligible Schools.

Specific Purpose of the Regulation

To clarify the regulation and add an additional eligibility criteria resulting from AB 607.

Need for the Regulation

It was necessary to add subsection (b) stating an additional eligibility criteria to reflect the revisions made to Education Code Section 17592.72 as a result of AB 607, which provides funding for emergency repairs at specified schools commencing with Fiscal Year 2007/08 and for subsequent fiscal years.

Section 1859.322. Emergency Repair Program Project Funding Order.

Specific Purpose of the Regulation

To modify and clarify the regulation, and to distinguish between funding for Grants and for Grant Adjustments.

Need for the Regulation

1st Paragraph: It was necessary to modify the regulation to accommodate grant funding as required by AB 607, to distinguish between the funding process and funding order for Grants and Grant Adjustments, to delete the words "full and final" regarding initial Grants because proposed new Regulation Section 1859.324.1 would allow additional project funding termed Grant Adjustments, and to make a non-substantive change.

Subsection (a), Subsection (b), and 2nd Paragraph: It was necessary to modify the regulation to accommodate grant funding as required by AB 607.

2nd Paragraph, Lines 1 and 2: It was necessary to set forth a prioritization of ERP apportionments to be made by the State Allocation Board from projects on the Unfunded List when funds become available. Funding for Grants will be first priority, with second priority for projects which have previously had approved Grants and are now seeking Grant Adjustments. This was deemed an appropriate needs-based prioritization.

2nd Paragraph, Lines 3 through 5: For purposes of improved understanding and compliance by LEAs, it was necessary to clarify the LEA obligation to reimburse any special reserve funds and local funding sources that were used by the LEA to make eligible emergency repairs in advance of receiving ERP project funding.

3rd Paragraph: It was necessary to modify the regulation to accommodate grant funding as required by AB 607, to express the exhaustion of ERP funds in different language that is not subject to possible future changes in total dollars allocated to the ERP, to distinguish between Grants and Grant Adjustments, and to make the non-substantive change of adding Education Code Section 17592.72 as a reference section.

Section 1859.323. Eligible Project Costs.

Specific Purpose of the Regulation

To modify and clarify the regulation.

Need for the Regulation

Line 1: It was necessary to modify the regulation to include grant funding as required by AB 607.

Lines 2 and 3: It was necessary to add a requirement for a minimum total project cost in order to streamline the application process, while still allowing Local Educational Agencies (LEAs) to justify requests for lesser amounts.

Line 4: It was necessary to modify the regulation to include grant funding as required by AB 607.

Lines 5 and 6: It was necessary to add this language to add an additional eligible project cost to include a reasonable sum for application documentation preparation and submittal costs incurred by LEAs, if any, to help avoid imposing any cost burden upon local entities in applying for ERP funding.

Section 1859.323.1. Replacement Projects.

Specific Purpose of the Regulation

To modify and clarify the regulation.

Need for the Regulation

1st and 2nd Paragraphs: It was necessary to modify the regulation to accommodate grant funding as required by AB 607.

2nd Paragraph: It was necessary to specify that LEAs opting to replace components or systems, instead of making more cost-efficient repairs, could not later receive increased project funding through a Grant Adjustment, in order to encourage more cost-effective use of ERP apportionments.

3rd Paragraph: It was necessary to delete this language because the requirement to submit a cost comparison is changed from a documentation submittal requirement to a self-certification signed by the LEA representative, in order to streamline the application process.

4th Paragraph: It was necessary to clarify the eligible project costs for replacement projects, because worn or broken building components can be up to decades old, with replacement options involving newer component technologies, different manufacturing materials, and differing costs. This clarifying language helps LEAs to know in advance the ERP-funding impacts of their decisions for replacement projects.

Section 1859.323.2. Ineligible Expenditures.

Specific Purpose of the Regulation

To modify the regulation in conjunction with Section 1859.323 "Eligible Project Costs," which added an eligible project cost for reasonable application documentation preparation and submittal costs.

Need for the Regulation

New subsection (j): It was necessary to provide a determination of a reasonable allowance for costs for application documentation preparation and submittal incurred by LEAs, if any, to help avoid imposing any cost burden upon local entities in applying for ERP funding. Discussions at Implementation Committee meetings attended by school district representatives showed that many LEAs would need to hire a school facility

consultant to accomplish their document preparation and submittals. Since such hirings would further the Legislative intent of making emergency repairs of health and safety hazards on school sites, two percent of total project costs was deemed a reasonable limit for LEAs incurring such costs, while not overburdening ERP program funds.

Section 1859.324. Funding.

Specific Purpose of the Regulation

To modify the regulations and add time limits for providing ERP funding for eligible projects extending into future years.

Need for the Regulation

Section Title and Line 1: It was necessary to modify the regulation to accommodate grant funding as a result of AB 607.

Line 2 and Subsections (a) through (c): It was necessary to modify the regulation to be consistent with the revisions made to Education Code Sections 17592.72 and 1240(c)(2), which provide funding for schools ranked in deciles one to three based on the 2003 Academic Performance Index, 2006 Academic Performance Index, or 2009 Academic Performance Index, as a result of AB 607.

Section 1859.324.1. Grant Adjustments.

Specific Purpose of the Regulation

To provide the method for processing Grant Adjustments.

Need for the Regulation

It was necessary to provide the method for processing Grant Adjustments to accommodate grant funding as required by AB 607. Because Grant apportionments will now be authorized for eligible ERP projects based upon submittal of estimated costs, later Grant Adjustments to LEAs are deemed appropriate if their expenditures in excess of the initial Grant apportionment are associated with the project's original scope. Conversely, it was necessary to provide a process for return to the State of ERP appropriations in excess of actual project expenditures.

