

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, February 23, 2005

WILLIAMS SETTLEMENT - SENATE BILL 6
DEFINITION OF THE SUPPLEMENT, NOT SUPPLANT REQUIREMENT

PURPOSE OF REPORT

To request:

- Adoption of and amendments to the regulations specific to the supplement, not supplant requirement of the statute applicable to the School Facilities Needs Assessment Grant Program (SFNAGP) and the Emergency Repair Program (ERP).
- Authorization to file the proposed emergency regulations with the Office of Administrative Law (OAL).

DESCRIPTION

Senate Bill (SB) 6, Chapter 899, Statutes of 2004 (Alpert), was enacted as a part of the settlement agreement in the case of *Williams v. State of California*. At the January 26, 2005 meeting, the State Allocation Board (SAB) adopted regulations implementing SB 6, which created the School Facilities Needs Assessment Grant Program and the Emergency Repair Program. There were two sections of the regulations pertaining to the supplement, not supplant requirement of SB 6 that were not included in the proposed regulations presented to the SAB in January. It was agreed that those sections needed more discussion and would be presented to the SAB in February.

AUTHORITY

Pursuant to Education Code Section 17592.72(b)(2), School Facilities Needs Assessment Grant Program and Emergency Repair Program funds "shall supplement, not supplant, existing funds available for the maintenance of school facilities." Further, the statute states that "it is the intent of the Legislature that each school district exercise due diligence in the administration of deferred maintenance and regular maintenance in order to avoid the occurrence of emergency repairs.

STAFF COMMENTS

At the February 11, 2005 SAB Implementation Committee meeting, the supplement, not supplant requirements were discussed in great detail. The proposed regulatory language reflected on the Attachment is the language that was agreed to by the SAB Implementation Committee members, school districts, and the American Civil Liberties Union. Upon adoption by the SAB, the Office of Public School Construction will submit these regulations as emergency regulations to the Office of Administrative Law (OAL).

RECOMMENDATIONS

1. Adopt the proposed regulations as shown on the Attachment and begin the regulatory process.
2. Authorize the OPSC to file these emergency regulations with the OAL.

TITLE 2. CALIFORNIA ADMINISTRATIVE CODE
DIVISION 2. FINANCIAL OPERATIONS
CHAPTER 3. DEPARTMENT OF GENERAL SERVICES
SUBCHAPTER 4. OFFICE OF PUBLIC SCHOOL CONSTRUCTION
SUBGROUP 5.7. RELATING TO SCHOOL FACILITIES NEEDS ASSESSMENT AND
EMERGENCY REPAIR PROGRAM

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

Needs Assessment Grant funds remaining after the completion of the Needs Assessment must be used for repairs authorized in Section 1859.313(b) and must be used to supplement, not supplant, funds already available for routine, deferred, planned and scheduled maintenance, or emergency repairs of school facilities. In accordance with this requirement, the LEA must comply with all of the following in the 2005/2006 fiscal year:

- (a) Deposit the funding level required pursuant to EC Section 17070.75 in the Routine Restricted Maintenance Account, if participating in the SFP.
- (b) Deposit an amount equal to the state's matching share of the basic grant pursuant to EC Section 17584, if participating in the DMP.
- (c) If either (a) or (b) are not applicable, the district must budget an amount not less than the average maintenance budget for the three previous fiscal years.
- (d) In an effort to ensure that each of its schools is maintained in good repair, the LEA shall expend or encumber by issuing a purchase order or entering into a legal contract or document, or dedicate funds from the sources listed in subsections (a) through (c), above, to correct problems identified in the facilities inspection system required pursuant to EC Section 17070.75(e), which may include items listed in the DMP five-year plan, or the Interim Evaluation Instrument that do not qualify for funding as described in EC Section 17592.72(c)(1). For those projects eligible for ERP funding, the LEA may seek reimbursement at any time provided that the LEA has or will meet the above requirements.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: 17592.73, Education Code.

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Section 1859.325. School Facility Due Diligence.

To ensure that the LEA is exercising due diligence in the administration of its facility accounts and is using an Emergency Repair Program Apportionment to supplement existing funding for the maintenance of school facilities, the OPSC may conduct a review of the LEA's facility maintenance accounts pursuant to the provisions of Section 1859.328.

In the event that the Board finds that an LEA is failing to exercise due diligence or supplanting has occurred, the Board shall notify the county superintendent of schools in which the LEA is located and may deny future funding under these regulations.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

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

Emergency Repair Program Grant funds must be used to supplement, not supplant funds already available for routine, deferred, planned and scheduled maintenance, or emergency repairs of school facilities. In accordance with these requirements, the LEA must comply with all of the following at the time the Accepted Application is submitted to the OPSC:

- (a) Deposit the funding level required for the current fiscal year pursuant to EC Section 17070.75 in the Routine Restricted Maintenance Account, if participating in the SFP.
- (b) If participating in the DMP, the district:
 - (1) For applications submitted prior to January 1, 2006, has deposited an amount equal to the State's matching share of the maximum basic grant, calculated pursuant to EC Section 17584, for the latest available determination; and
 - (2) For applications submitted on or after January 1, 2006, has deposited an amount equal to the maximum basic grant, calculated pursuant to EC Section 17584, for the latest available determination; and
 - (3) Will deposit an amount equal to the maximum basic grant, calculated pursuant to EC Section 17584, for the next scheduled determination.
 - (4) Shall not transfer excess local funds in accordance with EC Section 17583 from the deposits made as specified in (2) and (3), above.
- (c) If either (a) or (b) are not applicable, the district must budget for the current fiscal year an amount not less than the average maintenance budget for the three previous fiscal years.
- (d) In an effort to ensure that each of its schools is maintained in good repair, the LEA shall expend or encumber by issuing a purchase order or entering into a legal contract or document, or dedicate funds from the sources listed in subsections (a) through (c), above, to correct problems identified in the facilities inspection system required pursuant to EC Section 17070.75(e), which may include items listed in the DMP five-year plan, or the Interim Evaluation Instrument that do not qualify for funding as described in EC Section 17592.72(c)(1). For those projects eligible for ERP funding, the LEA may seek reimbursement at any time provided that the LEA has or will meet the above requirements.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.72 and 17592.73, Education Code.