Section 1859.326. Expenditures and Audit.

Specific Purpose of the Regulation

To modify, clarify, and make a correction to the regulation.

Need for the Regulation

1st Paragraph: It was necessary to make a correction by listing particular applicable regulation sections rather than describing a grouping of regulations.

2nd Paragraph, Lines 1 and 2: It was necessary to modify this language to accommodate grant funding as required by AB 607.

2nd Paragraph, Line 3: It was necessary to make a non-substantive clarification of the start of a time period in the existing regulation.

3rd Paragraph, Line 3: It was necessary to correct and clarify this reference to applicable section numbers.

3rd Paragraph, Line 4: It was necessary to make a non-substantive change involving the capitalization of a word.

3rd Paragraph, Line 6: It was necessary to lengthen the period of time from 30 to 60 days for a LEA to return ERP funds to the State due to audit findings, because the longer period is more reasonable to accommodate the processing of such financial transactions, and is consistent with the 60-day time period for such collections as referenced in Education Code Section 17076.10 for return to the State of School Facility Program funds.

3rd Paragraph, Lines 6 and 7: It was necessary to clarify that "Section 1859.324.1(a)" is where the OPSC collection procedures are set forth, for purposes of assuring uniformity of such procedures in each instance.

3rd Paragraph, Line 7: A non-substantive correction is made to add the word "Section" before the number "1859.324.1(a)." This word was mistakenly omitted but is shown underlined in the text in Tab 10.

Section 1859.328. Supplement, Not Supplant, Emergency Repair Program Grant Funds.

Specific Purpose of the Regulation

To modify and clarify the regulation.

Need for the Regulation

Lines 3 and 4: It was necessary to add reference to the proposed mandatory new Form SAB 61-04, "*Expenditure Report*" in the same context as the listing of eligibility requirements applicable to submitting an Accepted Application for an ERP Grant, because the Form SAB 61-04, "*Expenditure Report*" must be submitted either with an ERP Accepted Application seeking reimbursement for already expended project costs, or later, after an earlier Accepted Application was based upon estimated costs, and the project has now reached completion and final costs have been determined.

Line 4: A non-substantive correction is made at Tab 10 because the word "is" was stricken and changed to "are," but "are" was mistakenly not underlined. It is underlined as shown at Tab 10.

Subsection (d), line 6: It was necessary to modify this regulation to accommodate grant funding as required by AB 607.

Section 1859.329. Withdrawal and Amendment of Applications.

Specific Purpose of the Regulation

To modify and clarify the regulation.

Need for the Regulation

Lines 1 and 2: It was necessary to modify this regulation to accommodate grant funding as required by AB 607.

Lines 3 through 5: It was necessary to differentiate between an initial Grant apportionment and a subsequent Grant Adjustment. Because Grant apportionments will now be authorized for eligible ERP projects based upon submittal of estimated costs, later Grant Adjustments to LEAs are deemed appropriate if their expenditures in excess of the initial Grant apportionment are associated with the project's original scope.

Line 6: It was necessary to clarify that an LEA may only receive additional ERP funding for a project once through a Grant Adjustment, because finality of the funding process is necessary for closure of finished projects and management of ERP funds, without the uncertainty of Grant Adjustment submittals extending into the future and seeking later-incurred project costs. This also encourages LEAs to timely complete their projects and to carefully and accurately compile their Form SAB 61-04, "Expenditure Report" upon project completion.

Section 1859.330. Time Limit on Grant Apportionment.

Specific Purpose of the Regulation

To add provisions for time limits on grant apportionments.

Need for the Regulation

It was necessary to add provisions for time limits on grant apportionments to accommodate grant funding required by AB 607, and to provide for the return to the State of ERP funding in case the emergency repairs or replacements are not performed by the LEA within a reasonable time and properly documented to the OPSC on Form SAB 61-04.

Technical Documents Relied Upon

The State Allocation Board's Action item, dated January 24, 2007, entitled "Assembly Bill 607 Amendments to Emergency Repair Program Regulations."

The State Allocation Board's Action item, dated March 28, 2007, entitled "Amendment to the Emergency Repair Program Regulations."

Alternative 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 regulations or would be as effective and less burdensome to affected private persons than the proposed regulations.

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

The SAB has determined that the proposed regulations do not affect small businesses.

Finding of Significant Adverse Economic Impact on Businesses

The SAB has determined that the adoption of the regulations will not affect small businesses because they are not required to comply with or enforce the regulations, nor will they benefit from or be disadvantaged by the regulations.

Impact on Local Agencies or School Districts

The SAB has determined that the proposed regulations do 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 or school districts to incur additional costs in order to comply with the proposed regulations.

EMERGENCY REPAIR PROGRAM FORMS

Grant Request, Form SAB 61-03 (Revised 01/07)

Specific Purpose of Form

To specify the information necessary to determine a project's eligibility for funding.

Need for the Form

It was necessary to redesign this form to accommodate grant funding as required by AB 607.

Expenditure Report, Form SAB 61-04 (New 01/07)

Specific Purpose of Form

An applicant uses this form to report actual project expenditures.

Need for the Form

It was necessary to create this form to accommodate grant funding as required by AB 607, including the requirement that recipients of State funds for ERP projects must document the use of the funds for authorized purposes.

Page 3, Section C., 14th bullet item: A non-substantive correction has been made to a typographical error. Section "1859.234.1" (no such section exists) has been corrected to "1859.324.1," which is the applicable and intended section.

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

The State Allocation Board's Emergency Repair Program Form is maintained and readily accessible through our Web site. Therefore, it is not necessary to publish the form in the California Code of Regulations.

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

The State Allocation Board's Emergency Repair Program Form is made available upon request and through our Web site, and continues to be made available upon request and through our Web site.